

1167

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/06/2013 11:19 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Peter E. Dular Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal  
City: Dunedin Postal Region: Otago Postal Post Code: Postal Country: New Zealand  
Submission: \* What are your aspirations for Aotearoa New Zealand?

That there are just and honourable relationships based on the Treaty of Waitangi.

That we engage in a longer, more in-depth conversation in order to develop a values based, Treaty based constitution.

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

In a way which reflects te Tiriti o Waitangi.

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

The Treaty is the founding document of our country. It needs to be the foundation for our constitution.

Te Tiriti o Waitangi provided the framework for an ongoing relationship between Maori and others who came to settle here. Any future constitution needs to develop from the starting point of this document.

He Wakaputanga (the Declaration of Independence) and te Tiriti o Waitangi provide the fundamentals for governing in this country. Any further constitution needs to develop from the starting point of these two covenants.

\* Do you think the Treaty should be made a part of our constitution? YES Why?

The entire process for determining our constitution needs to be based on the Treaty-rather than trying to fit the Treaty into an existing constitutional framework.

As Tauwiwi (Caucasian American/resident NZer), I understand that te Tiriti o Waitangi provided for the

establishment of a government which allowed me to come here. It's important to our status as non-Maori that this document is the basis for our constitution.

The Treaty of Waitangi benefits all New Zealanders and enriches us as a country, therefore it should be central to the constitution.

The Treaty is the foundation document of our nation, therefore the constitution needs to reflect this.

The Treaty provides a basis for honourable and just relationships between Maori and all other New Zealanders.

Our country has made a statement of support for the United Nations Declaration on the Rights of Indigenous Peoples. If we are going to live up to the commitment it is essential that we honour the Treaty relationship.

Please take the Treaty seriously and honour it!

Dr. Peter Duglar

Sent on the 8 June 2013 at 11:18

1124

**From:** ConstitutionalReview  
**To:** ConstitutionalReview  
**Date:** 6/06/2013 11:00 a.m.  
**Subject:** Fwd: <http://www.ourconstitution.org.nz/> form submission

28 April 2013

This post is part one of my draft submission to the 'constitutional conversation' (<http://www.ourconstitution.org.nz/New-Zealands-Constitution>). Constructive critical comments are welcome.

Should our constitution be written in a single document?

Yes. As our society becomes more diverse and more open to complex influences, domestically and globally, we need to codify the basic values, rights and institutions that have enduring worth and widespread support. We do not presently have enough checks on the unicameral parliament and the executive, and a written constitution could prevent governments and legislators from overstepping boundaries that are crucial to the values and basic rights of the people. Much of the performance of our constitution presently relies upon convention, and so a written constitution would set out the basic democratic principles in compliance with which a matter would then have to be settled in situations where there may be doubt or disagreement, or where new practices are needed.

The content of a written constitution can largely be gleaned from existing documents, such as the Cabinet Manual, the Constitution Act and the Bill of Rights Act. A constitution's contents should be relatively brief and clearly written, so that all can understand it, and include only those essential matters that New Zealanders would not wish to see compromised or neglected by their elected representatives or by the courts. That is, it should cover those matters that we believe have been essential for the good functioning of government and law so far and that will continue to be of value for future generations. Knowing that we have developed, in the course of our history, a relatively stable system of government, a constitution should be regarded as a gift we give to future New Zealanders, for the preservation of sound and enduring values, rather than a set of rules that we hope might deal with today's problems. In writing it, we should be thinking of that which has endured through our history, and that which, in our best judgement, will continue to be of relevance and importance to generations not yet born. We should try not to leave future citizens with a document that needs frequent amendment.

We should get on and do this job soon, while we have the luxury of time on our side, rather than wait for some unforeseeable crisis to force the need for a written constitution onto us.

Should such a written constitution have a higher legal status than other laws (supreme law)?

Yes. Although New Zealand has done well in preserving the principle of parliamentary sovereignty, it must also be admitted that executives have in the past abused their powers, and parliaments have passed legislation that was acknowledged to be discriminatory and inconsistent with the Bill of Rights Act. Given such behaviour, it would be best for the people now to constrain law-makers and administrators to certain indelibly marked boundaries.

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

It is already parliament's job to decide whether legislation is consistent with the Bill of Rights Act. But, on occasions, it has been decided that a Bill is inconsistent, and yet it has been passed anyway. Hence, we cannot trust legislators alone to be always the arbitrators of our constitutional rights. The courts should have the power at least to impliedly repeal, if not to strike down, legislation that is found to be inconsistent with the constitution, as a supreme law. This should not include the right of citizens to seek declaratory judgements on constitutionality from a court. Such findings should be restricted to occasions that arise from litigation involving parties affected by the Act in question. That is, I do not think that a constitutional court should be politicised by disgruntled citizens seeking to overturn legislation they happen not to like.

One criticism of the idea of giving courts the power to over-ride legislation is that it may allow unelected judges to reverse the decisions of the elected legislators who are democratically accountable. If, however, the constitutional oversight of the courts is limited to situations in which they are protecting the rights of the citizen against a parliament with full law-making powers, and only in safeguarding popularly accepted standards of human rights and due process, then this new role of

the courts would be seen to be a part of the democratic rule of law, rather than an exception thereto

>>> < \_\_\_\_\_ > 6/06/2013 10:56 a.m. >>>

Sent from The Constitution Conversation ( <http://www.ourconstitution.org.nz/> ).

Full Names: Grant Duncan

Organisation Name:

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Postal Country: New Zealand

Submission

Sent on the 6 June 2013 at 10:56



1124a

**From:** ConstitutionalReview  
**To:** ConstitutionalReview  
**Date:** 6/06/2013 11:01 a.m.  
**Subject:** Fwd: <http://www.ourconstitution.org.nz/> form submission

How would the Treaty of Waitangi fit in a written constitution?

This post is part of my draft submission to the 'constitutional conversation' (<http://www.ourconstitution.org.nz/New-Zealands-Constitution>).

What future role could the Treaty of Waitangi have in our constitution?

The Treaty is a product of negotiation between iwi/hapu and the Crown, and should be preserved as such, to the extent possible. From time to time, parliament must pass laws that empower Treaty settlements and/or that require consistency with the principles of the Treaty, and the courts have to apply that legislation. The Treaty is one key historical source of our constitution (along with other documents such as the 1688 Bill of Rights and the 1852 NZ Constitution Act) and hence will always be acknowledged to have a place in our constitution, in the broader sense of the word. The Treaty is not, however, a charter for the principles or institutions of government and law, and so it needs to be kept in perspective.

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

A clear and up to date restatement of the basic principles of the Treaty could be made into a formal part of the constitution, perhaps in a preamble, but not the full verbatim text of the original Treaty. These basic founding principles that derive from the Treaty should not depart too far from the three articles themselves, and hence might be in a form something like this:

The Crown originally gained the right to form a government in New Zealand in 1840.

