

4956

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 26/07/2013 12:52 p.m.

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

Full Names: Tania Marie Louise Gaborit-Haverkort Organisation Name: Email:
Phone: al AddressA:
Postal AddressB: Postal City: Te Puke Postal Region: Bay of Plenty Postal Post Code:
Postal Country: New Zealand Submission: I am not happy with the proposed changes to
the Resource Management Act. Taking away the emphasis on community engagement in restoration
projects. And removing references to the intrinsic value of native ecosystems. These measures will
undermine our native
landscapes.

Submitted on the 26 July 2013 at 12:51

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.

Arna Gaby
Wellington
New Zealand

3530

From: "Art Gage-Brown"
To: <constitutionalreview@justice.govt.nz>
Date: 12/07/2013 12:29 p.m.
Subject: CAP Submission

To whom it may concern.

My wife and I totally support the submissions presented by.

New Zealand Centre for Political Research public policy think tank
www.nzcpr.com

Kind Regards,

Art & Jan Gage-Brown

HOME:

ART MOBILE:

JAN MOBILE:

1268

From: Philip Gall
To: <constitutionalreview@justice.govt.nz>
Date: 12/06/2013 10:13 a.m.
Subject: CAP Submission
Attachments: NEW ZEALAND CONSTITUTION.docx; Part.002

Please find attached my submission which has also been signed and

Constitutional Advisory Panel
C/O Ministry of Justice
DXSX 10088
WELLINGTON

P F Gall

Tauranga
E-mail

12 June 2013

SUBMISSION TO THE CONSTITUTIONAL ADVISORY PANEL [CAP]

Written Constitution

The present arrangements have served New Zealand well and I and many other citizens are far from convinced that we require a written national constitution.

CAP appears to be a below the radar political ploy to get the latest interpretation of the Treaty of Waitangi, Maori Parliamentary Seats and special privileges entrenched as supreme law.

CAP is a body like the Waitangi Tribunal that has too many members with a vested interest in promoting Maori claims.

If a written constitution were to be developed it could be far too binding and inflexible.

I submit that if a Written Constitution is proposed, a General Election Day Referendum would be essential for its ratification and I submit further under the following headings.

Treaty of Waitangi

- Is a historical simple three-clause document drafted to ensure that Maori and their descendants were given the same rights as the British settlers. Nothing more and nothing less.
- Did not establish Maori as a Sovereign Treaty Partner, is not a founding document, is not law and has become totally irrelevant in modern times.
- Has been generously and extravagantly reinterpreted by the likes of Geoffrey Palmer, the Waitangi Tribunal and others with a vested interest. Like a cancer it grows and spreads and is already causing alarm and disharmony
- Has been inappropriately included in legislation and provided unwarranted rights and educational, financial, consultative and representative privileges to a group of people who today are clearly predominantly of European descent but who can perceive or prefer to be Maori.
- Opens the door to outrageous never ending claims to water rights, airways, broadcast bands, natural resources etc. that belong totally to the people of New Zealand
- If included it would provide one group of citizens with separate superior racial rights and privileges. Apartheid racist laws are dangerous and being totally abhorrent in a democracy will create national division and an unstable New Zealand society.

I submit that there should be no reference to the Treaty of Waitangi in any written constitution and any reference to it in other legislation should be removed.

Electoral Matters

For the reasons given above and the fact that we are one nation and one people, separate racial or group representation is undemocratic.

I submit that Maori Parliamentary Seats should be abolished.

New Zealand is a small country with a population similar to a mid-sized city. 120 members of parliament are expensive over governance.

I submit that the New Zealand Parliament should be reduced to around 80 members, 75% of which should be directly elected.

A parliamentary term of 3 years does not give sufficient time for an elected government to bring in and prove the benefit or otherwise of its election policies.

I submit that The New Zealand Parliamentary Term should be increased to 4 or 5 years.

Thank you. I have also attached this submission to e-mail and look forward to conformation of its receipt.

