

2151

From: Alan & Anette Efford
To: <constitutionalreview@justice.govt.nz>
Date: 3/07/2013 10:27 a.m.
Subject: CAP Submission

Please abolish the Maori seats

2207

From: "John Egan"
To: <constitutionalreview@justice.govt.nz>
Date: 3/07/2013 12:58 p.m.
Subject: CAP Submission

I am firmly of the view that all New Zealand Citizens should be equal before the law and that no group should have separate representation in Parliament or in local government.

John Egan

What forms of representation do Māori have in Parliament, and what changes could be made to improve the level of representation available?

By Thomas Egan

New Zealand is fortunate enough to be a country that is multicultural. Included amongst its citizens are people from the United Kingdom, Europe, Asia, the Pacific Islands and also the indigenous people, *Māori*. As New Zealand's first people, certain privileges and rights were given to *Māori* to ensure *Māori* participation, representation and a voice in a country, where they were becoming a minority. These exist within New Zealand's most powerful institution, Parliament. The different forms of representation *Māori* have in Parliament will be expressed throughout the essay, along with possible changes that could be made to improve the level of representation available. It is these possible changes that have been at the core of contemporary *Māori* representation debates.

Within the walls of Parliament, there lie a few, but different, forms of representation for *Māori*. The first example is the existence of the *Māori* Party, secondly the *Māori* seats within Parliament, thirdly rituals and symbolic ceremonies in Parliament and lastly the electoral system of Mixed Member Proportional (MMP). These all in their own unique way, and in varying degrees of strength, give representation for *Māori* in Parliament.

The first and most obvious form of representation *Māori* have in Parliament, is through the presence of the *Māori* Party. In the *Māori* Party's constitution, one of the first sentences written is "*The Māori Party is born of the dreams and aspirations of tangata whenua to achieve self-determination for whānau, hapū and iwi within their own land; to speak with a strong, independent and united voice; and to live according to kaupapa handed down by our ancestors.*"¹ As a political party solely dedicated to the betterment of their own people, the *Māori* Party embodies the best and most capable form of representing *Māori* within

¹ Māori Party website, (Accessed 12th August 2012) available from:
www.maoriparty.org/index.php?pag=cms&id=133&p=constitution.html

Parliament – Māori representing Māori. It is especially significant as the *Māori* Party was not set up by legislation, or a rule set out to ensure *Māori* representation, but instead it was through the need of *Māori* to have a sole *Māori* political party.²

Throughout the *Māori* Party's involvement in Parliament, there are examples of where the *Māori* Party have advocated for their people. The most appropriate example was through the reasons of the Party's birth. It was through the actions of now Co-leader of the *Māori* Party *Tariana Turia* that the *Māori* Party was established. Then a Member of Parliament (MP) of the political party Labour, *Tariana* faced the path of choosing to vote along party lines and vote in support for the *Foreshore and Seabed Act 2004*. The *Foreshore and Seabed Act 2004* sought to take away the ability of *Iwi* to claim customary rights over the foreshore and seabed. It was this ability, upheld by the Court of Appeal that saw the enactment of the *Foreshore and Seabed Act* in 2004.³ The act extinguished *Iwi*'s ability to claim the foreshore and seabed as part of customary rights, specifically targeting *Māori*.

As an MP of Labour, *Tariana* was obligated to vote along Labour Party lines. Despite the threat of dismissal from the Party and the loss of her ministerial post, *Tariana* resigned on the 6th of May 2004 from the Labour Party. She resurfaced as a member of a new political Party, the *Māori* Party. The line had been drawn in the sand. No longer would the voices of *Māori* be wasted upon deaf ears.

The most recent example of the *Māori* Party advocating for *Māori* is in the recent development with the Government's plans to sell shares in State-Owned Enterprises (SOE). At the beginning of this year, it was revealed that the National led government was removing the Treaty clause, under section 9 of the State-Owned Enterprises Act 1986, in a new act set to proceed in the year, to allow the Government to sell shares in SOEs.⁴ Section 9 is particularly important to *Māori*,

²Maria Bargh (2010) '*Māori and Parliament Diverse Strategies and Compromises*', Wellington, Huia, p. 110

³Bargh p. 191

⁴Champan, Kate and Danya Levy (2012) (News Article) *Māori Party Threatens Split With National*, (31st January 2012, accessed 12th August 2012) available from:

as it states that “*Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.*”⁵ By removing section 9, the Crown would no longer be bound to the principles of the Treaty.

The new act was going against three treaty principles, the Principle of Self-Management, the Principle of Equality and the Principle of Reasonable Co-operation.⁶ Under these three principles, *Māori* were entitled to control the resources they own, to be treated as equal under the law and lastly, the obligation between the Government and *Māori* to act reasonably toward each other co-operatively on major common issues.⁷

The *Māori* Party’s response was to threaten to leave the National Government with which it had a confidence and supply agreement. However, the threat lacked any real power as the National Government would still hold enough numbers to maintain control in Parliament. But despite the diminished power of the threat, the threat of leaving the coalition relationship with the National Party is more symbolic. Drawing parallels with Tariana’s resignation in 2004, what the threat does is shed light and more public awareness on the SOE debate for all of New Zealand and not just for *Māori*. This debate continues as the Government struggles to gain public support of the sales.

The second form of representation of *Māori* in Parliament is through the allocation of *Māori* seats. Established in 1867 under the *Māori* Representation Act, four seats were set aside in Parliament for *Māori* representation.⁸ The intentions for the *Māori* seats are mixed with reasons including appeasement and tokenism towards *Māori*, and some attributing the seats to an attempt to bridge the

<http://www.stuff.co.nz/dominion-post/news/politics/6339220/Maori-Party-threatens-split-with-National>

⁵ State Owned Enterprises Act 1986, S9,
<http://www.legislation.govt.nz/act/public/1986/0124/latest/DLM98028.html>

⁶ Geoffrey and Matthew Palmer (2005) *Bridled Power*, Oxford University Press, Fourth Edition, p. 335

⁷ Palmer p. 335

⁸ Waitangi Tribunal Website, *Māori Electoral Role Option*, Chapter 8, (accessed 12th August 2012) available at <http://www.waitangi-tribunal.govt.nz/reports/viewchapter.asp?reportID=C04FF009-8245-455E-9BF2-A8998413132F&chapter=8>

rift between *Pākehā* and *Māori* during the Land Wars.⁹ The four seats were geographically inaccurate and not representative as well.¹⁰ The seats remained at four until 1996, despite the lobbying of pivotal *Māori* leaders such as James Carroll, *Apirana Ngata* and *Maui Pomare* throughout the 20th century.¹¹ In 1996, under the new electoral system of Mixed Member Proportional (MMP), the allocation of *Māori* seats was increased to five. Through more progressive increases in further elections, the number of *Māori* seats stands today at seven.¹²

The *Māori* seats represent different regional areas in New Zealand. These seats are named *Te Tai Tokerau*, *Tāmaki Makaurau*, *Te Tai Hauāuru*, *Hauraki-Waikato*, *Wairaki*, *Ikaroa-Rāwhiti* and *Te Tai Tonga*. In these regions, those meeting the criteria to vote are allowed to vote towards electing *Māori* representatives. The criteria are *Māori* are that any voter, voting for their *Māori* seat candidate, has to be over the age of eighteen, of *Māori* decent and registered under the *Māori* Roll. The *Māori* roll runs parallel with the General Election Roll in that it elects MPs to occupy seats in Parliament.

How the *Māori* seats help to represent *Māori* in Parliament is that it provides direct representation in Parliament. Having seven seats set aside for *Māori* representation, the aim is to provide a continual voice for *Māori* to use in the running of the country. As New Zealand's most powerful institution, having the voice present ensures that at least *Māori* concerns could be heard. However, this voice lacks the proportionality of the *Māori* population in New Zealand. With a population of 673,500 at the end of 2011¹³, the percentage of New Zealand's total population that is *Māori* is 15.23 %. If this ethnic proportionality were to be

⁹ Ministry of Culture and Heritage, '*Setting up the Maori seats - Maori and the vote*', (accessed 12th August 2012) available from: <http://www.nzhistory.net.nz/politics/maori-and-the-vote/setting-up-seats>

¹⁰ M.H. Durie (1989) 'The Objectives of the Treaty and the Scope of its Provisions', in *Waitangi Māori and Pākehā perspectives of the Treaty of Waitangi*, Oxford University Press, Auckland, p. 296

¹¹ Waitangi Tribunal website, *Māori Electoral Role Option*, Chapter 9

¹² Bargh p. 142

¹³ Statistics New Zealand, *Māori Population Estimates*, (15th May 2012, accessed 12th August 2012) available from:

http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/maori-population-estimates.aspx

translated into seats in Parliament, *Māori* would be entitled to at least twelve seats. With the current level of seven, can this number be truly representative of *Māori*?

The third form of representation of *Māori* in Parliament is through rituals and ceremonies. This form is often not realised and can be sometimes overlooked. It isn't as obvious or set out in rules or legislation, such as the *Māori* seats. The best example of the representation of *Māori* in Parliament can be seen at the opening of Parliament each year. During the opening of Parliament at the end of last year, two forms of ritual or ceremony can be seen that reflect *Māori* representation.

The first is that when Governor-General Jerry Mateparae makes his first address to Parliament and the audience, he speaks in *Te Reo Māori*.¹⁴ Whether the choice to speak in *Te Reo Māori* was because Jerry is *Māori*, the fact he was able to speak in *Te Reo Māori* symbolises the acknowledgement of the language, but also the acknowledgement to the presence of *Māori* in an important occasion.

And secondly, the last form of representation in Parliament can be seen where the Opening Speaker of the House, Lockwood Smith, asks the longest serving *Māori* MP, *Parekura Horomia*, to give a *Mihi*.¹⁵ Like Jerry, *Parekura* gives his *Mihi* in *Te Reo Māori*. During his *Mihi*, he acknowledges the deaths of significant *Māori* leaders in recognition of their service to *Māoridom*.¹⁶ When watching the *Mihi*, what is evident is the headphones on MP's heads. The headphones provided are for MPs who do not understand *Te Reo Māori*. *Te Reo Māori* is permitted to be spoken, as translators are readily available for those who cannot speak *Te Reo Māori*.

Although these ceremonies and rituals are more symbolic in nature, symbolism can be important too. The exposure of displaying *Te Reo Māori* and other *Māori*

¹⁴ Te Karere News, (Video) *Parliament Officially Opens*, (20th December 2011, accessed 12th August 2012) available from: <http://www.youtube.com/watch?v=NiUorK0f4Mk&feature=g-hist> minute 1:45-55

¹⁵ *Ibid.* 1:16-40

¹⁶ *Ibid.* 1:16-40

rituals at such an important time, gives exposure to those elected to represent their constituents in Parliament and guide New Zealand's future.

The fourth and last form of representation that Māori have in Parliament, is through the electoral system of Mixed Member Proportional (MMP). The use of the MMP electoral system, and its relationship with representation of Māori in Parliament, can be quite complicated. What MMP does, cannot be easily judged or gauged as some of the other of forms of representation. MMP in essence, effects the type of *Māori* representation that can be expressed in Parliament.

The first example of this can be seen in the results of the first election under MMP in 1996. When looking at the number of *Māori* present in Parliament, during the previous election under a less representative electoral system, there lies a strong contrast between the two sets of numbers of *Māori* elected into Parliament. In 1993, the number of *Māori* elected was seven, representing 7% of the total number of MPs.¹⁷ In 1996, sixteen *Māori* were elected, 13% of the total number of MPs in Parliament.¹⁸ When comparing the two figures, there exists a correlation between MMP and the representation of *Māori*. MMP encourages and aids minority groups to gain seats, that could not be gained under the previous electoral system. To add further strength to the correlation between MMP and *Māori* representation, the results of further elections continue to show the trend of increasing *Māori* representation in Parliament.¹⁹

The second example is that MMP was found to be the best in representing *Māori* interests. On September 17th 1987, instruction was given by Deputy Prime Minister Sir Geoffrey Palmer that an Electoral Law Committee be appointed to consider "*All matters relating to the electoral system and related constitutional issues... matters relating to the law and administrative procedures governing parliamentary elections.*"²⁰ As a result of the investigation of its aim, a report named *Inquiry into the Report of the Royal Commission on the Electoral System*

¹⁷ Palmer p. 28

¹⁸ Palmer p. 28

¹⁹ Palmer p. 28

²⁰ Electoral Law Committee, (1988) *Inquiry into the Report of the Royal Commission on the Electoral System*, Chairman: Richard Northey, Wellington, New Zealand Government Printer, p. 5

was made. Contained inside under section five entitled *Māori* Representation, consideration towards the impact, positives and negatives of MMP are outlined. The two most important statements inside the section that the Electoral Law Committee has said were these. Firstly that *“the present electoral system dominated by the non-Māori, had had a profoundly adverse affect upon the Māori MP’s ability to protect and promote their people’s interests within the policy making processes of Government”* and secondly that the MMP system is the *best means of providing effective Māori representation.*” The Committee best equipped to investigate what best suits *Māori*, especially in their representation in Parliament, comes to the conclusion that MMP is the best electoral system to represent *Māori*.