The Crown is thus bound to protect the mana, valued possessions, customary rights and cultural practices of tangata whenua.

The Crown guarantees to tangata whenua all the rights and privileges of New Zealand citizenship, in accordance with the law.

The original Treaty text as a whole should not be imported into a written constitution. The reasons for this are:

The Treaty is ambiguously worded and poorly translated. This has been the source of many disagreements, and we should not import those problems into a constitution that we hope will outlast us and remain relevant for future generations. No-one suggests importing the Magna Carta or the 1688 Bill of Rights into our written constitution, even though they still serve an important historical constitutional role for us, and so we should not do that with the Treaty.

The Treaty contains wording that is now anachronistic, such as 'British Subjects' and 'right of Preemption.' It would be unwise to include words that no longer have practical relevance to the New Zealand constitution.

Placing the Treaty into an entrenched overarching constitution risks making the Treaty itself subject to decisions in the courts, with precedents creating ever more complicated interpretations of a poorly drafted document. This may not be in the interests of Maori seeking redress under the Treaty, as it would create conditions for more litigious and costly settlement processes. The Supreme Court's recent finding on the government's decision to proceed with sale of shares in Mighty River Power would surely discourage us from believing that entrenchment of the Treaty in a written constitution would be in the interests of Maori. The courts will not necessarily find in favour of Maori nor agree with the Waitangi Tribunal's interpretations of the Treaty's implications for particular present-day issues. And the Treaty itself should not be converted into a supreme law that might constrain future decisions, especially given its lack of clarity.

The constitution could include some reference to the Treaty and its basic principles. If indigenous rights are to be recognized in a written constitution, however, it may make more sense to look at the UN Declaration on the Rights of Indigenous Peoples as a source of relevant and up-to-date wording.

>>> <

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Sent from The Constitution Conversation ( <http://www.ourconstitution.org.nz/> ).

Full Names: Grant Duncan  
Organisation Name:

Phone: \_\_\_\_\_  
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Postal Country: New Zealand  
Submission:

Sent on the 6 June 2013 at 11:00

11246

**From:** ConstitutionalReview  
**To:** ConstitutionalReview  
**Date:** 6/06/2013 11:16 a.m.  
**Subject:** Fwd: <http://www.ourconstitution.org.nz/> form submission

## Māori Representation

This post is part of my submission to the 'constitutional conversation' (<http://www.ourconstitution.org.nz/New-Zealands-Constitution>).

How should Māori views be represented in Parliament?

The immediate constitutional question behind this is whether New Zealand should retain a Māori electoral roll and Māori seats. See my recent post (<http://masspolicy.blogspot.co.nz/2012/01/maori-seats-why-do-they-exist.html>) on the Māori seats.

The Māori electorates have been criticized for being tokenistic and ineffective in representing Maori views, on the one hand, and racially separatist and a form of special treatment for a minority, on the other. Their existence is evidently controversial, but neither of the main two political parties has been determined to terminate them, each for its own well-known political reasons. The Māori seats have, however, made it possible for the Māori Party to make a difference in parliament and government, and this has been a beneficial political development.

The existence of the Māori seats has become, however, inconsistent with the principle of an equal and non-discriminatory right to vote. There was good reason to introduce them in 1867, as Māori were effectively disfranchised by the electoral system of that era. The problem identified at that time no longer exists, and it can only be a matter of time before the Māori seats are abolished.

The question is how much time, and this is a matter that should not be forced through. Māori seats should remain in place until such time as Maori are prepared to relinquish them. They should not be entrenched in a written constitution, as they should be regarded as a 'temporary measure.' Article 3 of the Treaty grants to Māori equal rights as 'British Subjects' – which we must now read to mean 'New Zealand citizens' – and they are bound by the law, including the electoral law, in the same manner as other citizens. The Māori seats appear to be an exception to this Article. They may be consistent with Article 2, at a stretch, however. But the letter of the Treaty does not compel us to retain the Māori seats, nor to entrench them in a written constitution.

A 'bicultural' upper House is not recommended either. The idea that Māori are the 'Treaty partners' and therefore should be represented in a special 50/50 bicultural forum, over and above the House of Representatives, is not justifiable. There is nothing in the Treaty to directly mandate such an institution, and the idea diverges too far from the principles of proportionality in the legislature and equality among voters.

The representation of Māori views in parliament is not only a question of having or not having special Māori seats or forums, however. The answer to this question is largely political and goes beyond the constitutional scope of the present 'conversation.' There are 20 Māori MPs presently, seven of whom represent Māori seats. It is thus up to all political parties to represent Maori views, according to their own processes and policies, and to be accountable to voters for that.

How could Māori electoral participation be improved?

Māori electoral participation, notably in the Māori electorates, is particularly low. Voter turn-outs have been dropping in recent decades across the board, and this is more pronounced among lower socio-economic groups and the young. The low participation rates by Māori are unfortunately consistent with that. No-one to my knowledge has come up with an effective way to raise voter turn-outs, however, and the problem is a deep-seated one that must be addressed politically. Again, I see this question as being a political question, rather than a constitutional one. There is no strictly constitutional solution to this at present, as the Electoral Commission does all it can to encourage people to register and to vote.

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

There is presently a statutory provision for Māori wards in local government, but so far only one local authority has adopted them. The Auckland Council was denied them, controversially, in its empowering legislation.

Effective governance at the local level needs to take into account the authority and cultural values of mana whenua, and so some means of representation of Māori views should be routine. There is no

compelling case to force all local authorities to have Māori wards, however, either in statute or in a written constitution. Locally appropriate democratic and consultation processes should be found to include and represent Māori views, or to ensure the election of mana whenua representatives to Councils.

As for the role of a written constitution, then, it may be necessary to go beyond the 'bottom-line' principle of non-discrimination in regard to the local representation of indigenous communities. This should not go so far as to entrench Māori local wards. But a constitution could at least permit such solutions, in as much as they are considered appropriate for the time being by a local authority, and in the interests of rectifying disadvantage or under-representation. Such wording would need to be consistent with the UN Convention on the Elimination of Racial Discrimination, which allows for 'special measures' for groups that have suffered past discrimination.

Thus, if a local body chose to adopt Māori wards, then the measure would at least not be unconstitutional.

In addition, Treaty settlement negotiations will still create possibilities for local iwi/Crown co-governance arrangements, for contracts with government for by-iwi-for-iwi service delivery, etc. But these are matters for negotiations and do not require a mandate in a written constitution.

>>> < \_\_\_\_\_ > 6/06/2013 11:06 a.m. >>>

Sent from The Constitution Conversation ( <http://www.ourconstitution.org.nz/> ).

Full Names: Grant Duncan

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I

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Submission:†

Sent on the 6 June 2013 at 11:06

1124c

**From:** ConstitutionalReview  
**To:** ConstitutionalReview  
**Date:** 6/06/2013 11:17 a.m.  
**Subject:** Fwd: <http://www.ourconstitution.org.nz/> form submission

#### Electoral Matters

This post is part of my submission to the 'constitutional conversation' (<http://www.ourconstitution.org.nz/New-Zealands-Constitution>).