Yours Faithfully

P F Gall

Copied to :	Hon. John Key	Prime Minister
	Hon. Chris Finlayson	Attorney General
	Hon. Tony Ryall	MP
	Hon. Simon Bridges	MP

5058

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 7/08/2013 3:14 p.m.
Attachments: Constitutional Law.doc

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

Full Names: Beth Gallacher Email: Phone: ---
Postal AddressA: Postal AddressB: Postal City: Christchurch
Postal Region: Canterbury Postal Post Code: Postal Country: New Zealand
Submission Upload: Constitutional Law.doc

Submitted on the 19 June 2013 at 11:03

A written, entrenched constitution is necessary to ensure the security and stability of New Zealand society. The introduction of a constitutional document would provide New Zealand with reassurance of their rights. The current situation proves vulnerable with regards to the concentration of powers, and the power they have over legislation. This leads to the issue of the Bill of Rights Act, and the weak status it holds as law. Without an entrenched constitution, the fundamental rights of New Zealanders are put in jeopardy. The current legal status of the Treaty of Waitangi also leaves the indigenous Maori worse off. If an entrenched, written constitution was introduced in New Zealand then the power of parliament could be reduced, basic human rights could be guaranteed and the Treaty of Waitangi could play a more vital role within New Zealand society.

A weakness in the current constitutional situation is a concentration of power within New Zealand. The Doctrine of the Separation of Powers plays an important role in defining the three branches of government; the legislature, the executive and the judiciary.¹ Ideally these three branches operate individually in order to check and balance its counter parts. If they remain separate then there cannot be a concentration of powers. However New Zealand has not fully embraced the separation, as there is some overlapping of these powers. The relationship between the legislature and the executive in particular is very close, with the overlap of membership in both. Under the first-past-the-post electoral system this was a major cause for concern due to the strong influence of the Executive Council on parliament which gave them concentrated power to pass legislation that they wanted. While the new electoral system, mixed-member proportional representation, requires the support of other parties to pass legislation, there is still reason for concern in regards of the concentration of power. The removal of Legislative Council in 1950 further weakened the theory of separation of powers, Geoff Leane writes that:²

Given the lack of an Upper House of review or the balancing effect of a federal division of powers, the concentration of power is, at least potentially, fraught with risk.

Without a second legislative chamber, parliament has the power to pass any law it wishes without question. There is still reason for concern in regards to the concentration of powers in New Zealand, which puts society at risk without proper constitutional guidelines on the separation of powers.

The lack of authority held by the New Zealand Bill Of Rights Act 1990 provides further weaknesses in relation to New Zealand's constitutional situation. The Act as a whole, aims

¹ Richard Scragg, *The Principles of Legal Method in New Zealand* (2nd ed, Melbourne: Oxford University Press, 2009) at 8.

² G.W.G. Leane "Enacting Bills of Rights: Canada and the Curious Case of New Zealand's Thin Democracy" (2004) 26 *Hum.Rts.Q.* at 166.

“to affirm, protect and promote human rights and fundamental freedoms in New Zealand.”³ However the effect of section four of this Act is that if there is an inconsistency between the Bill of Rights Act and any other Act, the other Act will prevail. Without the protection of entrenchment, the Bill of Rights Act is open to being overridden by a simple majority vote in parliament. In essence, by being able to disregard sections of the Bill of Rights Act, Leane argues that “The Executive wields extraordinary power, including the power to take away fundamental rights and freedoms, which are protected only by goodwill and trust, and not by the courts.”⁴ The implications of this power to disregard the Bill of Rights Act leaves society in a vulnerable position, whereby their most fundamental human rights could be put in jeopardy.

In its present form, Parliamentary Sovereignty has the right to make any law it wishes, and the legislation it passes cannot be invalidated by anyone else. Without constraints through an entrenched Constitution or Bill of Rights, this doctrine provides parliament with the authority to abuse its power. The very foundation of human rights, present in The Bill of Rights Act and other legislation, has the opportunity to be overridden if it gains the support of the majority within parliament. Cooke J comments on this, saying:⁵

‘If ever a government, indifferent at heart to basic rights were to hold office in this country, it could force through, possibly even in a matter of hours and by the barest majorities, legislation opposed to basic principles of justice.’