The four forms of representation that *Māori* have in Parliament, all vary in strength and effectiveness. When putting forward the four different forms of representation, weaknesses and possible solutions to improve the representation available in Parliament can be seen. The first possible solution to improve representation of *Māori* in Parliament, is to increase the number of *Māori* seats in Parliament to reflect that of the *Māori* population. This can be through the addition of further seats to accommodate the increase in the number of seats, or the percentage of the current seats that reflect the *Māori* population. What these two possible solutions have in common, is that an increase in the number of seats needs to happen. No longer can seven seats be sufficient and effective in voicing *Māori* concerns. As the *Māori* population continues to get bigger, the *Māori* seats need to reflect this.²¹

Another possible change that could be made, to improve the level of representation of *Māori* available, is to entrench the Treaty of Waitangi in New Zealand’s constitution. By entrenching the Treaty of Waitangi, legislation that goes against or hinders the Treaty of Waitangi will not be overlooked or given precedence over it as it is today. By having the founding document at the core of the New Zealand constitution, *Māori* interests, rights and voice will always be heard and found.

²¹ Statistics NZ website, 2012

How this translates into an increased level of representation of *Māori* in Parliament is that the tone is set that legislation like the selling of SOE could never pass through Parliament as it goes against the Treaty principles set out in section nine.²² As the Treaty of Waitangi was signed between two different peoples, New Zealand should not prosper at the cost of *Māori* rights.

What is more important is the need to unify *Māori* needs, interests, and rights towards a one collective voice. Unfortunately, the *Māori* world does not embody a collective voice. With *Iwi* and individual *Māori* needs and challenges different from others, so are their perspectives and opinions. The problem faced is that the opinions and needs of *Māori* living in Gisborne, may be different from those *Māori* living in downtown Wellington. When electing *Māori* representatives to *Māori* seats in Parliament, do they represent the opinions of the electorate they belong to or is their allegiance towards a greater *Māori* well-being? Now with the inclusion of the *Mana* Party in Parliament, advocating towards a “*truly independent Māori voice in Parliament*”²³, who now represents *Māori*? It is these questions that need to be addressed before any attempt at trying to improve *Māori* representation in Parliament can start.

Although there are forms of representation for *Māori* in Parliament, it is far from effective and representative. Whether it is because of the lack of proportional representation in the amount of seats in Parliament, or because of the inability and lack of enforcement of the Treaty of Waitangi, what is needed is another serious look into bridging the distance between what is expressed outside of Parliament by *Māori* and what is expressed inside.

Until this is resolved, *Māori* representation will remain ineffective. Integral is the representation of *Māori* in Parliament; the following *whakataukī* provides particular insight. *He aha te mea nui o te ao? He tangata! He tangata! He*

²² SOE Act 1986, S9

²³ Mana Party website, *Kaupapa-Vision* (Accessed 12 August 2012) available from : <http://mana.net.nz/kaupapa-vision/>

Thomas Egan

Tangata! What is the most important thing in the world? It is people! It is people!
It is people! The whole idea of Maori representation in Parliament is for the
betterment of the *Māori* people and this should always be remembered.

Thomas Egan

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State Owned Enterprises Act 1986, S9, <http://www.legislation.govt.nz/act/public/1986/0124/latest/DLM98028.html>

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4 000

From: Vanessa Egleton <
To: <constitutionalreview@justice.govt.nz>
Date: 29/07/2013 12:00 a.m.
Subject: CAP submission
Attachments: NZ Constitution Application MJE.doc

Personal Introduction:

My Name is Vanessa Egleton. I am a married home schooling mother of 3 daughters, who has lived in 3 other countries in my adult life and returned home to New Zealand, where I grew up, having trained at Waikato University. I am what many would call a “Christian”, but I would prefer to be seen as someone who simply loves the One who has given life and beauty to all people and has blessed us with a beautiful land to care for, Who loves all people with a love that defies even human imagining! With this in mind I gratefully take the opportunity to present my opinions and ideas to the Constitutional Advisory Panel and commend you all to the task ahead. May you be lead by Wisdom and Love, Honour and Courage as you consider the Constitutional needs of this beautiful land. Thank you.

Submission:

New Zealand has a unique and beautiful heritage, the heart of which is summed up in the whakatauki (Proverb) below.

He aha te mea nui o te ao?
He tangata! He tangata! He tangata!

What is the most important thing in the world?
It is people! It is people! It is people!

<http://www.korero.maori.nz/forlearners/proverbs.html>

The first nation to grant universal adult suffrage, New Zealand’s founding document was a Treaty signed by men and women, who sought the best for their people and descendents, and those who would join those already here. This heart is seen in the opening passage of the Treaty of Waitangi;

“HER MAJESTY VICTORIA ... regarding with Her Royal Favor the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration ... to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects...”

<http://www.nzhistory.net.nz/politics/treaty/read-the-treaty/english-text>

The purpose of the Treaty of Waitangi was then, to avoid the “evil consequences” of lawlessness or a differentiation of legal frameworks for the people of New Zealand, and ensure just human and property rights. While history has proven that these ideals have not always been upheld, they still represent a high standard that we, as beneficiaries of this treaty, should seek to attain to.

To this purpose, I request that the commission respect our ancestors’ honour and wisdom through the establishment of a formal, written Constitution that will reflect the intentions of the original Treaty signatories; to protect all people of New Zealand alike. The goal being to ensure that present and future generations are granted the freedoms of living in safety wrought by such a formalised constitution which would govern our present and future leaders to act within the best interests of all peoples, especially the weak.

these rights should include the Rights of Individuals to;

- Own property and to trade freely irrespective of race, gender or creed provided that freedom does not impose on the freedoms of others,
- Worship without harassment or persecution,
- Vote for governmental representation,
- Fair and equitable judicial provision, ,
- Train our children,
- Life (including unborn children), and
- live free from fear.

Such a constitution would need to recognise that All People are created of equal value or worth but not all people are identical and this individuality is to be treasured by all for all.

Thank you to the Commission for having the foresight to begin a dialogue between the people of New Zealand and the Government of New Zealand for the protection of our present and future generations.

Ki te kahore he whakakitenga ka ngaro te iwi

Without foresight or vision the people will be lost

<http://www.maori.cl/Proverbs.htm>

3975

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 28/07/2013 7:49 p.m.

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

Full Names:	rex ekins	Organisation Name:		Email:		Phone:	
Postal AddressA:		Postal AddressB:		Postal City:		Postal Region:	
auckland	Postal Post Code:		Postal Country:	New Zealand	Submission:		

Parliament should make all laws not the courts The treaty should NOT be written into a constitution and create two levels of citizens

The term for Parliament should be 3yrs max

Submitted on the 28 July 2013 at 19:48

720

From:
To: <constitutionalreview@justice.govt.nz>
Date: 2/05/2013 9:41 a.m.
Subject: CAP Submission
Attachments: 2013 04 30 Submission.docx

Submission attached for Constitutional Review.

Cheers
Nova Elers

Submission: Our Constitution 2013

Name: Nova Elers

Address:

Email:

What are my aspirations for Aotearoa New Zealand?

- * Maori have Mana Whenua Status and are represented equally i.e. 50% Maori reps at all levels in all decisions.
- * History of Aotearoa New Zealand, Te Reo Maori and Sign language is built into school curriculum.
- * That Te Tiriti o Waitangi as the founding document of this country is the Ruling document, used as Supreme Law and that all legislation, policies, acts etc be based upon Te Tiriti o Waitangi.
- * That Te Tiriti o Waitangi be a living, breathing document.
- * Equal and balanced representation at all levels i.e. 50% Maori, 50% other and 50% Wahine, 50 % Tane.
- * All New Zealanders on the same waka rowing the same way
- * All people of Aotearoa become Critically Literate and focus on Life-long Learning rather than education
- * Adopting Kaupapa Maori philosophies and entrenching/basing decisions upon these philosophies, such as
 - Mana Atua: Power from/of the Gods, Spirituality

The Knowing: the essence that comes with us as we manifest into this life form, the knowledge passed down through the ages that allows us to feel, think, sense and act.
 - Mana Tangata: Power of an Individual

The Being: Personal power derived from the knowledge passed down through the Atua, past present and future, what allows us to develop our esteem and confidence.
 - Mana Whenua: Power of/from the land (NOT power over the land)

The Belonging: - we are teina to Papatuanuku therefore it is our responsibility to look after her as she is what sustains us.
 - Mana Ao Turoa: Ability to make stronger, Light of a new day

The Future: Discovering new opportunities to grow, making ourselves stronger as people and seizing the opportunities that present themselves.
 - Taha Wairua: Spiritual Well-being

The Why: values and beliefs that determine the way people live, the search for meaning and purpose in life and personal identity and self-awareness
 - Taha Tinana: Physical Well-being

The Doing: Growth, development and health of the physical body
 - Taha Hinengaro: Mental Well-being

The How: Coherent thinking processes, acknowledging and expressing thoughts and feelings and responding constructively
 - Whakapapa: to place in layers one upon the other

Connecting through history, discovering that all things have a whakapapa – everything comes from somewhere

Submission: Our Constitution 2013

The Bill of Rights Act

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

* Not sure as I have never been made aware that there even is a Bill of Rights Act.

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

* The Bill of Rights should be written into the Constitution (Te Tiriti o Waitangi) because it is only one part of a whole range of laws and legislation.

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

* Legislation should be based on Te Tiriti o Waitangi principles (as our founding document) and should be the Courts that have the power to decide whether legislation is consistent with Te Tiriti, provided it works in equal 50/50 partnership with the Waitangi Tribunal (or other Maori court system) to make decisions.

Treaty of Waitangi

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

* Discard the Treaty of Waitangi and replace with Te Tiriti o Waitangi – the Maori version.

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

* Te Tiriti o Waitangi (not the Treaty) is the founding document of this country and should be the basis for developing a Constitutional framework – all other laws, acts, legislation etc should be based on and around Te Tiriti o Waitangi.

Maori Representation

'Your ancestors sit on your shoulders to keep your feet on the ground'

Ancestors leave responsibilities and tasks for each generation to complete.

You have no rights until you fulfill your responsibilities.

How should Maori views be presented in Parliament?

* 50%-50% Maori-Tauwi representation i.e. 50 Maori Seats

How could Maori electoral participation be improved?

* Participation can be encouraged by:

- All Maori automatically enrolled on Maori Roll
- No option for Maori to change rolls
- Earlier participation in decision making at all levels
- Education of parliament/government built into school curriculum and possibly adult learning courses.

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

* Ensure 50% of councilors and/or representatives within local government made mandatory.

81

From: [redacted]
To: "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.govt.nz>
Date: 7/04/2013 5:10 p.m.
Subject: CAP Submission

I think it should state

'one law for all without exception'

Billy

[redacted]

191

From:
To: <constitutionalreview@justice.govt.nz>
Date: 10/04/2013 4:55 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Submission: Since when did we have a constitution?. Full Name: Ratu Elliment. Email:

Sent on the 10 April 2013 at 16:54

191a

From:
To: <constitutionalreview@justice.govt.nz>
Date: 10/04/2013 5:01 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Ratu Pamela Pomare Sidnev Filliment Organisation Name: n/a Email:
Phone Postal AddressA:
Postal AddressB: Postal City: Postal Region: Tairāwhiti Postal
Post Code: Postal Country: New Zealand Submission: My submission is segregation
never integration forever.