How many members of Parliament should we have?

There is no formula for answering this question. But I see no compelling reason to change the number at present. As the population grows, however, we need the option of increasing the number of members. If not, the alternative is either to increase the population-size of electorates (so as to limit their numbers), or to see the proportionality of parliaments decline (as the number of list seats reduces). A written constitution could provide a mechanism for rationally deciding on the number of MPs in future.

How long should the term of Parliament be?

The public debate appears to be mainly around the options of either 3 or 4 years. In a unicameral system with minority governments, three years makes more sense, as it allows for more frequent democratic mandates and reduces the risk of governments losing confidence-votes and hence of early elections.

How should the election date be decided?

It should not be the prerogative of the Prime Minister to decide on the election date (within the three-year maximum), as this gives the incumbent party an unfair political advantage and a constitutional power that is not strictly theirs to wield. Election-dates should be fixed – unless a government loses a vote of no-confidence or the Governor-General is forced for some other reason to dismiss a government before the fixed term is up.

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

As MMP has been reconfirmed by the 2011 referendum, then proportionality must be an overriding factor. The ability of citizens to approach their electorate MP in person is also important, and so the physical size and population of electorates should be taken into account. In as much as possible, electorate boundaries should reflect the geographic integrity of local communities.

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

See my earlier post

on this topic in relation to one recent case.

It does matter whether the MP is a list or an electorate member. If an electorate member, then, even though that member's mandate to sit in the House comes on the back of his or her membership of a political party and is not purely a personal mandate, the member was personally elected and retains his or her seat. If it's a list MP, then there is a stronger argument to say that the member should resign from parliament and be replaced by the person next on the party list.

A defection from a party can adversely affect the party's hard-earned proportionality in the House. And an independent member in the House may be less than effective and may or may not vote in line with his/her former party. This is unfair on the party that brought them into parliament in the first place.

On the other hand, there is a concern that party leaders could use the threat of expulsion from caucus, and hence expulsion from parliament altogether, as an undemocratic means of silencing dissent. The public can, of course, make up their own minds about this and render their judgement on that party's behaviour at the next election.

On balance, then, list MPs who part ways (for whatever reason) from their party should automatically lose their seats in the House, to be replaced by the next in line on the party list.

This should not apply to electorate MPs, however, as we are not able to judge to what extent their local-electorate victory was due to a personal following, or to a party affiliation. Either way, voters in the electorate have voted for that named individual to represent their electorate. Hence that MP's party membership is not their sole claim on the seat.



>>> 6/06/2013 11:08 a.m. >>>

Sent from The Constitution Conversation ( <http://www.ourconstitution.org.nz/> ).

Full Names: Grant Duncan

Organisation Name:

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Submission:

Sent on the 6 June 2013 at 11:08

2943

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 9/07/2013 3:00 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Valerie & Tom Duncan Organisation Name: Email:  
Phone: Postal AddressA: Postal  
AddressB Postal City: Wanganui City Postal Region: Wanganui/ Manawatu Postal  
Post Code: Postal Country: New Zealand Submission: Dear Sirs/Madam, Both Tom and  
I do not feel that a written constitution will do good! because there are no "Full Blooded Maori  
" in N.Z., and those who have the ability of oratory, are not necessarily the best MANAGERS.  
Nor do we agree that - just because  
the tribal lands are managed by the elected Board/committee, that -that entitles them to more seats  
in the House, - when it was through the foresight of the Europeans that New Zealand is the amazing  
country it is today. The Governess of the tribes relies soley  
on the "Old Guard" in the heirachy, and the young are frustrated by not being given their  
rights within the Tribe, and especially as many elderly are trying to keep the young one under their  
thumbs by not allowing change to the Maori way of life in the new  
millennium. Which is what they seek. One Man - One Vote.

It has always been the right of any British citizen, and whether you have large tracts of Land, or are  
lowly employee or even unemployed - your voice is heard in the ballot box, with no favouritism. As our  
"constitution" is based on the British constitution  
- which the Maori asked the British Govt., of the time - to come to Aotearoa, so that they could have  
rules - such as theirs , to create a more stable population, and try and stop the wars.

At the meeting in Wanganui where we heard a senior member of the Committee, Studying the  
"Constitution. He gave us the indication of what happens in Parliament when  
"TIMES" change and the old law is not working, but is required , - and part of the law is  
removed  
and the wording changed to suit the "times";

We have "apartheid"; if we give a minority group of people the right to have more than one  
vote, and with the changing face of immigrants - colour and creed, - One Man - One vote is essential.  
There are others who also have large tracts of land , who do not  
demand more than one vote, and they have developed the land and made it profitable. We have yet  
to see Maori making their huge tracts of land, which have been returned to them , ready for  
development and make them profitable, and also show that they appreciate  
their young people, by employing them - and not leaving it to everyone else.

Sent on the 9 July 2013 at 14:59

## Submission to the New Zealand Constitutional Advisory Panel 2013

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

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

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

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

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

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

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

I therefore submit the following recommendations:

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

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

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

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

Wayne Duncan  
Auckland  
New Zealand



## Submission to the New Zealand Constitutional Advisory Panel 2013

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

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

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

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

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

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

I therefore submit the following recommendations:

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- The entrenchment of the Bill of Rights Act 1990 so that the weight and importance of these rights is adequately recognised;
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- That New Zealand ratify the Optional Protocol for International Covenant of Economic Social and Cultural Rights, including opting in to its inquiry and inter-state mechanisms, so that New Zealanders have access to an international remedy;
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New Zealand has an obligation to take steps to progressively realise such rights as the rights to health, education, and adequate housing. Ensuring they are explicitly protected in New Zealand law is a significant step in ensuring that New Zealand is a place where human rights are protected, respected and fulfilled.

Helen Margaret Dunckley  
Oamaru  
New Zealand

1001

**From:**  
**To:** cconstitutional <constitutionalreview@justice.govt.nz>  
**Date:** 31/05/2013 2:09 p.m.  
**Subject:** changes

I am writing to protest about changing the constitution of New Zealand. the purpose of this law is to protect all New Zealanders regardless of race religion or political leanings.

Please fo not make changes that would allow one specific group of people to have more rights than others.

It would be extremely racial to allow this to happen and could destroy the fabric of New Zealand

Thank you

Jean Dunlop

Katikati

1115

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/06/2013 9:41 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: kerrv dunlop Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City:  
Queenstown Postal Region: Otago Postal Post Code: Postal Country: New Zealand  
Submission: the Treaty of Waitangi is historic and it has served it's purpose. While respecting  
ethnicity, we should now focus on being NZers first & foremost. Maori seats should be  
abolished. We should have a four year parliamentary term and have a higher proportion  
of electoral members of parliament.