The power that parliament holds to enact laws as they wish has the potential to be dangerous because of the speed in which legislation can be passed. The speed at which legislation can be passed bought Geoffrey Palmer to label New Zealand’s law-making process as the “fastest law in the West”⁶. The substantial amount of power held by New Zealand parliament as a Parliamentary Sovereignty provides the risk of abuse of this power due to its ability to make new legislation quickly.

Within the early draft of the Bill of Rights Act there was a proposed recognition of the Treaty of Waitangi as the founding constitutional document. This was major because for much of the Treaty’s existence, it had not been regarded as “a document of legal, constitutional or

³ Scragg, above n 1, at 96.

⁴ Leane, above n 2, at 167.

⁵ Philip Joseph & Gordon Walker “A Theory of Constitutional Change” (1987) 7 OJLS at 166.

⁶ Geoffrey Palmer. *Unbridled Power? An Interpretation of New Zealand's Constitution and Government* (Oxford University Press, Wellington, 1979) at 157.

⁷ Webb, Duncan, Katherine Sanders, and Paul Scott. *The New Zealand Legal System: Structures and Processes* (5th ed, Wellington: LexisNexis NZ Limited, 2010) at 201.

political significance.”⁷ The legal status of the Treaty of Waitangi was included in the 1985 draft of the Bill of Rights Act as recognition of the Treaty’s significance. Leane refers to it by saying:⁸

The inclusion of the Treaty was an attempt to remedy a long history of failure to honour its terms, indeed even to recognize it as part of New Zealand law.

However as the current law stands, unless it is specifically incorporated into legislation, the Treaty of Waitangi has no legal status. As indigenous people of this land it can be argued that they have customary title. This Doctrine of Customary Title is a way of recognising the rights of indigenous people before the colonisers arrived.⁹ Under this doctrine, New Zealand Maori’s deserve to have their customary rights protected. These rights were guaranteed by the crown upon signing The Treaty of Waitangi and without it having a formal legal status, their rights are being overlooked and neglected.

An entrenched, written constitution could limit the concentration of power through written guidelines. The inclusion of this in a constitution would limit the power of those in rule and provide New Zealand society with security. A written constitution could set out the key foundations “that will make up the state, what powers those institutions have, by what process they are appointed or elected”¹⁰ These foundations could dictate the powers of each branch, ensuring there is not concentration of powers. The issues of the lack of constraint on executive power were addressed through the changes to the electoral process; by entrenching the powers into a constitution, then these constraints could be further secured. Marshall states that as it stands currently, “Even the entrenched sections of the Electoral Act can always be amended or repealed by first repealing the entrenching section which is not itself entrenched”¹¹. However by entrenching it fully, the society can be secure through the constraint on political power.

By entrenching the Bill of Rights Act 1990, the fundamental rights of New Zealand Society would remain intact. This could be achieved by introducing a process where in order to change the Act, it must be agreed on by a Parliamentary majority of three quarters of the members of Parliament or by a referendum of voters. By enforcing this, the rights of New

⁷ Webb, Duncan, Katherine Sanders, and Paul Scott. *The New Zealand Legal System: Structures and Processes* (5th ed, Wellington: LexisNexis NZ Limited, 2010) at 201.

⁸ Leane, above n 2, at 170.

⁹ Webb, above n 8, at 230.

¹⁰ Secretariat, Constitutional Advisory Panel “New Zealand’s constitution The conversation so far” (December 2012) *The Constitution Conversation* < www.ourconstitution.org.nz >

¹¹ John Marshall (ed.) “The Reform of Parliament: Papers presented in Memory of Dr Alan Robinson” (Wellington, New Zealand Institute of Public Administration, 1978) at 10.