Sent on the 10 April 2013 at 17:01

4013¹

From: Mike Elliott
To: <constitutionalreview@justice.govt.nz>
Date: 29/07/2013 9:32 a.m.
Subject: CAP Submission

My wish is to abolish the Maori seats.
The way forward for all people in NZ is to have no raced based legislation
or privilege that favours one race of people over any other group.
Racism by its nature is divisive and favours one person over another so I
vote for a fair, equal society.
Treat each person as an individual on their own merits.
Mike Elliott
Auckland

From: debbie elliott
To: "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.gov...
Date: 27/07/2013 9:51 a.m.
Subject: CAP submission

NO CHANGE to our unwritten Constitution.

2859.

From: "Garry Elliott" <
To: <constitutionalreview@justice.govt.nz>
Date: 6/07/2013 8:29 a.m.
Subject: CAP Submission

Maori seats should be abolished.

1. Maori are now (and have been for many years) well represented in all parties (National, Labour, Greens, NZ First). Having separate seats gives them an advantage over all other races in that they get Maori seats as well as the general population vote.
2. Maori do not even vote for this right. Latest by-election only one third turned up so less than 10,000 voters get a member of parliament while all general election voters (about 70+% turnout get 1 MP FOR ABOUT 40,000 votes - WHY SHOULD THIS GO ON?
3. The principle of the Waitangi Treaty (before it got re-written by the Waitangi Tribunal) is one nation and one rule for all. It is about time this was recognised and Maori joined the rest of the population and contributes to the country's future rather than hanging off the past and wanting more. The country can not afford it and it is time to move on.
4. Maori were never a Nation and have always been at odds with each OTHER - the main reason there was a Treaty drawn up in the first place. Maori seats were made available to help them have their say in Colonial New Zealand but it is no longer a Colony. So why should a group of people, who can not get on with each other have special representation in our Parliament today.
5. It is also farcical that the bulk of the Total Maori population would be lucky to have more than 25 % Maori blood so they are already 75% non-Maori New Zealanders and, as such, should be on the General Roll and not masquerading as Maoris - They are not Maoris any longer.

Maori Seats did have a place in the past but they are now irrelevant and are Racist in the modern world. Race based politics have no place in modern day New Zealand. There are already more Asians here than Maori so why have not the Asians got special seats in Parliament?

If we have one rule for all, racism will be diminished and the country will be able to move on without Kow-towing to a privileged minority Group. The money can be better spent elsewhere.

Garry Elliott

Auckland

854

From: Gil Elliott
To: "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.govt.nz>
Date: 16/05/2013 3:00 p.m.
Subject: The NZ constitution debate
Attachments: NZBOR and Rule of Law 1.docx

Dear Select Committee members,

I have attached an opinion on the New Zealand Bill of Rights Act 1990.

If the NZBORA was to be part of a written constitution for New Zealand, I would not like the BOR in its current form to be part of the constitution.

Yours sincerely,

Gilbert (Gil) ELLIOTT

THE NEW ZEALAND BILL OF RIGHTS ACT AND THE RULE OF LAW IN A DEMOCRATIC SOCIETY

The NZBORA 1990, especially sections 8, 9, 23, 24, 25 and 5, but also sections 13, 14, 15, 16, 17, 18 and 21

There are many anomalies with this Bill formulated mostly by the Hon Geoffrey Palmer, then Minister of Justice. Of course in 1985 he wanted the BOR to be even stricter than it is and to be entrenched.

One might wonder if in fact BOR stands for Bill of Offender Rights. There is no equity in the NZBOR, it is very one sided in favour of offenders.

STARTING WITH:

“Life and Security of the person” – The Act guarantees everyone:

Section 8

- The right NOT to be deprived of life...

Section 9

- The right NOT to be subjected to torture or to cruel, degrading or disproportionately severe treatment or punishment. This is fine for offenders, but this guarantee to EVERYONE simply does not hold for victims and especially murder victims because murderers do not obey the law and yet we are supposed to treat them nicely after what they have done (see section 23 below).
- How indeed can the Bill of Rights ACT/Government, **GUARANTEE** the ‘life and security of the person’. This would be a total impossibility even amongst prisoners who are well guarded. How would the NZBORA do this and who would police this? If this claim were true then there would be no homicides in New Zealand.

Section 23

- Everyone deprived of liberty has the right to be treated with **HUMANITY** and with **RESPECT** for the inherent dignity of the person

I disagree with this because for instance none of the murderers who have appeared in our courts have treated their victims in this manner. Murderers don't care what their victim suffers. They certainly do not treat their victim with humanity or respect, so why should we treat them better than they have treated others. I don't think it is a matter of not 'stooping to their level' at all. They should not however

be treated with kid gloves/ be treated with courtesy.

I realize that this Bill of Rights comes via the International Covenant on Civil and Political Rights of the United Nations, but other signatory countries must have difficulty with this section, I would have thought.

I also realize that these so-called safeguards have been put in place so that countries do not treat apprehended citizens badly as happened in Nazi Germany. The findings of the Nuremberg trials also contributed to the eventual wording of the UN charter.

Section 24

- Shall have the right to receive legal assistance **WITHOUT COST...**

This is all very well but is quite an unbalanced situation. The victim/family of a dead victim do not have this (equal) right. Why, because they do not have **REPRESENTATION** at all under our Westminster system of criminal justice. The state does, but not the victim/family.

With crimes being against the state (not the victim), the Crown takes over the prosecution of the case. The victim it appears is simply the **TARGET** of the offence. If no family member witnessed the murder as in the recent Templeman case in KeriKeri, then they will have no part in court proceedings (quite unlike the offender) until they might get to read a (censored) victim impact statement at sentencing, or perhaps only hand it up and therefore not even get to read it in court.

Section 25

"Fair trial"

Everyone who is charged with an offence has **the MINIMUM** right:

- Not to be compelled to be a witness or to confess guilt (will the Kahui case ever be solved)
- To be present at the trial and to present a defence
- To examine the witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution

Why should any murderer (someone caught in the act which happens often enough and definitely in our case) have this minimum right! Is this because they could be insane/unbalanced/narcissistic etc?

One could argue that any one that kills another is not normal because it is not a normal thing to do in our society.

- If convicted of the offence, to appeal according to the law to a higher court **AGAINST THE CONVICTION OR AGAINST THE SENTENCE OR BOTH.**

Why have this right? We may as well do away with Jury trials if a convicted murderer is entitled to

appeal the conviction arrived at by a jury of his/her peers in a perfectly fair trial!

This won't cost the murderer anything (without cost – s24 above), but it will certainly cost the tax payer quite a lot. If on the other hand the victim/family of the victim wished to appeal what they considered an inadequate sentence, they could not do it because the law does not allow such an appeal from the victim/family. The Crown Prosecutors can appeal the sentence to the Court of Appeal, if they feel the sentence is manifestly inadequate, but this in fact is rarely done in NZ and more particularly if the Crown thinks the sentence is close enough to what they were asking, why appeal it.

The only thing a victim/family can do is apply for reparation. This would not be without cost (another imbalance). It would mean engaging a barrister to do this at no doubt great expense and why do it because who can get 'blood out of a stone' so to speak.

No, the state (Crown) prosecutes on behalf of society as a whole because crimes are wrongs against the whole of society not the victim (alone) per se. Therefore the Crown should pay reparation to the victim/family as in some other countries, if it takes on this role.

What does all this mean, it means the criminal has all the rights and the victim/family have virtually none. The Victims Rights Act 2002 gives only 'luke warm' rights to victims and their families. Rights, like being able to attend a trial and an appeal and parole hearings and being kept informed etc.

There is no balance in the criminal justice system as it is practiced in New Zealand and probably in other countries as well that have a Westminster based (Common Law) criminal justice system and I am only talking about the NZBOR here. You may know my views on other aspects of the criminal justice system.

I believe the NZBOR needs seriously looking at. Perhaps the Law Commission might revisit this Act now that it has been in operation for 23 years with little or no benefit to victims and numerous undeserved rights for offenders.

NZBOR 1990 - AN EXAMINATION OF OTHER SECTIONS

Section 5 – allows for 'justified limitations' on the rights guaranteed by the Act which are 'subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'.

These limitations on certain rights need to be explored further.

CIVIL AND POLITICAL RIGHTS

Part 2 of the Act – covers a broad range of Civil and Political Rights, including:

'The right not to be deprived of life except in accordance with fundamental justice' (section 8).

What does 'except in accordance with fundamental justice' mean – is this there because the UN CCPR wanted to appease those countries like the USA where some states still have the death penalty?

'Freedom of thought, conscience and Religion'. [s13] (democracy already allows this)

'Freedom of expression'. [s14] (Democracy)

This is an interesting concept ('right') and if it is true then why are Victim Impact Statements censored by the court?

'The right to manifest a person's religion or belief'. [s15] (Democracy)

'The right of peaceful assembly'. [s16](Democracy)

'The right to freedom of association'. [s17](Democracy)

'The right to freedom of movement and residence in NZ'. [s18(1)] (democracy)

'The right to leave NZ'. [s18(3)]. (Democracy)

SEARCH ARREST AND DETENTION

'The right to be secure against unreasonable search or seizure, whether of the person, property or correspondence, or otherwise'. [s21] (but see the English BOR 1689)

'The right not to be arbitrarily arrested or detained'. (Democracy)

Everyone who is arrested or is detained has the right to:

1. Be informed at the time of the arrest or detention of the reason for it.
2. Consult and instruct a lawyer without delay and to be informed of that right.
3. Have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is not lawful. (see magna carta and what already occurs surely in a democratic society).

And

'Everyone who is arrested for an offence has the right to be charged promptly or to be released and

'Everyone who is arrested or detained for any offence or suspected offence shall have the right to

refrain from making any statement and to be informed of that right (The Right to silence – Kahui case).

Everyone deprived of liberty has the right to be treated with humanity and with respect (not like they treated their victim) for the inherent dignity or the person (s23).

The Act requires that everyone who is charged with an offence:

1. 'Shall be informed promptly and in detail of the nature and cause of the charge'
2. 'Shall be released on reasonable terms and conditions unless there is just cause for continued detention'
3. 'Shall have the right to consult and instruct a lawyer'
4. 'Shall have the right to adequate time and facilities to prepare a defence'

(all the above 'rights' are expected in a democratic and Common Law society)

And

'Shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance'

(this 'right' is abused frequently in our criminal justice system)

THE (ENGLISH) BILL OF RIGHTS (1689)

The (English) Bill of Rights is also law in New Zealand. One of the nine 'rights' that this Act guarantees is that **no excessive bail or cruel and unusual punishments may be imposed (on wrongdoers)**. But isn't this similar/identical to section 9 of the NZBOR Act?

This BOR was enacted in part to give parliament certain rights over the King.

THE RULE OF LAW

Why look at the rule of law here, **is there any relationship between The Rule of Law (ROL) and the NZBORA?**

Well yes there is.

What is the Rule of Law then and what does it mean.

Justice Keith Mason (a Judge in the Supreme Court of Australia) in a forum address entitled 'The Rule of

Law, Judicial Review and The Public-Private Divide', Wellington NZ, 20 March 2006, said, and I quote; **"The rule of law is the bedrock of a civilized society. It rules the rulers, including those who exercise judicial power"**.

(but isn't this what the NZBORA has set out to do)

(There was a classic example in the law where the ROL was at odds with statute law in NZ. That was 'the partial defense of provocation'. After all the ROL does say inter alia that 'laws should not be ambiguous and vague' and that was precisely what the 'partial defense of provocation' was as it was written.

As you may know, the Law Commission in 2001 recommended to parliament that the provocation defense be removed from the statute. This was not done, so again in 2007 they recommended that the defense be removed and it wasn't. It was only after the trial of Clayton Weatherston, where that defense was wrongly applied did the then Minister of Justice Simon Power act to have that defense abolished).

Justice Mason said "We in Australia are yet to embrace a national Bill of Rights. This said, some of our leading judges seem intent to discover 'implied rights' within the interstices of the constitutional separation of judicial power"

If Australia does not see the need for a BOR and there is no reason to believe that Australians are treated any differently in terms of criminal justice to New Zealanders in New Zealand, then it can be argued that New Zealand does not need a BOR either.

The International Covenant on Civil and Political Rights on which the NZBORA 1990 is based, was drawn up in response to the awful things that happened in Nazi Germany and other countries where a despotic dictator did what ever he (mostly he) liked with people he didn't like or sometimes even his fellow citizens.

In a democratic society like New Zealand where the rule of law is observed to the letter, then it can be argued that the NZBORA with all its 'safeguards' for offenders in society is simply redundant. These so-called safeguards are guaranteed in a common law democratic society where the rule of law is the law.