A fixed constitution would lack flexibility. Our current situation is satisfactory.

Sent on the 5 June 2013 at 21:41

245

**From:** "Stephen"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 12/04/2013 3:45 p.m.  
**Subject:** re NEW ZEALAND CONSTITUTIONAL REVIEW

TO WHOM IT MAY CONCERN

Please be advised the undersigned wants no change to New Zealands unwritten constitution -- that includes any attempt to include reference to "The Treaty Of Waitangi".

New Zealands unwritten constitution has served the country well since the 1852 New Zealand Constitutional Act ( ie New Zealands founding document) was passed .

signed

Stephen Dunlop  
New Zealand Citizen

245a

**From:** "Stephen"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/06/2013 10:50 p.m.  
**Subject:** CONSTITUTIONAL REVIEW ET AL

(1) There is no such place as Aotearoa New Zealand -- the country is named New Zealand --get it right.

(2) New Zealand is to run without a written constitution (ie as is the current system) and with no reference to the Treaty of Waitangi (which is not our founding document)-- our founding document is the-- 1852 New Zealand Constitutional Act

signed

Stephen Dunlop



245b

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 9/06/2013 2:53 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: stephen dunlop Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal  
City: Postal Region: bay of plenty Postal Post Code: Postal Country: New  
Zealand Submission: there is no need to change new zealands constitutional arrangement (as  
they stand as of june 2013) in any way whatsoever

Sent on the 9 June 2013 at 14:52

245c

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 9/06/2013 2:58 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: stephen dunlop Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal  
City: Postal Region: bay of plenty Postal Post Code: Postal Country: New  
Zealand Submission: the treaty of waitangi is NOT new zealands founding document -- (the 1852  
new zealand constitutional act is)-- there is no place for the treaty of waitangi in any new zealand  
constitutional arrangements.

Sent on the 9 June 2013 at 14:57

245d

**From:** "Stephen"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 8:13 p.m.  
**Subject:** CAP Submission

There is no place for race based seats in local or central government -- abolish them -- any candidate wishing to stand for public office has to do so on merit not race.

signed  
Stephen Dunlop

4301

**From:** "Rob & Dunn"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 30/07/2013 10:57 p.m.  
**Subject:** CAP Submission

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I don't think there has been enough consultation and discussion with the general public of New Zealand by the Constitution Advisory Panel. If there is going to be any change to the constitution, it should only be after everyone has been made aware and understands the proposed changes. It should only be passed after it has gone to a public referendum.

I feel that the current constitution we have is working fine, and is fair to everyone. Therefore I don't think it needs changing.

Robert Dunn.

4962

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 26/07/2013 2:36 p.m.

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

Full Names: Dr. Alastair Dunne Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City: Auckland Postal Region:  
Postal Post Code: Postal Country: New Zealand Submission: I am glad we have kept  
proportional representation to protect the views of all New Zealanders; the next logical step is how we  
protect the rights of all New Zealanders. I think the best way of doing this is via a constitutional  
republic where our elected  
representatives have a clear set of rules they must operate within or have their actions struck down  
by the courts. A written constitution to guarantee basic human rights along with property rights could  
draw from the principles of the Treaty but needs to  
protect all at risk groups. The main advantage I see of a constitutional republic is that it gives (if  
created correctly) minority groups protection from the "dictatorship of the 51%" that democracy can  
sometimes become.

I think it is probably time to phase out British monarchs as our head of state but we should keep our  
ties to Britain through the Commonwealth - history is important. Our head of state should therefore be  
a New Zealander and I cannot see it being appropriate  
for them to continue being appointed without any public input. I think head of state should stay a  
ceremonial apolitical role also. What I would like to see is a President/premier who is elected via an  
STV system so that they represent as many New Zealanders  
as possible.

Submitted on the 26 July 2013 at 14:35



3030

**From:** "Nat Dunning Law"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 16/07/2013 3:39 p.m.  
**Subject:** submission  
**Attachments:** Nat Dunning.vcf; Nat Dunning submission 16 July 2013.pdf; dm2.PDF

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Please find my submission to the CAP attached. The second attachment is the attachment to the submission

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Nat Dunning



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Constitutional Advisory Panel  
C/- Ministry of Justice

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This submission is intended to be more about the approach, process or methodology of getting New Zealand to the society it would like to be, than the specifics of what it would take to get there.

The submitter is an unapologetic civil libertarian at heart, and a practising lawyer, pakeha.

### **Preliminary**

In my submission, if you were starting a constitutional review you would start with the question: what sort of country would I like this to be? Much as has been done.

If one can agree on where you want to get to, it is a big start on getting there. If we can pretty much agree on that (and surprisingly, New Zealanders are probably pretty agreed on that), there is at least some prospect of agreeing on how to get there, and then specific proposals can be considered for how they fit into the model or type of society to which we ascribe. Are they consistent with where we all want to go, or are they inconsistent and lead in the opposite direction?

Some of these traits or characteristics we do not need to aspire to, since much of it is already in place. It is surprising we are pretty much agreed on the sort of society we want to live in because New Zealanders have such strong, often opposite, opinions about what we like and do not like. It is also not surprising that there is such consensus because we are by and large a homogeneous, expressive and communicative society and in fact most of us will agree or reach consensus about something right across the country in a relatively short time. There is, for example, a public opinion regarding GCSB spying on New Zealanders.

Our overt agreement on the type of country/society New Zealanders do want can be inferred from the frequent reference in the press to Nazi Germany, quite often with secondary reference to communist-dominated or controlled East Germany, and Communist Russia not far behind that. Never is a word heard in support of the former, and hardly ever the latter (I seem to recall the Bill Anderson's Socialist Unity Party for most of its life had around 14 members).

The point is that those societies are the very antithesis of the type of society we aspire to be, and there would be very few indeed who did not agree about the desirable elements of the society we do aspire to be. We subscribe to

- freedom of expression
- freedom of movement
- freedom of assembly
- freedom of information.

One could go on. These are very real civil libertarian concepts. We agree interference with these is warranted only in order to prevent harm to others even if it is not articulated quite as such. This is where government and laws come in.

There are therefore the more seemingly positive assertions of rights, or protection from

- unreasonable search and seizure
- fair trial
- presumption of innocence.

These are really counter measures against the power of the State. In a sense so too is the almost universal desire for privacy, mostly from government, one has to say, because it has the greatest ability to invade our privacy. Racism and gay rights are more problematic but those social issues or concerns are moving in a liberal direction.

Whichever way you look at it, some form of government is at the same time the only way of delivering anything anywhere near Utopia, and the greatest risk of denying us those freedoms and protections we so desire. And of course we look for other things from Government with a capital G which a disorganised community would never be capable of delivering. This includes security.

We will surely agree that democratic vote is the best form of government for avoiding the dangers of dictatorship.