Zealanders would be far less vulnerable to abuse caused by amendments to the Act. By entrenching the Bill of Rights Act, the courts would be authorised to invalidate inconsistent law. Leane argues that “The 1985 proposal to entrench the Bill of Rights would have empowered the courts and provided a much needed check on this almost unconstrained parliamentary sovereignty.”¹² In general, entrenched Bills of Rights usually restrict how the parliament can limit the rights of individuals.¹³ This would also provide the guarantee of the rights of minority and indigenous groups. By entrenching the Bill of Rights Act, it would allow basic rights to be secured by the process to change this. This would provide stability and reassurance for New Zealanders.

The inclusion of the Treaty of Waitangi within a written constitutional document, would allow the rights of Maori to be recognised and maintained. As a multi-cultural society, the indigenous Maori make up 15.4 percent of the population¹⁴. By including the Treaty of Waitangi into a constitutional document their rights could be secured. This inclusion could work to “protect minorities from the ‘tyranny of the majority,’”¹⁵ as the Maori population are an indigenous minority. The draft of the Bill of Rights Act in 1985 attempted to recognise the Treaty of Waitangi, including a clause that declared:¹⁶

“The rights of the Māori people under the Treaty of Waitangi are hereby recognised and affirmed.” It also provided that the Treaty of Waitangi “shall be regarded as always speaking and shall be applied to circumstances as they arise so that effect may be given to its spirit and true intent.”

These clauses were removed before the Act was passed but indicate the importance of including the Treaty of Waitangi within a constitutional document. Leane enforces this by saying “that the legal rights of the indigenous Maori population are of particular concern”¹⁷. If the treaty was to gain a spot within a written constitutional document then the rights of Maori as a significant minority could be recognised.

The introduction of a written, entrenched constitution in New Zealand is necessary to ensure

¹² Leane, above n2, at 167-168.

¹³ Secretariat, Constitutional Advisory Panel “New Zealand’s constitution The conversation so far” (December 2012) The Constitution Conversation < www.ourconstitution.org.nz>

¹⁴ Geoff Bascand “Māori population grows and more live longer” (15 November 2012) Statistics New Zealand < www.stats.govt.nz>

¹⁵ Secretariat, Constitutional Advisory Panel “New Zealand’s constitution The conversation so far” (December 2012) The Constitution Conversation < www.ourconstitution.org.nz>

¹⁶ Secretariat, Constitutional Advisory Panel “New Zealand’s constitution The conversation so far” (December 2012) The Constitution Conversation < www.ourconstitution.org.nz>

¹⁷ Leane, above n 2, at 165.

the security and stability its society. The introduction of a constitutional document could assure New Zealanders that their rights would be protected. The current constitutional situation proves vulnerable; this is especially evident through concentration of powers, and the unconstrained power of parliament due to the doctrine of Parliamentary Sovereignty. This leads to the issue of the Bill of Rights Act, and the lack of authority it holds as law. Without an entrenched constitution, the central human rights and freedoms of New Zealanders are put at risk. The current legal status of the Treaty of Waitangi also leaves the indigenous Maori in a vulnerable position, not fully recognising their rights. By introducing an entrenched, written constitution into New Zealand, then the power of parliament could be constrained, the most basic human rights could be secured and the Treaty of Waitangi could play a more central role within New Zealand society.

2098.

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 2/07/2013 10:55 a.m.
Subject: [RELEASED FROM QUARANTINE] [SUSPECT SPAM]
http://www.ourconstitution.org.nz/form_submission

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

Full Names: john patrick gallagher Organisation Name: Email: john.gallagher@ourconstitution.org.nz
Phone: Postal AddressA: Postal AddressB: Postal City:
Postal Region: otago Postal Post Code: Postal Country: New Zealand Submission:
All people regardless of age,sex,race ,religion , sexual orientation who are citizens or permanent residents should have equal rights.

The treaty of waitangi should be recognised but not the the extent that we have a privileged group and an under class based on race.