Apart from this there are also sections in the Crimes Act 1961 and other Acts that follow the rule of law with regard to how citizens who offend against society must be treated.

On this argument, the NZBORA is redundant and should be removed from the statute books. It is a piece of legislation that is duplicated elsewhere (including the Crimes Act 1961) and is totally unnecessary in New Zealand. It is interesting and informative to note again that our closest neighbour Australia, has never enacted a Bill of Rights.

The courts in Australia recognize 'implied' rights. Rights that are manifest or implied in the Rule of Law and in the Westminster common law.

Some commentators say that the NZBORA has less force in New Zealand law than may be realised. In

other words why in effect waste time criticizing a law that few take notice of. I believe however that courts are obliged to take notice of the NZBORA and that the Act adds unnecessary complexity to an already complex set of rules that officers of the courts must follow.

Gil Elliott, 13th May 2013

1698

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 28/06/2013 2:37 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Bill and Barbara Ellis Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal
City: Auckland Postal Region: Postal Post Code: Postal Country: New Zealand
Submission: We would like to see particular reference in the constitution to the rights of the elderly
and the disabled. The right to a safe and comfortable environment without prejudice.

Sent on the 28 June 2013 at 14:36

2677

Minnie and Peter Ellis,

Tauranga
New Zealand.

Secretariat,
Constitutional Advisory Panel,
c/o Ministry of Justice,
DX SX10088
Wellington

12-07-2013

Regarding the NZ Constitutional Review, my submission is that the current unwritten Constitution requires absolutely no substantive changes from the 1852 NZ Constitutional Act.

The present campaign for change can only create division and racial conflict and for what?

The original Treaty of Waitangi in Maori, Te Tiriti o Waitangi was signed by chiefs all of whom fully understood it and actually were instrumental in its creation. It was their desire that all Maori should share in the protection of the English Crown equally as British subjects. Hobson's greeting to each chief as he signed, said it all – "We are One People now"

And that is unequivocally how I wish it to remain. Anything else will be a perversion, with the result, we will most definitely no longer be that.

There is only one indisputable Principle of the Treaty of Waitangi and that is encapsulated in Hobson's words.


Peter J Ellis

Minnie and Peter Ellis,

Tauranga
New Zealand.

Secretariat,
Constitutional Advisory Panel,
c/o Ministry of Justice,
DX SX10088
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And that is unequivocally how I wish it to remain. Anything else will be a perversion, with the result, we will most definitely no longer be that.

There is only one indisputable Principle of the Treaty of Waitangi and that is encapsulated in Hobson's words.

Minnie J Ellis.

2396

From:
To: <constitutionalreview@justice.govt.nz>
Date: 4/07/2013 4:15 a.m.
Subject: CAP Submission

Please let us become "One people in one country" by abolishing the Maori
Seats. There are no Maori people left, and haven't been for many years.

Thanks for this opportunity.
Richard Ellis, John Gilliver

2528

From: "Rick Ellis"
To: <constitutionaireview@justice.govt.nz>
Date: 4/07/2013 11:09 a.m.
Subject: CAP Submission

Greetings, I say respectfully that it's time to abolish the Maori seats.

Regards Rick

Rick Ellis

Auckland
New Zealand

"It's not what happens to you, It's what YOU do about it"

2602

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 4/07/2013 5:28 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Edward and Alison Ellison Organisation Name: private Email:
Phone: Postal AddressA:
Postal AddressB: Postal City: Postal Region: Otago Postal Post Code:
Postal Country: New Zealand Submission: We believe that New Zealand is a unique country that reflects the special social, cultural, economic and environmental values of a country that has as a foundation document, the Treaty of Waitangi. Our growth as a nation has been significant and matured as we have dealt with the injustices of the past. We have grave fears that a written constitution will undo the learnings and strength we as a united nation have achieved. There is no other country with the same histories and unique culture that has been honed by our joint past. The difficulty of finding words to complete a brief document that the constitution will necessarily be forgoes the benefit of a steady evolution that is able to be tested in a variety of ways be it in the courts or political system. The place of tangata whenua is based on collective rights, recognised at the whanau and hapu level, any individualisation of those rights will be catastrophic to Maori as a people and race.

Edward & Alison Ellison

Sent on the 4 July 2013 at 17:27

4338

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 31/07/2013 8:49 a.m.

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

Full Names: Maree Ellison Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal City: tauranga Postal Region:
Postal Post Code: Postal Country: New Zealand Submission:
<http://ahi-ka-roa.blogspot.co.nz/2013/07/template-submission-to-constitutional.html>

I tautoko this submission.

Submitted on the 31 July 2013 at 08:47

1752' Quick Submission

Your name:

Gerard M Ellis

Name of the organisation you represent (if applicable):

Postal address or email address:

A nation's constitution should not be determined by those who have been chosen by its citizens to represent them in Parliament and who have made for themselves a profession of that representation. Nor, if the constitution is a written document, should its provisions be determined by the professional politicians, but by those who elected them. Nor should any written constitution be looked upon as a sacred and divinely inspired document, and almost incapable to amendment. That said, I should like any written constitution that was devised for New Zealand to be

one that provided for a head of state with no more powers exercised by our present sovereign or her representative in New Zealand, an Upper House of Review of representing provinces based on those of the period 1852-1876, with changes, and additions (and if necessary, reductions) each province returning the same number of senators for a single term of eight years, of which half would be elected at each general election to provide continuity; a Lower House elected by a system of proportional representation decided by the citizens and amended, if necessary, by the citizens; the term of each parliament House of Representatives to be four years, and the date of each election to be fixed by the Constitution - the Administration could no longer 'go to the country', and should it lose the confidence of Parliament and be required to resign, a new administration should be formed from the members of the current parliament. The size of the provinces should be such that the local government of its territory might be entrusted to a single administration, so reducing the number of local bodies to a dozen or so.

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**

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.

Lubna Elmadani
Chrsitchurch
New Zealand

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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.

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Gary Elshaw
Wellington
New Zealand

4308"

From: "Norman Ely"
To: <constitutionalreview@justice.govt.nz>
Date: 30/07/2013 11:29 p.m.
Subject: CAP Submission
Attachments: NZ Constitution - my Submission to the Advisory Panel July 2013.doc

Find attached my submission to the Constitutional Advisory Panel in respect of "The Constitution Conversation 2013".

Please acknowledge receipt of this submission.

Yours sincerely

Norman R. Ely

Submission to: Constitutional Advisory Panel

Submitted by:
Norman R. Ely

~~Should there be any hearing on this matter I would wish to present a submission in person.~~

It is my opinion that:-

1. New Zealand should have a written Constitution.
2. That New Zealand should return to a Bicameral Parliament.
3. That the term of the New Zealand Government should be 4 years.
4. That any Prime Minister of New Zealand should not hold the positions of Prime Minister for more than Two Terms (8) years regardless of the term any political party may be consecutively elected to. Should an election be called early during any elected term then the maximum 8 years any Prime Minister can serve shall still remain from the date the Prime Minister was first elected. (This may therefore require an elected party to reselect its leader (new Prime Minister) during an elected term.
5. That the Treaty of Waitangi should be entrenched in the Written Constitution.
6. That the Bill of Rights and the Privacy Act should be entrenched in the Written Constitution.

New Zealand should have a written Constitution

It is said that New Zealand has an "Unwritten Constitution". To this end it is made up of many sources. Some examples are:

- a) The Constitution act 1986 itself
- b) The Principles of the Rule of Law
- c) New Zealand statutes both entrenched and unentrenched.
- d) UK and other Commonwealth countries legislation by way of Court resolve and precedents
- e) Conventions
- f) Court decisions
- g) Treaty of Waitangi

The Constitution Act 1986 only concerns itself with bringing together into one enactment certain provisions of constitutional significance, and to provide that the New Zealand Constitution Act 1852 of the Parliament of the United Kingdom shall cease to have effect as part of the New Zealand Law.

In this aspect it is very limited.

All other examples are in reality not directly part of the Constitution. They are only part of the Constitution for as long as The Executive accept them as such. Apart from "Entrenched Legislation" The Executive can ignore modify or completely delete any other legislation. In fact The New Zealand Law Society this year advised the United Nations' Human Rights Council that mechanisms protecting human rights in New Zealand would benefit from further strengthening.

In a press statement dated 20 June 2013 the New Zealand Law Society states;

In a submission to the Council for the second Universal Periodic Review of New Zealand's human rights record, the Law Society identifies a number of legislative measures which it says fail to meet New Zealand's domestic and international human rights obligations.

Law Society President Chris Moore says that while New Zealand has a generally good record on human rights, its constitutional arrangements mean that protection of human rights depends on rigorous scrutiny of policy and legislation, close adherence to the rule

of law, and political restraint where rule of law concerns or inconsistencies with human rights standards are identified.

"Without a supreme bill of rights or entrenched constitution it is crucial that human rights protection mechanisms operate effectively to forestall breaches of human rights. Unfortunately on a number of recent occasions legislation has been passed despite conflicting with the rule of law and human rights."

Mr Moore says the Law Society believes New Zealand must take action in a number of areas to ensure it ceases to infringe or jeopardise human rights and the rule of law.

"There have been twelve pieces of legislation in recent years that have been identified as inconsistent with the rights and freedoms protected in the New Zealand Bill of Rights, and on a number of occasions urgency has been used in Parliament to limit or bypass select committee scrutiny," he says.

"The Law Society is also concerned that there has been legislation prohibiting review of government decisions by the courts, and proposing restrictions on rights to legal representation in Family Court proceedings. Other significant concerns include giving the power to amend legislation by regulation without parliamentary scrutiny, and not vetting late amendments to draft bills for their consistency with the Bill of Rights."

It is important for the overall protection of New Zealand Citizens that the Variety of Existing Sources of the Unwritten Constitution of New Zealand, (legislative or otherwise), be merged with the Constitution Act 1986 to form The New Zealand Constitution and that this be Entrenched in the terms of New Zealand Legislative Practice requiring no less than 80% of the members of the New Zealand parliament to support any change.

Further this New Written Constitution should be The Supreme Law of New Zealand and not be contravened without the 80% of support of the Parliament and this MUST be a conscientious vote without party whips involved.

That New Zealand should return to a Bicameral Parliament

Over many years the Government of The Day has broadened its power to legislate with very limited control over its actions.

The Government of The Day has moved a large proportion of secondary legislation to "Regulation" rather than direct amendments of parts of Acts. These Regulations do not need to come before the Parliament for debate. They are able to be enacted by the approval of the governing parties Executive and in the case of some Regulations Cabinet.

The Cabinet manual lists the process of regulatory scrutiny as follows:

The limits of the regulation-making power will be defined as precisely as possible in the enabling Act. Therefore care must always be taken to ensure that the regulations are within the scope of the power granted. The High Court can review regulations and declare them to be ultra vires and therefore invalid if they are outside the scope of the power to make them. The Regulations Review Committee examines all regulations after they are made. This select committee considers whether it should draw the regulations to the attention of the House on number of grounds relating to basic legal or constitutional principle. (See the section entitled "Delegated legislation" in the chapter on legislative procedures in the Standing Orders.) This scrutiny forms the basis for any recommendation to the House.

A process also exists under the Regulations (Disallowance) Act 1989 and the Standing Orders to move a motion for the disallowance of a regulation in the House. The Regulations Review Committee also investigates complaints on the operation of regulations understanding Orders.

In effect as has been shown by past Governments the result of these scrutinies can often be minimised or ignored, especially if a very strong Prime Minister wishes to push through some Regulations. Equally, as has been shown in the past Regulations have been enacted that have very serious and much further reaching implications than was first stated.

Under both 'First Past The Post' and 'Mixed Member Proportional' representation the Government of The Day may be in a position of being able to form a majority of one vote to succeed in processing legislation. In general terms this may not be an issue. However, when the legislation proves to be controversial the implications may be more serious. It has on some occasions both past and present been the case when the majority of the public disagree with a particular piece of legislation.

It is my opinion that on occasions such as these the legislation should be reviewed in some

way as to stop it being "rammed through" Parliament despite majority opposition of the 'people at large'.

Referenda (unless part of entrenched legislation) does not answer this problem. In addition the process of referenda could be pursued to the point of tying Governments down in their ability to pass legislation.