Indeed, it is entirely conceivable that each and every member of the panel can agree virtually word for word with what I have written thus far. The important thing is to recognise that we pretty much agree what kind of society we want and like, and how it is structured (on a civil libertarian model), and move on.

### **Written Constitution**

If it is not about fine tuning our form of democracy as such, which we will probably agree has delivered huge benefits and made New Zealand a happier and fairer place, then whether New Zealand should have a written constitution is the next issue, and what the alternatives are.

In this submission a written constitution is not desirable, or possibly even achievable.

The issue can be approached on a cost versus benefit basis. One has to say New Zealand has come a very long way in its 170 years as a nation, without a full formal written constitution. Probably only the last 100 years are relevant, given that up until then, New Zealand was little more than a colonial transplant. The greatest advances to New Zealand society have been made over the last 100 years, and the question is: would they have all been made if we had a constitution written in 1910? Quite likely not. This is not to devalue individual constitutional documents such as the Treaty of Waitangi or the transformation that that document gave rise to.

As a generalisation perhaps, constitutions are written by well intentioned people who end up entrenching their attitudes and solutions to issues of their day. In any event, they do not have a mandate to do anything else except to record, assemble if you like, the status quo, in writing. If they try to do more than that, they are exceeding their brief.

Secondly, there is every prospect that it might come at a cost, and instead of making for certainty, create uncertainty. Not quite that easy, is it, if you start thinking about what goes in it? The Treaty of Waitangi? The Covenant on Social and Political Rights? The Universal Declaration of Human Rights? Why not? But who and how many are going to agree about that? It could become a source of disagreement or even cause bitterness or disaffection, and even risk the advances made to date.

One can easily imagine a colonial power writing a constitution for a country that has no system of government - to create one, but that is not the case here. Ours has evolved in a seemingly haphazard fashion and left some major colonial vestiges.

Thirdly, not only would it be nearly impossible to replicate the almost unseen checks and balances in a single document, it is submitted that would slow the rate of change and destroy the flexibility created by the way we got there. And risk getting it badly wrong. Or spending forever deciding what it means, or whether or how to change it again when perceptions change or it proves inadequate.



### **Alternative to a written constitution**

There does of course not have to be one, but if New Zealand is to pursue the dream of having a country the way we would like it, some sort of focal point is needed, and civil libertarians do not particularly trust individual offices and individuals being made the focal point, or too much Government for that matter, or that being unduly emphasised as the dispenser of all good things to which we are beholden.

Government is meant to be the servant of the people, but it is quite often hard to see that. The Prime Minister will legitimise the GCSB's undeniably illegal activity unless he comes to realise he may lose office as a result, or he fails to muster the required number of votes, but he still tries in the face of public opinion. Leadership is expected of politicians (as long as it is in the right direction). But the interesting question is, does he have a choice but to do what he is doing, or does he feel he has no choice? He is a democratically elected member of a Parliament which passed law criminalising surveillance of New Zealanders, and now as Minister in Charge of the New Zealand Security Service, gives every appearance of heading the charge to legitimise illegal activity at the behest of the security services involved. Perhaps he fears it will affect trade with the Americans, or New Zealand security or membership of the Five Eyes worldwide electronic surveillance system from which we seem to get very little benefit at considerable cost (on any rational analysis).

One of the alternatives is of course what might be simplistically described as a presidential style of government, possibly even two houses à la the House of Representatives and the Senate. Presidents are focal points, and can provide leadership. The Governor-General, as an office, is long past it. All the Governors-General still try. More checks and balances as well as written instructions from the past to the future. Not many New Zealanders would be impressed with the United States as a role model, or Russia for that matter.

Any confluence of security forces, especially secret security forces, doing unlawful things they plainly, and no doubt deliberately, have not told the citizenry about, is not a happy thought, and yet here it is being replicated in New Zealand, aided and abetted by the Prime Minister. Other Prime Ministers have done just the same in the past, to be fair. In combination, though, very presidential and very difficult to arrest. And not to be encouraged. With Presidents and military on the same side, it seems quite easy to sway the populace.

While there is no easy solution to this, there is at least a solution; if not a complete solution, an alternative: a beefed-up New Zealand Bill of Rights Act. In a sense, it is already one of the most significant constitutional documents we have. It is only fair to acknowledge Sir

Geoffrey's masterstroke (his other being sunset clauses in legislation). This Act more than any embodies those values, freedoms, liberties and rights to which we aspire than any other Act of Parliament. They are there concentrated for all to see, and they epitomise, indeed provide the basis in law for, the sort of country New Zealanders feel able to aspire to.

The New Zealand Bill of Rights Act should be New Zealand's most effective constitutional document, and the good thing about it is that it had consensus in its day, and it was passed into law, by a democratically elected government. Better a statutory focal point, not a personality. Long live the rule of law, not the king. The trouble is, it is not terribly effective, and it needs an upgrade.

#### **Enhancements to the NZBORA**

The biggest problem is that it is mostly ignored by Government. The Courts don't ignore it, the executive seems to be prepared to abide by it if it is pointed out to it, but the legislature can simply and has gone around it whenever it has suited it. This is no doubt because of the ministerial system; they like to get their way, especially when they are pushed by the interest groups which they feel beholden to.

As another generalisation, the relationship between the executive and its ministers is too close. While there has to be day to day control, there is not a lot of accountability, until the relationship comes to public notice e.g. (again) GCSB, Department of Education and payroll systems, Police and Police computers and so on. That the Attorney-General is required to report on inconsistencies is something, but ineffective, partly because the Attorney-General is also part of the Government, but whatever the cause, it goes around the issues that arise.

Essentially, in this area I subscribe to the New Zealand Council of Civil Liberties' submission, with the exception of the written constitution. The NZBORA was intended to function as a protection for civil rights and freedom in New Zealand, and it has only been marginally successful because the Act's reporting and enforcement provisions have been inadequate. Other issues remain e.g. the substance of the NZBORA. Privacy needs to be added, so does property (as of right too). There can be little justification, apart from convenience, for citizens not to have a right to privacy, particularly from government, which has been instrumental in passing on the most sensitive of personal communications to our American allies, holus bolus, via Waihopai. It is a check to the power given to Government. Look at how much we benefit from those freedoms we are entitled to as of right e.g. freedom of expression: the press keeps Ministers of the Crown more or less honest. But all of a sudden reporters are being tracked, and government wants to read their emails (which is precisely what will happen if Peter Dunne releases them, if it has not happened already). Strange, is it

not, how all these powers come into focus for application against individuals who have embarrassed Ministers of the Crown? Precisely the sort of thing that happens in so-called police states, albeit nowhere to the same degree, but still with the same rationale: what does it matter if you have nothing to hide? Freedom of expression is critical to keeping New Zealand a democracy. These submissions could be construed to be, and probably are, anti American (to some degree), so perhaps better to post them, not that surface mail has not been opened in New Zealand and no doubt still is, but in New Zealand citizens should not be made to feel intimidated by real or even imagined spying.