Retain the right to firearms ownership.

Enshrine the right of access for all New Zealanders to our rivers ,lakes,mountains and seashores.

Sent on the 1 July 2013 at 17:17

458

From:
To: <constitutionalreview@justice.govt.nz>
Date: 16/04/2013 5:17 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Mark Joseph Gallagher Organisation Name: Email: .nz
Phone: Postal AddressA: Postal AddressB: Postal City:
Postal Region: Postal Post Code: Postal Country: New Zealand Submission:

I categorically object to the Treaty of Waitangi or the "Principals" of the Treaty being included in any New Zealand Constitution. People must all be regarded as equal before the law and no race should be singled out for special mention.. I would be very disappointed if we become one of the few truly racist nations in the world by enshrining this racist legislation.

Sent on the 16 April 2013 at 17:16

868

From:
To: <constitutionalreview@justice.govt.nz>
Date: 19/05/2013 10:00 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission
Attachments: Constitution submission.doc

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

Full Names: andrew galloway Organisation Name: n/a Email:
Phone: Postal AddressA: Postal AddressB: Postal
City: auckland Postal Region: Postal Post Code Postal Country: New Zealand
Submission: Submission Upload: Constitution submission.doc

Sent on the 19 May 2013 at 09:59

Andrew Galloway

Auckland

Submission in respect of the constitutional review.

New Zealand is governed by a unicameral Parliament, meaning it has just one legislative or parliamentary chamber. This is significant, as historically New Zealand government has been described as lacking the necessary checks and balances and in effect it is a quintessential example of a majoritarian system.¹ Geoffrey Palmer described the power of Cabinet in New Zealand as “unbridled” and claimed that New Zealand had the “fastest law making in the west”.² New Zealand’s electoral system has since undergone quite significant change with the introduction of the MMP (mixed member proportional representation system) which saw a wider range of parties represented and a complete overhaul of Standing Orders. The formation of legislation is however, complimented admirably by the select committee process as a checks and balance approach that enhances the strength of parliament to act as an effective legislature³

Case study – Auckland’s Local Government

In October 2007, the previous government administration approved a Royal Commission to review the organisation of Auckland local government, currently undertaken by seven territorial authorities and one regional council. The terms of reference for the Royal Commission on Auckland Governance (Royal Commission) requested that the Commissioners should “receive representations on, inquire into, investigate, and report on the local government arrangements”⁴

The Royal Commission released its report and recommendations in March 2009, and shortly after the government announced its high-level decisions on the future of Auckland’s local government. The

¹ Lijphart. A 1984: *Patterns of majoritarian and consensus government in twenty-one countries*. Yale University Press New Haven and London Democracies

² Palmer. G. 1987: *Unbridled Power*. Auckland Oxford University Press.

³ Ganley. M. 2001. *Select Committees and their role in keeping Parliament relevant: Do New Zealand select committees make a difference?*. Australasian Parliamentary Review.

⁴ Terms of Reference – Royal Commission on Auckland Governance – published in the New Zealand Gazette, No. 118, 1 November 2007 <http://www.royalcommission.govt.nz/rccms.nsf/0/F9B0EDD4840ED9AFCC2574020018BA53?open>

Government's announcement had changed a significant amount of the recommendations of the Royal Commission, scrapping its suggestion for six tier two local councils, in favour of 20 to 30 local boards, with limited powers.

The subsequent legislative processes have seen the passage of two bills into law and a further bill to be introduced to Parliament in November 2009. The first (Local Government (*Tamaki Makaurau Reorganisation*) Act 2009) was passed into law under urgency, while the second (Local Government (*Auckland Council*) Act 2009) was passed having been through the select committee process.

This submission examines the process used by the current government administration to reorganise Auckland's local government, and whether the process adhered to the underlying principle of New Zealand's constitution, democracy.