It is my opinion that an Upper House of a small number of members (20 to 40) should be established. They should NOT be of a particular political persuasion and should not be elected. Their duty would be to review all legislation that is passed by the Lower House.

Generally the Upper House would sanction such legislation; at times the Upper House may raise an issue or issues to be considered by the Lower House before passing the particular legislation. When there is widespread community dissent then the Upper House should make a recommendation(s) to the Government as to how to resolve the matter. (This could be anything from changing clauses, setting up a specialist review panel to consider the matter and make recommendations to Government that become binding on the Government or call for a referendum the result of which would be binding on the Government.

That the term of the New Zealand Government should be 4 years

The present term of Parliament of 3 years I believe is too short.

It is widely held by establishment authorities and academics that Government (especially when there is a change of government) takes 9 – 12 months to get settled in and take counsel from the Public Service and other advisors. In turn there is a tendency to start preparing for the next election prior to the start of the third year of government. In reality in New Zealand the Government only seems to constructively govern for between 30% to 40% of their time in power.

History in England shows that 5 years is probably too long. Authorities and academics tend to suggest that second and third term governments often are seen as too manipulative. In the same way the argument that government takes on the belief that it is its Right to Govern. All successful Companies work on short term plans (5 years), long term plans (10+) years and many have a plan beyond that time.

The Public Service also puts up 5 year plans and in some case (SOEs especially) 10 year plans. One of the major problems that the Public service has is abilities to fully follow these plans. This is largely because each change of political governance has the portent to change those plans. In some cases very significantly.

It is extremely bad for the economy and the general operation of New Zealand Inc. to have changes of this nature.

I believe that a 4 year term is almost the ideal situation for Governments in New Zealand in the foreseeable future.

That the Prime Ministerial term should be no more than 8 consecutive years regardless of the term any political party may be consecutively elected to.

Academics and other political commentators have suggested in the past that some Prime Ministers have had such dominance over their fellow elected political party backbench members and more particularly Cabinet members that they start to become presidential and narcissistic. It is also suggested that this results in poor governance overall.

Two examples of Prime Ministers in recent times that have been presented in this light by political commentators especially are Robert Muldoon and Helen Clark. In the case of Mr Muldoon there has been considerable commentary on his governance especially in the last 18 months of his term. The largest proportion of this commentary seems to indicate that members of his Cabinet were reluctant (unwilling) to stand up to his style of Governance. Equally, the history of New Zealand's financial position in the last 6 months + (especially the last 2 months) of his term demonstrate that he was (out of control) and took actions that were significantly deleterious to the New Zealand economy.

It is my opinion that there may be every good reason for the electors of New Zealand to want a particular political party or coalition of parties to govern. However, if the Prime Minister is only there for 8 consecutive years then the electors are more likely to consider the policies and not

the person. In the same way the party(ies) elected to govern are unable to rely on one strong personality. They have to build a succession process. In my experience of governance this will build better policy, stronger consideration of the future for the Political Party(ies) and therefore for the New Zealand Incorporated. In addition if combined with a four year parliamentary term it will bring greater financial and governance to New Zealand Incorporated.

That the Treaty of Waitangi should be entrenched in the Written Constitution

Matters that concern The Executive in respect of the Treaty of Waitangi are:

1. Completing existing claims.
Government has determined a finalisation date for claims to be submitted and is working towards a finalisation date for all claims.
It is not clear what happens in respect of timing if the result of these claims is disputed.
2. Future claims being pursued owing to dissatisfaction about past "settled claims" future unknown matters that may well arise.

The use of claims money to benefit members of particular Iwi causing disproportionate economic positions of members of differing Iwi will almost certainly cause issues in future. The on going economic; education; health and other disparities between Maori and other ethnicities will raise future problems.

The gradual diminution of the Maori populace as a percentage of the combination of all other non Maori and non Pacifica populace will cause future problems. (It is very difficult to pursue Treaty obligations and historical grievances when the majority of the population no longer form part of the party causing the original obligations and grievances.)

By entrenching the Treaty of Waitangi and entrenching supporting legislation will allow for the permanent, (at least until a significant majority of Parliament), protection of the rights currently offered.

I use the word offered as even in the present day Governments can and have reneged on the understanding set down historically when or if it doesn't like a decision. Even Court decisions have been dealt to or avoided when Governments have passed legislation to avoid the result of the decision or impending decision.

That the Bill of Rights and the Privacy Act should be entrenched in the Written Constitution.

Legislation can, (and has on many occasions), passed that is "inconsistent" with the Bill of Rights. In addition Government consistently passes legislation that is in conflict with the United Nations Declaration on Human Rights to which New Zealand is a signatory.

Legislation can and has been passed that diminishes New Zealanders protection under the Privacy Act.

In recent times both the Human Rights Commissioner and the Privacy Commissioner have rebuked Governments for passing (or in the case of the current GCSB Act controversy intending to pass) legislation inconsistent with both of these pieces of legislation. The Attorney General should advise Parliament that the legislation is inconsistent with the relevant legislation. Often this is ignored on the basis that legal advice given opines that the impending Legislation is **not** inconsistent. On occasions this has been challenged in Court. Firstly, this is unacceptably expensive. Secondly, if the Applicant succeeds with the action then the Attorney General simply makes the requisite statement to The House and Government simply ignores the Court ruling.

An example of this most recently is that with Security Legislation, (the amendments to the GCSB Act), the main parties historically have come to a consensus and passed the requisite legislation. Whereas, currently a politically motivated Party and Prime Minister are politically manoeuvring to get a ONE person majority to push legislation through to appease one or more other Nations to which that Party and Prime Minister have made a promise. This is a completely immoral and ethically unacceptable position.

In a country such as New Zealand this is abhorrent. Why have Legislation that protects the rights of New Zealanders when it can be ignored and/or abused at the discretion of the Executive (or in some cases one person – The Prime Minister).

Entrenching these Acts offers protection against this Political Interference and Manipulation. In addition if the Legislation is really required then 75% (or the percentage determined) of the Members of Parliament can come to a consensus and pass the requisite legislation (as has been the past situation with security bills).

I submit that to not have a Written Constitution encompassing and fully entrenching - The Constitution Act 1986; The Principles of the Rule of Law as currently operable; particular New Zealand constitutionally related statutes both entrenched and unentrenched; Constitutional Precedents and Conventions already existing; The Treaty of Waitangi is repugnant to the rights of all New Zealanders of all ethnicities.

I submit that the current Constitutional position allows for Political Party interference and ideological malfeasance.

I submit that the current Constitutional position allows for some element of gerrymandering of parliamentary seats to allow for Parliamentary majorities that would otherwise not exist. This can be by way of Electoral Boundaries, by way of allowing members of other political parties into a seat rather than allowing voters to select from ALL other party members who otherwise might have stood in the electorate.

I submit that an extensive review of current Legislation that may affect Constitutional matters should be carried out by a small panel of Constitutional Experts. The result and recommendations of this review panel should then be enacted within no more than 12 months by the sitting Parliament. This not to be a majority vote to enact but a Mandatory Act on the Parliament of the Day. This to be enacted as The New Zealand Constitution Act and the whole of the act to be entrenched.

I have added an Addendum in response to the panel's specific questions. This commences at page 6 of this submission.

Notes.

This has been referenced from:

1. The New Zealand Constitution Act 1986
2. The New Zealand Cabinet Manual July 2013
3. The New Zealand Bill of Rights Act 1990
4. The Privacy Act 1993
5. The UN Declaration of Human Rights as at 2013
6. The Human Rights Act 1993
7. The Electoral Act 1993
8. The Treaty of Waitangi Act 1975
9. Historical (as at today's date) press reports over many years.

Norman R Ely

Porirua

Email –

Phone (all methods)

Tuesday 30 July 2013

ADDENDUM

The panel has asked the following specific questions which I have addressed as part of this submission but by way of this addendum to it.

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

I have covered this in my above submission.

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

I have covered this in my above submission.

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

It is my opinion that if the The Constitution Act is Supreme and the The New Zealand Bill of Rights Act; The Privacy Act; The UN Declaration of Human Rights; The Human Rights Act; The Electoral Act; The Treaty of Waitangi Act 1975 are entrenched as part of the Written Constitution, and require 80% Parliamentary support, (as I have suggested above), there is less of a problem. If there is any issue it should be able to be taken directly to the Supreme Court for a decision of the Full Bench. (Current requirements to approach the Supreme Court Bench should be the requirement to take the matter to the Supreme Court).

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

I have covered this in my above submission.

What other things could be done to protect rights?

I have covered this in my above submission.

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

I have covered this in my above submission.

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

It is my opinion that if the The Constitution Act is Supreme and the The New Zealand Bill of Rights Act; The Privacy Act; The UN Declaration of Human Rights; The Human Rights Act; The Electoral Act; The Treaty of Waitangi Act 1975 are entrenched, part of the Written Constitution, and require 80% Parliamentary support, (as I have suggested above), there is less of a problem. If there is any issue it should be able to be taken directly to the Supreme Court for a decision of the Full Bench. (Current requirements to approach the Supreme Court Bench should be the requirement to take the matter to the Supreme Court).

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

I have covered this in my above submission. The only other benefit would be to incorporate The UN Declaration of Human Rights (to which New Zealand is a signatory) into the Bill of Rights.

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

I have covered this in my above submission.

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

I have covered this in my above submission.

How should Māori views be represented in Parliament?

Over a prescribed period the Maori Seats should be incorporated into the General Seats. I have dealt with this in some part in my comments above on the gradual diminution of the Maori populace as a percentage of the combination of all other non Maori and non Pacifica populace. I believe that by entrenching the Treaty of Waitangi and entrenching supporting legislation this will allow for the permanent, (at least until a significant majority of Parliament), protection of the Maori representation as this change takes place over future generations.

How could Māori electoral participation be improved?

The only way to improve participation for any group is to make voting compulsory. It is my opinion that this is not a bad position to take. Compulsory voting works extremely well in many other countries, I do not see New Zealand as SO different that it would not work here.

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

As part of the general population and with regard to my comments above on National Government Representation I see no reason to change the current process. If anything the way would be to make local Government voting compulsory as with my comment directly above.

How many members of Parliament should we have? Why?

I believe that 120 members is too many, maybe 70 to 90. However I have no fixed view on this matter

How long should the term of Parliament be? Why?

I have covered this in my above submission.

How should the election date be decided? Why?

I do not really have a view on this. It does seem that a fixed number of days from writ day of the newly elected Government is the most logical process. In the event of an early election being required then the new election should be 6 weeks from the date of the Governor General being advised by the Prime Minister of the dissolution of Parliament.

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

I believe the current system is satisfactory albeit that it can be interfered with and has been in

the past. Maybe the present and future committee(s) should have a judicial review procedure.

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

It is my opinion that in the event of a Member of a party "parting ways" with their party or having their party membership cancelled then a by-election should be compulsorily called for that seat. This by-election should be on the same basis as the death of a sitting member.

Norman R. Ely

1841

Joanna Emerson

Foxton

To whom it may concern

I strongly oppose any legalisation or reference to the Treaty of Watangi in any current or future legislation.

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

2619

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 4/07/2013 8:46 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Mr Dennis Emery Organisation Name: Nga Kaitiaki O Ngati Kauwhata
Incorporated Email: : Phone: } Postal AddressA:
^ Postal AddressB: Postal City: PALMERSTON NORTH Postal Region:
..... Postal Post Code: } Postal Country: New Zealand Submission: As Ngati
Kauwhata-ki-te-Tonga Iwi, we support Te Tiriti O Waitangi being recognised as a founding document
for Aotearoa, and that it should be enshrined in the proposed Constitution of Aotearoa - New Zealand.

Sent on the 4 July 2013 at 20:45

2570'

From:
To: <constitutionalreview@justice.govt.nz>
Date: 4/07/2013 2:50 p.m.
Subject: CAP Submission

Maori seats should be retained at this point in time, but in the future they must be abolished - date for abolishing should be set so that all New Zealanders are constantly reminded that racist political groupings are NOT harmonious with or conducive to consolidating a ONE NZ Constitution, if such a Constitution is seen as necessary.

Graham R Empson

Tairua.

96

From:
To: <constitutionalreview@justice.govt.nz>
Date: 8/04/2013 9:30 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Lauren Ensor Organisation Name: Email: none:
Postal AddressA: Postal AddressB: Postal City: Auckland Postal Region: Postal Post
Code: Postal Country: New Zealand Submission: - Considering the large amount of
legislation passed under urgency over the last decade, time between elections should again be
reviewed, with public made aware NZ is one of the only countries with a 3year term for each
Parliament.