Similarly with property: what can be the justification for not ever mentioning the right to keep your own property a la the Universal Declaration of Human Rights? The State takes property in police states; why should it ever have that ability here? Not mentioning it simply avoids issues and leaves unsatisfactory situations not even addressed, and makes it easier for the State to confiscate property in the future. Conspiracy theories do not just happen accidentally; they have a basis.

There is a very good case for introducing other internationally recognised rights e.g. those in the Universal Declaration of Human Rights.

This is by way of illustration, not an attempt to produce a comprehensive list.

While in my opinion it may be going too far to allow the Courts to strike down legislation, there can be little genuine objection to authorising the Courts to declare, as if it were a common law power, legislation to be in breach of the NZBORA, if only for the sake of the embarrassment that would cause and the attention drawn.

#### **Other issues**

*The Treaty of Waitangi:* This too is a constitutional document but one which the government has not been allowed to ignore. Personally, my thought is it is best left alone as a valuable historical document, but with the more modern interpretations of the rights it contains carried over to and recognised in the NZBORA. Why not?

*Maori seats:* Too hard. Nothing is that broken it needs fixing. They do serve as some sort of unifying force for Maori, but see below.

*Republic:* Too hard, too soon. Australia got it right and no point in asking New Zealand for a long time.

*Term of Parliament:* This cries out to be changed to 4-5 years. Possibly better 5, but you wouldn't get away with it, given the prevailing delusion that the ability to change

Government every 3 years makes for better government. Instead it wastes energy, costs and reduces the quality of the product.

*Number of MPs and MMP:* Not a serious issue currently, in this submission, but one can see the case for increasing the qualifying threshold for MMP. But even with a 4% threshold, would both a left wing and a right wing Maori Party be sustainable? Probably not. In fact, the system is almost tailor made for the present Maori Party and makes abolition of the Maori seats possible, quickly while there still is a Maori Party, but it is the Maoris' call.

*More democracy:* Democracy in hospital boards and maybe local government is taking it one step too far. People would be better to focus their energies on central Government. Who wants to try to run a hospital when they haven't the slightest idea how? Should we be allowing some of these people to run what are the two biggest institutions in probably all but one or two of our cities (hospitals and the local authority)? What possible public good is being served? Local authorities - you have to wonder sometimes. At least they represent some counterweight to central Government.

*Economic dimension:* Try as one might, encapsulating a right to access available government services and benefits seems to me to be the best means of expressing an entitlement or right to financial support by the State. Hard to see the services can be guaranteed as such! That is left to death and taxes, but it may be possible, with an overall framework in place (i.e. with NZBORA the focal or centre point) and other legislation with constitutional significance (e.g. Bill of Rights Act UK) recognised as such, with any legislation containing constitutional rights prefaced with the words "It is your constitutional right to XYZ" as to a way of informing the less aware that they have something important here, in the nature of a guarantee and defining/stating the only circumstances in which it can be taken away from them (as a theme if you like).

*Ministerial Government:* This does need reviewing. How? It is the problem of power corrupting all over again, but to be fair, it is hard to see an alternative, given the Crown structure. Tweaking the systems perhaps. Supplementary Order Papers are used by Ministers to by-pass the system, Cabinet Standing Orders too. There are a lot of little tricks being used. Queen Elizabeth II is named the Queen of New Zealand and that still seems what people want and it all flows from that. I suppose, thinking about it, one really would need a written constitution to connect to, in order to become a republic, and we are not about to do that.

*GCSB and "Five Eyes" (so-called)*

The GCSB revelation of the spying being carried out on New Zealanders at the behest of NZSIS and probably Police and others could not have come at a better time. But blowing the whistle on the surveillance being carried out in the States, with information coming from Five Eyes (i.e. New Zealand, Australia, Canada and UK) makes a mockery of all the public has been told and promised by successive Governments of New Zealand i.e. not just the current Government. It is in a sense the constitutional issue of our time, that this and the Dotcom debacle and the Urewera raids could have happened; or at least in the case of the Urewera raids, in the way that they did. It also affords the panel the opportunity to examine the performance of the constitutional model for the management of the security services (Police and military included), and the inter-connection between them as exposed by the Dotcom affair - as a kind of case study to ascertain if constitutional change is needed (as it is suggested it is).

One needs to be conscious that prior to the introduction of the New Zealand Security Intelligence Service Act in 1969 there was virtually no legislative base for the operation of the security services in New Zealand. That was largely its justification. In respect of the crimes of sabotage or espionage, no problem; it was carried on by the Police. But in the process of legislating these guarantees, the ambit of SIS activity was extended to subversion (not a crime), and more lately, extended further, into international wellbeing and economic wellbeing - whatever they are. Really a licence to spy on everyone and everything. Not a problem: we have a Commissioner of Security Warrants (now), and warrants will need to be issued by a High Court Judge first. More lately with the rise and rise of the internet more and better ability (and more opportunity) to vet the air waves, the GCSB has been added. Privacy concerns? Not a problem, it (like the NZSIS) has no executive power in New Zealand, and we have the Inspector-General of Intelligence.

A fat lot of use he has turned out to be.

It is worth replicating the provision and ask yourself: when does not to not mean not to?

**Government Communications Security Bureau Act 2003**

**14. Interceptions not to target domestic communications**

Neither the Director, nor an employee of the Bureau, nor a person acting on behalf of the Bureau may authorise or take any action for the purpose of intercepting the communications of a person (not being a foreign organisation or a foreign person) who is a New Zealand citizen or a permanent resident.



It took quite some abuse of power and court action for it to come to light. Ex Solicitor-General's (Crown) and High Court Judge appointed by the Minister in Charge or Prime Minister (Crown). One cannot help wondering how and from whom the Police found out about what was going on in the Ureweras. There is a range of possibilities, not all on shore. Were spy satellites used?

The point is this: just how well did New Zealand's much vaunted checks and balances work out in practice in these cases? It seems to me that New Zealand's security services have an unhealthy relationship with the inherently undemocratic American security services (indeed as do and are the British services). But they are all inherently undemocratic with influence or effect on New Zealand foreign policy as pointed out recently by Terence O'Brien, who described them as anachronistic, and in effect dangerous, which they are. Just bear in mind what sort of taxpayers' money gets paid for this operation - it looks like amounting to \$100,000,000 this financial year - for which there is some little justification in New Zealand, but is it actually spending masses of money for the benefit of the American surveillance industry, since it does not seem to have a lot of other functionality apart from vetting the civil service.

To my mind, that GCSB covertly breached an express provision in its own legislation and then reacted the way it did when that became public, including opposing the appointment of a new non-military director to head the organisation, strongly suggests that the truth of the matter is that they were well aware it was illegal in the first place, and that they had been doing what they did because they thought the threat(s), not to mention the importance of the activity, to the Americans and New Zealand's overall security, was such that it justified breaking the law. If you are aware of the history of promises made by Government about spying on New Zealanders, you are left in little doubt of that being the case. You could not but know it was illegal. Read the section above. Or perhaps it has become accustomed to waltzing around the Prime Minister and the Inspector-General.