The Royal Commission into Auckland Governance

The Royal Commission was tasked by the previous Government (in October 2007) to "receive representations on, inquire into, investigate, and report on the local government arrangements (including institutions, mechanisms, and processes) that are required in the Auckland region over the foreseeable future in order to maximise, in a cost effective manner, - (a) the current and future well-being of the region and its communities; and (b) the region's contribution to wider national objectives and outcomes".⁵

The Royal Commission investigated current legislation, potential changes to the Auckland boundary, effective arrangements between central and local government, ownership, governance and responsibilities required to ensure provision of public infrastructure, services and facilities to: support and enhance current and future well-being, performance and economic growth, Auckland's ability to compete internationally as a desirable place to live, work and invest and ensuring the ability of the region respond to economic, environmental, cultural and social challenges.

With quite a large brief, the Commission conducted a far reaching and thorough inquiry, aimed at informing itself while also obtaining the views of the general public and specific communities. Advertising widely for public submissions, while also conducting its own research and consultation, the Commission received over 3500 written submissions, published and promoted two information booklets (one in Maori), heard public submissions at public hearings in nine locations throughout the

⁵ Terms of Reference, Royal Commission of Inquiry into Auckland's governance arrangements.

region (including the largest two Islands in the Hauraki Gulf), held workshops with Maori, Pacific and other ethnic communities, and specifically approached various specialist individuals, groups and organisations.

The Commission released its report in March 2009, providing its case for change, including vast changes for the structure of Auckland's governance. The proposal included replacing the current structure of seven territorial authorities and one regional authority with a single unitary Auckland Council, with local representation through six (smaller and less powerful) local councils. The case for change was made, through identifying two broad streams of 'problems': that regional governance is weak and fragmented and community engagement poor. As evidence of the need to change, the Commission cited disputes among councils over urban growth and the development of key infrastructure, the inconsistent agreement on, or application of consistent strategies or plans and a limited amount of shared services.⁶

The options for change provided by the Royal Commission included a proposal for one Mayor, "an inspirational leader" elected by all Aucklanders, with greater executive powers than currently provided for under the Local Government Act. It also suggested a single Auckland Council, with 23 Councillors, 10 elected at large and eight from urban wards, two elected by voters on the Maori electoral roll, and one appointed by Mana Whenua. The provision of elected Maori Councillors was considered by the Commission to establish processes for Maori to contribute to decision making, consistent with the spirit and intent of the Local Government Act 2002.

The Royal Commission also suggested that the six local councils be divided into four urban and two rural councils, recognising the area was too big and already significantly diverse to be able to be serviced wholly by one 'super-council'. Each local council would have lesser powers than councils currently enjoy, but it was envisaged that the local councils could better engage with communities and improve community access to councils. The local councils would be responsible for decisions relating to the local area such as swimming pools and local parks.

The Government's decision

Within two weeks of releasing the Royal Commission's report, Minister of Local Government Rodney Hide proposed a high-level response to the Cabinet.⁷ The Cabinet paper outlining these decisions

⁶ Salmon P, Bazley M, Shand, D. 2009. *Royal Commission on Auckland Governance, Volume 2, Executive Summary*. Printlink.

⁷ Hide R. 2009 Cabinet Min (09) 12/7, *Royal Commission on Auckland Governance: Proposed High Level Response*. Cabinet

noted the report of the Royal Commission and proposed a plan for Government to consider, as well as its own assessment of the recommendations against criteria including; meeting the terms of reference, observing good governance principles (democracy, efficiency and effectiveness), feasibility to implement within timeframes, consistent with Government programmes and initiatives and recognition of the Treaty of Waitangi.

The Cabinet paper sets out the Government's high-level response on: Auckland's overall governance structure, the specific functions of the new structure and proposals for responding to key issues in the Royal Commission report, and the relationship between central Government and Auckland local Government. The body of the paper is divided into three sections: governance, critical issues for Auckland and central government arrangements. The chapters include; the proposal, executive summary, background, part one (governance), part two (critical issues for Auckland), publicity, consultation, financial implications, legislative implications, regulatory impact and business compliance cost statement, ethnic perspectives, gender implications, and disability perspectives.