- Considering NZ has a unicameral govt., laws to change existing statutes (especially pertaining to the
constitution) or votes requiring conscience votes should require 75% majority to pass: NZ Govt.
seems unstable and irrational with its decisions to pass
certain laws with little consideration to the long term effects of passing such legislation and even less
consideration of public opinion.

- Treaty of Waitangi should not be entrenched into any written legislation if the Waitangi Tribunal are
still the only agency able to interpret its meaning. There should be a more transparent, democratic
approach that is able to be scrutinized on a national
level.

Sent on the 8 April 2013 at 20:28

1787

Submit at the 27 April 2013 Constitutional Review Panel's *Constitution Conversation*,

email: constitutionalreview@justice.govt.nz. Website www.ourconstitution.org.nz to submit on-line, or call 0508411 411

To Professor John Burrows, Co-Chair, Constitutional Advisory Panel, Secretariat, C/- Ministry of Justice, DX SX10088, Wellington:

SUBMISSION

My Name: David Enting

Name of Organisation: Civics Education Action Group – Nelson Ph: 03 548 4461

or _____

Postal or email address: _____

We ask that any constitutional document, either singular or through a set of constitutional principles that may emerge from the Constitutional Review of 2013:

- Have in any Preamble and elsewhere, New Zealand be declared a secular, sovereign, representative democracy with citizens' participation by way of plebiscites and direct community consultations.
- New Zealand has no death penalty be included in the Bill of Rights Act and under a Suffrage section in any singular document appended to any single constitution.
- New Zealand has no conscription to war and its people bear no arms.
- The South Pacific Nuclear Free Zone Treaty signed in Suva, Fiji in 1985 and the New Zealand Nuclear Free Zone Disarmament and Arms Control Act of 1987 be stated in Territories or appended to any constitution, with the inclusion (as have the Palauan Islanders done) of clauses against use, testing, storage or disposal of nuclear, toxic chemicals, gas or biological weapons intended for use in warfare, plus transit of the same through our Territories.
- New Zealand follow the example of the Philippines Constitution in stating it "renounces war as an instrument of national policy" and there also be carried a clause requiring not less than three fourths of votes cast in a referendum against docking, military bases and engagement in war, except as ratified by a majority of votes by the people in a plebiscite held for that purpose.

Please take this submission forward to your Secretariat by 1 July 2013.
My name can/cannot be used in publications.

Signature: _____

2932

From: Peter Entwistle
To: <constitutionalreview@justice.govt.nz>
Date: 8/07/2013 9:04 p.m.
Subject: CAP Submission

Abolish the Maori seats- definitely.

In this day and age there is no need for separate seats for Maori

After all we now have the Maori party who are supposed to represent their own people.

2932a

From: Peter Entwistle
To: <constitutionalreview@justice.govt.nz>
Date: 21/07/2013 8:27 a.m.
Subject: CAP Submission

My submission concerns the true meaning of equality.

New Zealand has a proud record of stable government based on the internationally recognised parliamentary system which recognises all citizens as equal members of society.

Nothing in the statute books gives the right of superiority based on ethnicity which the present proposed Constitution appears to want to change in favour of an ethnic minority

The present attempt by a small segment of our population to gain preferential rights for incorrect reasons, is morally wrong.

Our legal system has been tested and found to be entirely adequate to enable Government to govern in the best interests of ALL the population.

The principle of ONE LAW FOR ALL must be followed.

3879.

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 25/07/2013 2:17 p.m.

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

Full Names: Wayne Erb Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City: Auckland Postal Region: Postal Post
Code: Postal Country: New Zealand Submission: Constitution

The Queen should be replaced as head of state by a President who is a New Zealand citizen. A head of state act would stipulate what criteria the president had to meet, eg citizen, not be a member of a political party, not a former member of parliament. The president would have similar powers to the current governor general. The president would be voted in by parliament, with the Supreme Court having the power to judge if legal criteria were met. Other checks and balances may be required so president is not able to act in a overt partisan political manner.

Bill of rights

Consideration should be given to extending the Bill of Rights to cover unborn children. This would give them the right to live, and therefore spark a debate about the legality of abortion. This step would need to be taken carefully in conjunction with other steps such as the recent increase in use of a long-term reliable contraception.

Courts should have the right to decide if legislation is consistent with the act. I've heard of too many cases where Parliament has ignored advice that new legislation is inconsistent with the Bill of Rights.

Electoral matters

Parliamentary term should be four years to give policies more time to be developed and implemented. For example, development of the education national standards was rushed because the politicians wanted to get quick results.

An MP who is list-only should resign from Parliament when they leave the party, and the party replaces them with next on the list. This is in order to keep reflecting the intention of voters when they cast their party votes.

The election date should be fixed at four year terms so politicians can not pick a date to their advantage. An exception would be made if there was a vote of no confidence in the government and no new government was formed within a reasonable time.

Submitted on the 25 July 2013 at 14:16

1819

Tautanga
15-6-13.

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

Yours truly,

Rosalie B. Every.

4124

From:
To: <constitutionalreview@justice.govt.nz>
Date: 29/07/2013 11:30 p.m.
Subject: CAP submission
Attachments: DHBE (2013) Final submission.odt

I attach my submission, which is in Open Office format.

--
Don Esslemont
Palmerston North

Sign the New Zealand Declaration of Equality at
<http://www.nzcpr.com/ConstitutionalReview.htm>
"He iwi tahi tatou"

From: Don Esslemont, Palmerston North
To: Constitutional Advisory Panel
Subject: CAP submission
Date: 29 July 2013

What are your aspirations for Aotearoa New Zealand?

This is a very vague question, that might invite almost any answer. "Aotearoa New Zealand" is not the usual name of our country; its use is a signal of sympathy with separatist views, like wearing a tiki. I know from my experience as a teacher and practitioner of survey research that asking about "Aotearoa New Zealand" instead of "New Zealand" is likely to influence the responses of many people.

Apart from this hint, it is not clear what kind of response is looked for. I have too many aspirations for New Zealand to list them all. They include a lower, stable population; much greater income equality; energetic enforcement of laws against racial and other forms of discrimination; free medical, dental, and hospital care for all residents; old age pensions paid at a higher, sustainable, age; and many others.

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

New Zealand has a constitution, but it is not all written down in a single document. It is covered in legislation such as the New Zealand Bill of Rights Act 1990 and the Constitution Act 1986, foundational documents such as the Treaty of Waitangi signed in 1840 and established constitutional principles.

It might be helpful to explain, and follow, the widespread and sensible custom of using "constitution" (with a lower case "c") to refer to the set of rules according to which the government of a country is carried on, and "Constitution" (with upper case "C") for what is often called a "written Constitution".

Some of the rules in a constitution may be included in a formal written Constitution, that is, in a particular law, usually more difficult to change than ordinary laws, that sets out some important parts of the constitution. Virtually all modern countries, other than the UK, Israel, and NZ, have such a Constitution.

Many of the rules in the NZ constitution are set out in ordinary laws, such as the New Zealand Bill of Rights Act 1990, the Constitution Act 1986, the Electoral Act, the Local Government Act, the Defence Act, the Supreme Court Act, and many others. None of these is fully entrenched, and most are not entrenched at all.

Other constitutional rules, which are not set out in law, are called "conventions". Because they are not laws, they can not be enforced by the courts. But some conventions are observed as strictly as any law, and a breach of these conventions would be followed by serious consequences.

A very strong convention is that the Governor-General must always act on the advice of the Prime Minister. That convention is always observed because a GG who refused to follow such advice would, if the Prime Minister had a safe majority in the House, be removed: the Prime Minister would "advise" (in effect, instruct) the Queen to revoke the appointment and make another. Yet this convention rests on the Prime Minister's control of Parliament. Sir John Kerr was able to dismiss Mr Whitlam because another MP was prepared to accept appointment as interim Prime Minister and hold an election.

Another example is the convention that the Governor-General never refuses Royal Assent to a bill. If a Governor-General failed to observe this convention, and refused Assent (perhaps because he or she had some moral objection, or believed that the bill did not have the support of the country as a whole) the result would almost certainly be that the GG would be replaced, and legislation introduced to do away with the need for Royal Assent, and perhaps to abolish the post of

Other conventions are relatively trivial, because breaking them might not be followed by serious consequences. The rule that a Prime Minister must resign if he or she loses a vote of confidence is, as far as I know, only a convention. Of course a Prime Minister would have to resign if a majority of the House wished it; it would be impossible for a government to continue for any length of time if Parliament refused supply, which is what happened to Whitlam.

A constitution determines who exercises power in a country, and the checks and balances on that power. It also protects the rights of the people. In other words, it is the set of rules that determines how we are governed and how we live together.

A constitution is indeed a set of rules about how we are governed, but it is not true that a constitution “determines who exercises power”. That is decided by elections, at least in this country. What these rules do is prescribe how those who exercise power are chosen, and what their powers are. It does *not* determine how we live together – whether we live in amity or hostility, work together for the common good or fight each other for economic and other benefits.

It reflects our national identity (who we are, our unique history, values and aspirations).

It is not clear what that sentence is trying to say, or how one might try to find out if what it is saying is true. It does perhaps imply that if we were to adopt a written Constitution then it should contain provisions that would ensure adherence to what the authors of the Constitution regarded as important “values and aspirations”. For example, some people argue that a Constitution should establish part-Maori citizens as having, collectively, rights deriving from their status as *tangata whenua*. Such a Constitution would indeed reflect the values and aspirations of those people. It would not reflect mine, or those of many other New Zealanders.

I believe that all New Zealand citizens should have the same rights, and that to treat people differently on the basis of whether they have ancestors of a particular race is morally wrong.

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

The whole constitution of a country, ie the set of laws and customs that set out how it is governed, can never be contained in a single written document. I imagine the Panel actually wants answers to “Do you think NZ should adopt an entrenched written Constitution?”

It is clear that having a written Constitution is no guarantee of liberty, since all the tyrannical and oppressive regimes in the world have written Constitutions. It is also clear that there is no consensus among New Zealanders about matters that would be set out in a Constitution, such as whether we should become a republic, or whether the constitutional status of part-Maori citizens should be different from that of other New Zealanders.

I therefore do not favour adopting an entrenched written Constitution. On the other hand, if I were one of those who believe that *tangata whenua* should be recognised as having rights deriving from their status as a indigenous people, I would probably seek to have such contentious issues entrenched in a Constitution, so as to make it more difficult in future to upset such arrangements.

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

Again, this is a poorly-framed question. Perhaps it means “Should NZ have a formal written Constitution, that would invalidate other laws not consistent with it, and which would require special procedures to change?”

Such a Constitution could of course not contain all the laws and other rules about how the county is governed. But it would identify some laws as “supreme” ie particularly important, and taking priority over other laws.

In my opinion there is little reason to suppose that adopting a supreme Constitution would make

much difference to the way we are governed. Of course, if one wanted to secure some particular aspect of the Constitution against future change, embedding it in a written Constitution would help, but only to a limited extent.

For example, a monarchist might wish to adopt a Constitution that declared the country will never be a republic, or the Maori Party might want a Constitution that provided for an Upper House consisting of iwi representatives, or guaranteed the continued existence of the special seats for part-Maori.

Writing such things into a Constitution does not really guarantee permanency. When Fiji became independent it adopted a Constitution that provided for racially separate electorates, and was intended to ensure that ethnic Fijians would always control the country.

On the whole there seems little point in adopting an entrenched Constitution. The three countries that manage without one – the UK, Israel, and NZ – are not noticeably worse governed or less free than many of the countries that do have one.

Although I do not support an entrenched Constitution, it does seem desirable that some important laws should be protected so that they can not be changed as easily and hastily as ordinary laws.

The doctrine of the supremacy of Parliament is sometimes interpreted as meaning that it is impossible for a Parliament to “bind its successor”. But it should be possible to devise a formula that would protect us against the danger that a government with a secure majority in the House might legislate to do away with safeguards.

This is not the place to argue for any particular mechanism, and I have no wish at this time to research the relevant law in enough detail to enable me to do that. But I am confident that it could be done. Specifying that clauses can be repealed only by an Act passed in two successive Parliaments, perhaps, or a stipulation that the Governor General may refuse Assent to repeal the clauses contrary to the advice of the Prime Minister.