It is no exaggeration to suggest that if we have a constitutional issue or in respect of the secret services, particularly in keeping them under control and acting in the democratically elected Government's perception of the country's best interest (as opposed to furthering their relationship with likeminded or parallel services in other countries who do not have the same interest). Those countries' issues, values and perceptions are not necessarily or automatically ours. They are English and Americans and probably Australians if only because one can assume they are of one mind with the American secret service, leaving out Canada. Terence O'Brien's article says most of it and it is worth refreshing your recollection with it. It is attached.

The American secret services seem to have got completely beyond control, the British only somewhat. The worst possible recent examples are the supply by the British secret services of arms and support to Gaddafi, unbeknown to the British Government, and a whole war based on misinformation from the CIA, NSA and other security services in the States. And Guantánamo Bay is still there. They - whoever they are - cannot get rid of it. These guys are fighting communism, or if that is waning, whatever else is going on in the world such as drugs in Afghanistan, and their responses and therefore ours are proportional to how *they* see or perceive the threat, not the democratically elected Government sees or perceives it. Not to say they do not have to persuade them, but they do seem to manage to. How was/is Afghanistan in New Zealand's interests? Men are dead as the price of a club membership fee?

One can see from the changes to New Zealand legislation how far New Zealand has moved towards the idea that espionage is useful in furthering (and protecting) economic interests in the way the Americans and British have. No wonder countries get into wars, but the spectacle of the largest economy in the world invading a country which just happens to be a major oil producer on the other side of the world for no better reason than it had the gloriously undefined "weapons of mass destruction" takes the biscuit and the aggressor was a democracy! Democracies are not meant to start wars and killing people for the sake of it (3000 fatalities on the first day!). That is left to dictatorships. Drones would be just perfect in the kind of world we would have to wake up to, if ever it were done their way. And New Zealand is, through its security services, is aiding and abetting that country. It probably only escaped going to Iraq because of the determination of the then Prime Minister, but it should not be coming down to that. No cosy agreements between respective militaries and/or secret services being represented as absolutely essential for security and trade, in a democracy, please.

It is very hard to see this is desirable but what does one do with a State-funded organisation that has the ear of the Prime Minister and can play the security card whenever it wants? Stop appointing cronies of the system to these positions? The problem is worse than that. The New Zealand Government should be able to keep better control than it has or feels it is able to, whichever it is.

Stopping the daily SIS audiences (if they are still daily - I do not know) with the Prime Minister would be a start. Any audiences. No audiences should create a distance and objectivity. Oppositions are always sceptical about security services, then when it is their time, their attitude is slowly converted, and they turn into the greatest supporters - or so it seems. Labour Governments seem to be the biggest arms buyers. Prime Ministers seem to

enjoy these little situation reports, and be flattered by receiving them and, one suspects, almost titillated by the content. However real and worthwhile are they? They sure cost a lot. They present a very real opportunity to bring the Prime Minister around towards their perception of world events and security threats, and their own worth. They are insidious and like all security, it creates its own demand, and they can hardly be contradicted because no one else gets to read them. Commonly they end up getting the Prime Minister on side. It is an opportunity that should be taken away because of the political influence it enables them to gain.

The Dotcom case deserves further mention (so too of course do the Urewera raids). Somehow, through GCSB and the NZSIS, no doubt with CIA and/or other American security services' involvement, New Zealand Police and military have, at the behest of a group of American commercial interests, engaged in an armed raid on a commercial organisation run by a New Zealand resident whose activities are affecting American businesses. Never mind he was a New Zealand citizen though well done the New Zealand Police for raising the issue.

If one looks at s 14 (quoted above), it did not matter whether he was a citizen or a permanent resident (as opposed to temporary, presumably). Who told them to do that? Who knew about it? It is not the sort of thing the Police would get involved in if left to their own resources. It would reveal the depth and the various relationships and the scale of the operation. Dotcom says the Prime Minister knew about it. The Prime Minister denies it. It is hard to imagine he did not, but then it may be a question of how it was presented and whether he should or should not have realised what was going on and maybe if he could have prevented it or not, but either way, it doesn't look like he gave it his rubber stamp, and that it was carried out without his approval, and maybe his knowledge as well, which tells you something pretty serious about how much is going on without the knowledge of our democratically elected Government and how much can go on without its knowledge. And about the inter-connection between the secret service, military and Police in New Zealand which we assume are pretty distant from each other but is obviously not the case. Likewise, their counterparts in the United States.

It is appreciated these observations could be construed as moving away from the Panel's brief, but they are not really. There is a disturbing similarity with the Urewera raids: armed Police helicopters, military support, unlawful detention, attempts to overthrow the Government. A bit like the bad old days. Not quite the New Zealand way, one would have thought. Or that the Urewera people needed that sort of treatment for their sins. Where does Ministerial authority start and finish? One has to say 80 New Zealanders in need of surveillance is an awful lot of New Zealanders or permanent residents to spy on, some

permanently in all probability, but who knows? Perhaps we could be given the list, with an explanation, so we can know what they have been up to and on whose behalf it was. Maybe they would leave New Zealand, in preference to providing raw material for the New Zealand spy industry, but maybe too much of it would prove to be simply unjustifiable.

Related to this question: how from a constitutional point of view does and should New Zealand handle going to war? Is it still as it appears, purely a matter for the Crown?

The Constitutional Advisory Panel cannot be expected to find the answers to all these questions but it could at least raise the matter in its report, and perhaps suggest a Commission of Inquiry into the whole area, and reserve the right to make specific recommendations after that.

Certainly there is a constitutional issue lying around security services, military and Ministerial powers which reflects a past contrary to the concept of a modern, open democracy in which all may participate. If the justification for all this somehow revolves around the power of the Governor-General who, as "commander in chief", has powers to raise and maintain forces under ss 5 and 6 of the Defence Act 1990, then that has to go.

Anachronistic is an understatement - see Terence O'Brien's article attached. It is quite wrong, and sends completely the wrong messages to legalise illegal conduct by spy agencies over a long period of time, following on others' illegal activity of similar ilk. If, as on the whole seems likely, the Prime Minister was gloriously unaware about this highly sensitive and controversial activity, he should not expect or ask Parliament to condone it. Now is the time to confront these issues and open the processes up to inspection.

We could be living in a fool's paradise in more ways than one.



**Nat Dunning**

16 July 2013

(3030)

The submitter included the following published material which was removed for copyright reasons:

- **Dominion Post** – 5/7/13 '*Five Eyes an Anachronistic Setup*', by Terence O'Brien.
- 
-





3923

**From:** Gavin  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 28/07/2013 11:11 a.m.  
**Subject:** CAP submission

Dear Reviewer

---

This is my submission .  
" Do NOT incorporate "The Treaty of WAITANGI" in the constitution."  
Gavin Dunphy

4599

[newzealand.govt.nz](http://newzealand.govt.nz)

Our constitution is the set of rules that determines how this country is governed and how we all live together.

Tell us your aspirations for our country and let us know what's important to you about how this country is run:

I would like the Bill of Rights to include cultural, social and economic rights as promoted through the treaties and agreements of the

You can find out more about the Constitution Conversation and make a fuller submission online at [www.ourconstitution.org.nz](http://www.ourconstitution.org.nz)

United Nations.

stamp

Secretariat  
Constitutional Advisory Panel  
C/o Ministry of Justice  
DX SX 10088  
Wellington

Name(s):

JOY DUNSHEATH

Email or postal Address:

☒ Tick box to receive regular updates by email

6088.1

735

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/05/2013 5:37 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Brian and Diana Dunstan Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City:  
Postal Region: waikato Postal Post Code: Postal Country: New Zealand  
Submission: 1.Our constitution should stand as it is.

2.The rights under the Constitution were incorporated into The Treaty of Waitangi to give ALL New Zealanders equal rights and protection under the Constitution, not the other way around.

3.There should be one law for all. The Treaty of Waitangi has been and will continue to be miss-interpreted as long as it has legal recognition applied to it to benefit one race over the others.

4. Government both national local should not be elected favouring any one group on ethnic or religious grounds.

5.The Waitangi Tribunal has in recent decades been bombarded by claims outside its original purpose.The treaty is an historical document. Let it be consigned to history. The tribunal have milked for long enough.

Sent on the 3 May 2013 at 17:36







3697

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 19/07/2013 10:17 a.m.

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

Full Names: christina durdy Organisation Name: nil Email:

Phone: Postal AddressA. Postal AddressB. Postal  
City: gisborne Postal Region: kaiti Postal Post Code: Postal Country: New Zealand  
Submission: i am a year 2 student of bachelor of teaching primary at te wananga o aotearoa  
whirikoka gisborne campus. it surrises me that the charter schools bill has passed and think this is  
wrong both morally and throughout education for our tamariki. where do i  
begin? no proper qualified teachers? they can do with government money what they teaching doesnt  
hlike to. anyone can start up 1 and the fact teaching doesnt have to go by New Zealand Curriculum. is  
this really what the government want for our tamariki? well  
shame on you.

Submitted on the 19 July 2013 at 10:16

2262

**From:** "Rob"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 3:32 p.m.  
**Subject:** CAP Submission

We have now come to the stage that we seem to be entrenching Apartheid in New Zealand Law.

There can be no justifiable reason to retain Maori seats apart from political expediency.

After reading the Treaty of Waitangi I can not agree with the current interpretation of the principals of the treaty. This is a huge stretch to say the least. Granted that those in power are able to rewrite history for political convenience but it makes us and the people in New Zealand look rather stupid to those looking on. Rather than giving unequal power to ethnic groups we should be concentrating on preserving the different ethnicities cultures and treating all New Zealanders as one despite their origins. Lets face it with the natural mixing of races through interbreeding we are all going to look a lot like each other over a very short period.

Robert Duthie

1590

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 26/06/2013 9:30 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Matt Gerald Dutton Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Whanganui  
Postal Region: Postal Post Code: Postal Country: New Zealand Submission:  
Entrench the BoRA: require the courts to strike down any legislation that fails to meet it. Honour te  
Tiriti O Waitangi.

Sent on the 26 June 2013 at 09:29

162

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 9/04/2013 8:18 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: John dyer Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Taupo Postal  
Region: Postal Post Cod: Postal Country: New Zealand Submission: This country  
has to start to be one people not moari and Europeans etc

It should be all kiwis all together

Moari shouldn't be aloud to rape the country as they are ruining the country now

I spoke a moari lady in her 70 awhile ago who said that if the country divided 500 million dollers  
between all the people of this country we would all be better off

She pointed out that before the moari got greedy all the people of Nz worked together for a better  
newzealand

Now we are having a them and us situation

And the moari are losing there pride and in the we will be a country with no pride in our moari friends

Sent on the 9 April 2013 at 20:17

2853

**From:** Owen Dyer ·  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/07/2013 10:58 p.m.  
**Subject:** CAP Submission

abolish maori seats :we are all one people



2669

**From:** Tania Dyett ·  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/07/2013 12:47 p.m.  
**Subject:** CAP Submission

Maori seats retained but not abolished. Tania Dyett.

1203

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 9/06/2013 11:41 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Gail Dymock (Mrs) Organisation Name: n/a Email:  
Phone: Postal AddressA: Postal AddressB: Postal  
City: Auckland Postal Region: Postal Post Code: Postal Country: New Zealand  
Submission: I would like to see NZ as "one country, one people" - no Council or  
Parliamentary seats based on race, as this is becoming more and more divisive - the best one is  
voted in regardless of race, colour, creed. We are becoming a very-multicultural society  
and we must acknowledge that.

One electoral roll for all. No privileges for one race and not another.

We have paid our dues to the Maori people - the Treaty of Waitangi claims should now be closed -  
permanently.

The Maori language can be an optional language at schools - there is not need for it to be  
compulsory.

New Zealand was based on Christianity, and that should remain so - including parliamentary oaths,  
prayers etc.

and in schools if they want it. We should NOT our Faith.

Others can practise theirs, but not expect us to make changes for them - if they don't fit into our way,  
well, if from overseas, they chose to make NZ their home, so if they don't like it, then go back from  
whence they came.

Sent on the 9 June 2013 at 11:40

501

**From:** [redacted]  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 17/04/2013 9:32 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Name: Jennifer Jane Dymock Organisation Name: private citizen Email: [redacted]  
z Phone: [redacted] Postal AddressA: [redacted] Postal  
AddressB: [redacted] Postal City: [redacted] Postal Region: Far North Postal Post Code:  
Postal Country: New Zealand Submission: I think NZ is served very well by its current  
consitutional arrangements - why change hwne the current system has served as well? We have  
operated successsfully as a nation under a parliamentary democracy - one person, one vote. Equal  
representation for  
all New Zealanders. Elected representatives make law for all New Zealanders. Any constitution  
favouring one New Zealander over another will be disastrous.

Sent on the 17 April 2013 at 09:31

113

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/04/2013 7:18 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Andrew Dyson Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: ranui Postal Region: Postal Post Code:  
Postal Country: New Zealand Submission: Any constitution should make all people equal. To this  
end, no just constitution can contain any reference to the treaty of wiatangi. We must all be New  
Zealanders, not Maori and everyone else.

Sent on the 8 April 2013 at 18:17

## Submission to the New Zealand Constitutional Advisory Panel 2013

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

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

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

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

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

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

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

I therefore submit the following recommendations:

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

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



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

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

Lyana Dzulkefli  
Auckland  
New Zealand