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

This question makes sense only if we have an entrenched written Constitution. My answer would depend on what the features of the Constitution were. In my opinion the most serious threat to our rights and liberty is the lack of separation between the legislative and executive Powers. In countries where that separation is ensured, such as the USA, governments have to operate within the existing law.

At the time of the America Revolution, the King was still the head of the executive government in Britain. George III no longer presided in person at meetings of his Cabinet, but he did decide who his Ministers would be. The Glorious Revolution of 1689 had established that the executive government – the Crown – was obliged to obey the laws made by Parliament, and had no power to raise taxes or maintain an Army without Parliament's consent.

The Americans, in framing their own Constitution, were much influenced by Montesquieu, who contrasted the free and happy state of Britons with the miserable subjection to royal despotism of his own countrymen. His analysis led him to the conclusion that Britons were free because the various “powers” of government were separate. The legislative power, to make the laws, and the judicial power, to resolve disputes and decide whether laws had been broken, and the executive power, to manage the government, employ civil servants, collect taxes, and control the Army and Navy, were each exercised by separate authorities, namely Parliament, the Courts, and the Crown. In France, by contrast, all these powers were ultimately exercised by the King – summed up in the famous remark “L'Etat, c'est moi”.

The Americans decided they did not want the head of their government to be selected by the accidents of primogeniture, or to continue ruling if he became mad or otherwise unsuitable, so

they stipulated their President should be chosen by a panel of wise men appointed by the various State legislatures, and should serve for a term of four years. Neither the President nor any of his Ministers could be members of Congress, but the President was given a power of veto over new legislation, matching the Royal power of withholding Assent to Bills, although that had last been exercised by Queen Anne.

By the time of Victoria's accession, shortly before the Treaty of Waitangi, the Monarch no longer had any real freedom in selecting her Ministers, including the Prime Minister. Only someone who could count on getting the House of Commons to approve money bills could be an effective Prime Minister.

Since a government could not continue in office for long if Parliament refused to provide supply, that was regarded as ensuring the supremacy of Parliament, which had been a valuable defence against executive tyranny in the days when the Sovereign was the head of the executive government, as the President of the USA is today. But now, because the Cabinet effectively controls Parliament, there is no real separation of the executive and legislative powers. Parliament is no longer supreme, except in a technical legal sense.

General elections are no longer a matter of choosing the most appropriate person to represent in Parliament the people of each district. The main function of a general election today is to decide how many MPs each party will have. Once the result of the election is known, and a Prime Minister has been appointed, Parliament no longer controls the government. Rather the government controls Parliament, because it knows that it will have a majority in Parliament for any Bill it declares to be a matter of confidence.

The result is that the important decisions about legislation are no longer made by MPs debating the pros and cons of proposed measures in the House, and deciding what should be done in the interest of the country and their constituents.

It is true that the situation is not as bad as it was under FPP, where one party nearly always had a majority of seats. But it does mean that Cabinet nonetheless exercises an essentially despotic control until the next election. This may be one of the reasons why so many people are opposed to extending the Parliamentary term beyond the current three years.

The introduction of MMP was expected to improve matters because no single party would normally have a majority of MPs. That has indeed happened, but from the first MMP election in 1996 coalitions have been negotiated which have resulted in the Cabinet continuing to exercise control over the legislative process. This is sometimes regarded as desirable, since it prevents the business of government being held up because it is unable to pass legislation.

In my view, it is not desirable. I believe it is entirely appropriate that Parliament, rather than the Cabinet, should make decisions about changes in the law. A government may believe some change is very much in the public interest – for example, Obama's planned introduction of compulsory health insurance, or strict checks on the history and character of anyone buying a firearm. My answer (and that of Montesquieu) would be that the task of an executive government is to carry on the business of the country according to law, not to decide whether the law should be changed. That is, or should be, the business of Parliament.

Even if effective separation of powers could somehow be achieved a mechanism would still be needed to protect particularly important laws against hasty changes, and the Courts should be able to rule on the legality of attempts to circumvent the protection.

Amy Brookes has proposed that all legislation should be subject to veto by referendum (see <http://100daystodemocracy.wordpress.com/the-concept/>). Important legislation might be protected by requiring amendments to be approved in two successive referenda, perhaps by say a two-thirds majority.

Bill of Rights Act

The New Zealand Bill of Rights Act confirms fundamental rights and freedoms. It contains important rules about the relationship between the state and the people in New Zealand, and covers a broad range of civil and political rights, including the right to freedom of expression, religion and belief, assembly, association and the right to vote. The Act sets minimum standards about how New Zealanders can expect to be treated by the state and the law. You can find the act here:

<http://www.legislation.govt.nz/act/public/2011/0092/latest/DLM4058708.html>

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

I attended the discussion about the Bill of Rights at VUW on 29 April 2013. At that meeting, unlike the earlier “debates”, the pros and cons of the issues were examined by the panel. It is clear that good cases can be made for (1) extending the Bill of Rights to include protection of property, (2) for entrenching the Bill impregnably, but also (3) for not having a Bill of Rights at all.

I do not have a considered opinion as to whether the protections offered in the Act are sufficient. It is however clear that the provision for the Attorney General to draw attention to legislation he believes to infringe protected rights is inadequate. Some of the measures suggested in my answer to the previous question might be appropriate.

5 What other things could be done to protect rights?

All manner of things *could* be done to protect rights. A more appropriate question would be “What other things *should* be done to protect rights?”

I think the executive arm should be more vigorous in enforcing some of the provisions in the existing law. It is illegal to discriminate on the grounds of race when letting accommodation, for example, yet it seems clear that it is actually quite common. Perhaps there should be an enforcement agency that would investigate complaints and, if necessary, prosecute. I think this is something the Human Rights Commission is supposed to do but my impression is that it is not very active. The recent case of an author being ruled ineligible for a literary prize because she is not part-Maori is an example of the kind of breach that I think should be pursued vigorously.

Proper separation of powers would go a long way to protect us from misuse of power by government. I believe we should remember that rights belong to individuals, not groups. It is currently fashionable to argue in favour of group rights, particularly for ethnic groups. In my opinion that is a dangerous and immoral position; rights – or lack of rights – should never depend in any way on membership of a particular group. If defending the rights of an ethnic group *is* acceptable, then it was acceptable for white New Zealanders to defend themselves from economic competition from Chinese immigrants a century ago, and for white South Africans to defend their economic and political position vis-a-vis their non-white compatriots. To argue that special arrangements should be made for any sub-group of citizens on the ground of the race of some of their ancestors is immoral and racist, whether the special arrangements favour or disadvantage the sub-group in question.

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

This seems equivalent to the earlier questions 1 – 3. The Bill of Rights is clearly part of our constitution.

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

This is really the same as Q 3.

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

“Could” or “should”? How does this differ from Q 4? In my opinion the Bill of Rights is not at present an important topic and improvements should probably be discussed after broader

constitutional issues have been settled.

The Treaty of Waitangi

The Treaty of Waitangi is an agreement made between the British crown and Maori chiefs in 1840. It enabled the British to establish a government in New Zealand and confirmed to Maori the right to continue to exercise rangatiratanga.

It is simply not true that the Treaty “enabled the British to establish a government in New Zealand”. The British government had the legal right to establish a government in any territory it controlled. During the 19th and earlier centuries it acquired sovereignty over many places, sometimes by “discovery”, sometimes by conquest, and sometimes by cession from the local rulers.

Because Britain had acknowledged the “Declaration of Independence” of 1836, the Colonial Office instructed Hobson to try to obtain the consent of the relevant chief before any part of NZ become a British colony. But his proclamation of sovereignty over the South Island on 4 June 1840 was by right of discovery, not cession.

Even if Hobson had been unable to persuade any chiefs to sign the Treaty, the NZ Company's settlements would still have brought large numbers of settlers to NZ, and it would have become a British or French – or American – colony in time, as all other Pacific territories did.

To say that the Treaty “confirmed to Maori the right to continue to exercise *rangatiratanga*” is disingenuous, to say the least. Separatists such as Professor Mutu have claimed that “*rangatiratanga*” in Article 2 means something like “chiefly authority to rule over their people”. Other authorities, including for example Sir Apirana Ngata, accept that “*rangatiratanga*” in this context meant “ownership”, rather like “lordship” in medieval England.

The promise in Article 2 is made not only to chiefs, as it would have been if it were about the power to rule, but “*ki nga Rangatira ki nga hapu – ki nga tangata katoa o Nu Tiranī*”. It is obvious that only “*rangatira*” could claim to exercise anything like sovereignty, whereas chiefs, hapu, and all the people could and did enjoy ownership over their “lands, villages, and other valuable things”.

That this Article dealt with the ownership of land, rather than with authority to rule, is also clear from the second sentence, which restricts how and to whom land may be sold. Before 1840, Maori chiefs, hapu, and individuals had no security of ownership, because possession might be lost at any time to raiding rival tribes. Article 2 guaranteed that their ownership would in future be protected from such threats.

The Treaty is generally regarded as New Zealand's founding document and influences the relationship between the Crown and Maori.

It is true that the Treaty is often said to be our “founding document”, but what does that mean? What is the founding document of the USA? The Declaration of Independence? The Constitution? The Constitution as currently amended? And what about the UK? Is the founding document the Magna Carta? The Bill of Rights 1689? The Act of Union 1707?

Clearly, to assert that the Treaty is our “founding document” is to assert that it is in some way important, and that it is part of our early history, as it undeniably is. But to assert anything beyond that requires spelling out just what the assertion is.

What is meant by saying it “influences the relationship between the Crown and Maori”? “The Crown” is clearly just a synonym for “the government”. But what is meant here by “Maori”? All the 765,000 New Zealanders who have some Maori ancestry? The politicians who claim to represent the Maori people? The modern corporations that make claims to the Waitangi tribunal, and administer the funds granted as a result of these claims?

The Treaty has obviously influenced the relationship between the NZ government and Maori individuals and tribes in the past. As Apirana Ngata pointed out in 1922 in "*He whakamarama*", it spelt out to those Maori who were discontented with their status as British subjects, that their ancestors had agreed to accept the *kawanatanga* of the Crown. It also spelt out to successive NZ governments that Maori individuals had the same citizenship rights as other New Zealand subjects.

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

"Could have" or "Should have"? These are radically different questions.

In my opinion the Treaty should be celebrated and commemorated for its three main features. First, the chiefs who signed it agreed to be ruled by the Queen, ie the British government, and acknowledged her power to rule. Second, the British government undertook to protect the property of chiefs, hapu, and ordinary people, from conquest or theft by rival tribes or lawless Europeans. Third, and most remarkably in the context of the time, the British government promised that the native people would have the same legal rights as other British subjects.

In so far as the Treaty may be said to have any "principles", that expresses them: Crown sovereignty, secure ownership of property, and equal political rights for all, whether European or Maori. The claims that the Treaty guaranteed continued political control by chiefs over iwi members, or that "*kawanatanga*" was somehow restricted to control over Europeans, or that *rangatira*, *hapu*, or *nga tangata katoa* were in 1840 owners of radio frequencies, or exclusive rights to fish in ocean waters, are in my opinion simply absurd special pleading.

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

It is not clear what is meant by "making the Treaty a formal part of the Constitution". Perhaps it is that a written Constitution should or might contain a provision such as "The founding document of New Zealand is the Treaty of Waitangi and no law shall be valid that is inconsistent with its Principles". This, or something like it, seems to be among the "aspirations" of the Maori Party and other neo-tribal separatists.

In my view it would be meaningless to incorporate any version of the Treaty itself in a written Constitution.

Special provision for representing part-Maoris

The Maori seats in Parliament are a unique feature of New Zealand's democratic system.

In what sense are they unique? Special seats for different ethnic groups have featured in several countries, eg special seats for Coloureds in South Africa, seats for different ethnic groups in Fiji, reserved seats for Magyar, Roma, and others in Romania.

These seats ensure that a guaranteed minimum number of members of Parliament (MPs) can represent Maori views and perspectives in Parliament. There are currently seven Maori seats.

They can be said to ensure representation of the views of those people who have chosen to enrol on the separate electoral roll, but not the views of all "Maori" as defined in legislation. The Royal Commission on electoral reform argued that MMP would ensure representation of Maori and other minorities, and recommended abolition of the race-based seats. Events have shown that part-Maori do win list and other seats.

The nature and extent of Maori representation in local government decision-making varies across the country. Most councils consult to some degree with tangata whenua.

"*Tangata whenua*" has a number of meanings. Traditionally it referred to all the people who were entitled to live and work in a *rohe*. In that sense, all New Zealand residents today are *tangata whenua*. It is presumably meant here as a synonym for "the Maori people" but that too is

ambiguous. In practice, the council consultation is with the leaders of neo-tribal corporations who claim to be successors of the tribes that dominated the area in 1840.

11 How should Maori views be represented in Parliament?

In exactly the same way as the views of New Zealanders who do not have any Maori ancestors. Those of us who have pre-1840 Maori among our ancestors are now fully assimilated into the modern international culture of New Zealand. We all attended similar schools, we all speak and understand English, we all wear ordinary modern clothes, and live in ordinary modern houses.

The Treaty neither promised nor implied any special treatment for the descendants of 1840 Maori; on the contrary, the Queen promises to "*nga tangata maori katoa o Nu Tirani*" that "the rights and privileges of British subjects will be granted to them".

None of that is to say that individuals who regard themselves as belonging to "the Maori people" should not be free to do so. They can, if they wish, wear facial *moko*, study traditional crafts and dances, and send their children to Maori-medium schools. All of us have the right to do these things if we wish.

12 How could Maori electoral participation be improved?

This question appears to mean "How could the number of part-Maori MPs be increased?" Does the Panel believe that an aim of the constitutional review should be to increase the representation in Parliament of New Zealanders who have Maori ancestors? That does not appear in their terms of reference, although some individual members of the Panel are of course known to favour such an increase.

There is empirical evidence that an overwhelming majority of New Zealanders would prefer to see the "Maori" seats abolished. Of course, if the electoral process discriminated in some way against part-Maori, so that they were somehow prevented from seeking election, that would be wrong. But the proportion of MPs who have Maori ancestors is much the same as the proportion in the whole population.

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

It might have been sensible to have included a preliminary question: Should any special provision be made for representing part-Maori in Parliament and local government? There is some evidence that around 70-80% of New Zealanders would answer "No".

My own view on this question is the same as on special arrangements in Parliament. Electoral arrangements, or any other laws, that accord different rights on the basis of ancestors' race are racist and immoral.

Composition and duration of Parliaments

New Zealand's Parliament usually has at least 120 members of Parliament. The current Parliament is made up of 63 general electorate members, seven Maori electorate members, and 51 list members. The number of electorates is determined by ensuring that all electorates have more or less the same number of people in them. Parliament can run no longer than three years after an election. The Prime Minister decides when the term of Parliament ends and the date of the next General Election. The Electoral Integrity (Amendment) Act 2001 enabled the speaker to declare a seat vacant if an MP parted ways with their party or their party leader reasonably considered the member had distorted the proportionality of representation in Parliament. The Act expired in 2005.

The remaining questions deal with relatively unimportant technical issues. If the Panel really want a general discussion on constitutional matters it might be better not to divert attention to these questions. In any case, the answers offered are likely to depend on other aspects of a new constitution. For example, for many people, responses to Q18 will depend on whether voting is by MMP or STV.

14 How many members of Parliament should we have? Why?

The idea of reducing the number of MPs is popular, but to some extent that is because of a general dislike for "politicians". Given that Ministers have to be MPs, and that we seem to need between 20 & 30 Ministers, they make up a substantial proportion of all MPs.

Reducing the number of MPs would increase the influence of Ministers, and further reduce the separation between Parliament and the executive. It would make it harder for ordinary people to interact with their MPs. If we make constitutional changes that bring about a real measure of separation of powers, so that MPs play a real part in the legislative process, there will be a great deal more work for MPs to do.

In my opinion any reduction from 120 would be unfortunate, and an increase to 150 or even 200 might be sensible. But this is a relatively minor question, which should probably be considered after other aspects of the constitution have been decided.

15 How long should the term of Parliament be? Why?

This is another relatively minor issue. Under our present constitution I believe four years would be better than three, mainly because a smaller proportion of time would be taken up with electioneering, and the total cost of elections would probably be less.

With a proper separation of powers, the term of Parliament would matter less.

16 How should the election date be decided? Why?

The present system increases the power of the Executive. A better system would be to have a fixed term, with elections held regularly on a set date.

The PM's power to threaten a dissolution is an important element in the executive's control of Parliament. Perhaps the best solution would be to take away that power, but permit Parliament itself to vote for an early dissolution.

If Parliament refused supply to the government the GG should be free to try to find another politician willing to form a government, and, if that proved impossible, to dissolve Parliament and call an early election.

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

In MMP, unlike FPP, there is no compelling reason why constituencies should be closely equal in population, which requires frequent changes in boundaries. Stable boundaries would foster long-term feelings of community identity. During the 40 years I have lived in Palmerston North some parts of the City have switched in and out of the constituency in an unnecessary and confusing way.

Under STV constituencies would be larger, with between 3 and 5 or 6 members per constituency. Changes over time in population could be accommodated by changing the number of MPs as well as by changing boundaries.

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

If MPs are not to be mere puppets, voting on the orders of the party whips, I believe it is important that they should not be forced to leave Parliament if they resign, or are expelled, from their party. The argument that voters have democratically determined the party numbers in Parliament by their list votes is not compelling. Some voters may well have cast their party votes on the basis of the individual qualities of the dissident MP. If we want to attract capable and honest people to become MPs we should encourage them to use their knowledge and judgement, not mechanically follow the choices of their caucuses.

About myself.

I was born in Scotland, and after six years as a Naval officer I studied at the London School of Economics, majoring in Social Anthropology. My teachers there included Raymond Firth and

Ralph Milliband. After graduating I taught economics, British constitution, and government, mainly at Scholarship or first year level, in various institutions in London for several years.

For two years I was the desk officer for South and South-East Asia in the International Secretariat of Amnesty International, researching the political and legal position of people claimed to be "prisoners of conscience" in those regions. After marrying in 1969 I worked for a leading market research company, , where I became Head of Economic and Industrial Research. In 1974 Massey University recruited me as a Senior Research Officer, and I researched in and taught survey research methods and statistical analysis. I am an author of more than 40 scientific papers on these subjects.

I have lived, travelled, or worked in more than 30 countries. My two children, and my present wife, are of mixed race. I became a New Zealand citizen as soon as I could after coming here.

Don Esslemont

Palmerston North

or

930

From:
To: <constitutionalreview@justice.govt.nz>
Date: 28/05/2013 10:38 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission
Attachments: image.jpg

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

Full Names: Jon-Turner Pari Etana Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB:
Post: Postal Region: Auckland Postal Post Code: Postal Country:
New Zealand Submission: Maori to have more say in parliamentary affairs Submission Upload:
image.jpg

Sent on the 28 May 2013 at 10:34

883

From:

To: <constitutionalreview@justice.govt.nz>

Date: 21/05/2013 12:45 p.m.

Subject: <http://www.ourconstitution.org.nz/> form submission

Attachments: The NZ Constitutional Review -Submission CWE.pdf

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

Full Names: Etherington Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City:
Postal Region: CANTERBURY Postal Post Code: Postal Country: New Zealand
Submission: as attached Submission Upload: The NZ Constitutional Review - Submission
CWE.pdf

Sent on the 21 May 2013 at 12:34

The NZ Constitutiona l Review - Submission by Charles Etherington - May 2013

My view is solely on our Constitution and the future role of the Treaty, and can be summarized as:

The Treaty is no longer a constitutional document. It was a founding document but that was as a colony which we no longer are, so its relevance today is solely historical. As we are now an independent parliamentary democracy, the Treaty cannot be part of our constitution since it is undemocratic.

1. **Democracy rules:** Democracy is our most precious institution and paramount value. Minority views and rights are very important to consider, but they must always be subject to the majority's views and rights;
2. **The People are Sovereign:** I think somehow we need to make it explicit that the people through Parliament are sovereign, that nothing is superior to Parliament. This fact seems to be denied by a minority and regularly forgotten by many more, so it needs to be reinforced. Not sure how but just stating it in an appropriate Act would be a start;
3. **Beware Non-elected Bullies:** Currently our sovereign Parliament is regularly bullied by some judges, academics, pressure groups and activists to submit to what are termed 'the principles of the Treaty' and that should be brought to an end before too long. It is decidedly undemocratic and unconstitutional;
4. **History does not Rule us:** The Treaty is a n important historical document, as it was a founding document that got us off to a unique start towards becoming an independent democratic nation. But that is why it cannot be part of our constitutional arrangements now, as we are no longer the imperial & tribal peoples as we were then. Or put another way, the Treaty is incompatible with the make-up of our nation today and will increasingly be so. It was a deal between a huge colonizing empire and many small Maori tribes. But now neither of those parties exists in a form that makes sense for the Treaty to be a *working* document. The people today who identify as Maori are essentially no different from the people some call Pakeha, now a decidedly meaningless term, since many of us have some Maori ancestors. Maori today are modern first world citizens with ancestors of many origins just like most New Zealanders. Or put in outdated terms, Maori are also Pakeha, both ethnically and culturally, so who are today's parties to the Treaty? None of us or all of us, but with some people represented on both sides? Well if so then it cannot be a living, workable document can it?
5. **The Alternative is Men with Guns:** Most of the world is democratic, or becoming so and I believe all of it will be so in time as we progress as a species. Democracy means one person, one vote, equality before the law with no exceptions. That cannot allow the Treaty to be as significant in our future as when it was signed. Then the people and the law did not rule, men with guns did, on both sides. Of course it was fortunate they decided on a treaty, which was law to rule rather than guns. To allow the Treaty force today cuts out the majority of the people and although that is currently tolerated it cannot go on;

6. **The Treaty's remaining relevance is in Property Law:** The Treaty does still have residual non constitutional value, as it concerns certain property rights. Property rights and the rule of law as decided by democracy are vital to a just and healthy society. So property rights do not clash with our democracy and the historical breaches of those rights should be and are being settled;
7. **The State is for All without exceptions:** As time goes by and historical Treaty breaches are resolved all State involvement in Treaty and Maori matters should be phased out. Things Maori should be the business of Maori. The State should not be involved in ethnic or cultural affairs, those are matters for society.

Then the ethnic origins of New Zealanders, and how they culturally organize themselves will rightfully be the business of the people, not the State. That is a fundamental attribute of a just democratic society, under the rule of law. No other arrangement is sustainable. Indeed other arrangements are a recipe for disaster.

Accordingly if I am wrong and in current law the Treaty does still have some constitutional force, we need to legislate to change that, as it fundamentally clashes with democracy, and will increasingly do so as New Zealand increasingly becomes one people with mixed cultural backgrounds, rather than the two distinct peoples we began as.

297

From:
To: <constitutionalreview@justice.govt.nz>
Date: 14/04/2013 1:23 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: christopher kyle etuale Organisation Name:
Email: Phone: Postal AddressA:
Postal AddressB: Postal City: auckland Postal Region: waitakere
Postal Post Code: Postal Country: New Zealand Submission: Notification of law changes
which effects every kiwi's everyday life. For example when we changed the give way rule where you
had to give way to oncoming traffic turning right across your path whilst you were already stationery at
the curb turning left.
This law change received extensive messages to the public via tv and radio,which enabled it's
transition into law that much easier for everyone.

Sent on the 14 April 2013 at 01:22

297a

From:
To: <constitutionalreview@justice.govt.nz>
Date: 14/04/2013 1:59 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: christopher kyle etuale Organisation Name:
Email Postal AddressA:
Postal AddressB: auckland Postal City: auckland Postal Region: waitakere
Postal Post Code: Postal Country: New Zealand Submission: No the constitution should
not be written in a single document as the Treaty of Waitangi should remain it's own document,
therefore we should compile the rest or the constitution into a single document hence along with the
treaty the constitution of NZ
should exist on two documents.

No the constitution should not have a higher legal status than the Supreme Court as we need the
Supreme Court to rule on cases that may arise challenging the translation of the constitution itself.
Furthermore, the constitution should stand as a basic 'rule
of thumb' if you like, to assist judges and law enforcement agencies throughout the country on
enforcing the law in a fair and ethical manner.

Courts should have the power of deciding whether legislation is consistent with the constitution and
NOT governments as history has shown us governments will change laws to assist themselves and
not necessarily the people. We need a body that can challenge
politican's when they blatantly renege on promises which got them elected in the first place. Colourful
jibe's and banter from the opposition parties is just simply not enough.

Sent on the 14 April 2013 at 01:59