In the consultation section of the cabinet paper, it noted that the paper had been prepared by the Department of Internal Affairs in consultation with the Ministries of Economic Development, Transport, Environment and Social Development, Treasury and the Department of Building and Housing, and Te Puni Kokiri. It stated that the Department of the Prime Minister and Cabinet had also been kept informed on the development of the paper.

A later cabinet paper introducing the broad concept of the three Auckland reorganisation local government bills, stated in the publicity section that the messages expressed would be that the first bill would be technical, providing for an Auckland council, the transition agency and looked to transfer the responsibilities from existing councils. It stated that the bill would proceed under urgency with no referral to a select committee to get the process underway.⁸

The cabinet paper expressed that the second bill would have a compressed select committee process with a tight deadline, and that this bill cover such issues as the role of the new Mayor, the council, the local boards and the boundaries. The third bill is stated to provide the detail of the working relationship between the local boards and the new Auckland council, and that there is time for this bill to go through the usual select committee process.

Office Wellington

⁸ Hide R. 2009 Cabinet Paper (09) 220, *Auckland Reorganisation Bills: Policy Content* Cabinet Office Wellington.

The select committee process and the use of parliamentary urgency

Select committees play an important role in the functions of the House, in particular holding the executive to account and in this case considering bills. Cabinet members are not usually appointed to select committees, but Ministers outside cabinet may be appointed as members.⁹

All government bills, except those under urgency (and appropriation and imprest supply bills) are referred to select committee for consideration. Commentators argue that New Zealand's unicameral parliamentary system **needs** the process of select committee to scrutinise legislation, which is evident by a pattern of significant changes being made to legislation in the select committee process.¹⁰ Select committees read the written submissions, hear oral submissions, receive advice from officials, the members consider the bill and determine changes to it and provide a report on the bill. Studies have shown that large numbers of changes occur when the bills are reported back to the house.¹¹

The use of urgency challenges the effectiveness of the system. Government has the discretion to seek urgency when passing legislation through the house. Although this process has become more difficult with the demise of single-party majority governments, we are currently seeing a recurring tendency to put the house into urgency on controversial legislation.

The use of urgency was controversial in the late nineties and provoked much debate (e.g. Foulkes 1998, Llewellyn 1998a, Marks 1998, NZPA 1991, NZPA 1998)¹²¹³¹⁴¹⁵¹⁶¹⁷, but it has also been raised

⁹ Cabinet Manual 2008. Cabinet Office, Department of the Prime Minister and Cabinet, Wellington.

¹⁰ Skene, G. 1990. *New Zealand Parliamentary Committees*. An analysis for the Institute of Policy Studies.

¹¹ Ganley M. 2000. *Select Committees and Their role in Keeping Parliament Relevant*. ASPG Parliament 2000 – Towards a Modern Committee System 2001.

¹² Foulkes, Angela. (1998). "Parliamentary shambles claims another victim." Press Release from New Zealand Council of Trade Unions via NewsRoom.

¹³ Llewellyn, Ian. (1998). "House Not Debating the Economy, Urgency Instead." NewsRoom 30 June 1998.

¹⁴ Llewellyn, Ian. (1998). "Why Bother With Standing Orders?" NewsRoom 19 June 1998.

¹⁵ Marks, Ron. (1998). "National Management of House Chaotic." Press Release from New Zealand First Party via NewsRoom.

recently in the Auckland reorganisation of local government debates.

During the introduction of the first two Auckland governance bills, the Hansard debates regularly featured criticism of Government from opposition members about the use of urgency. One comment stated "...[The Local Government (*Tamaki Makaurau Reorganisation*) Act 2009] was rushed through, without a select committee hearing..."¹⁸ and another, "we are saying to the Government that the process is flawed and undemocratic"¹⁹ and another, "When this bill passes under urgency, without our having heard the voice of Aucklanders and without public consultation..."²⁰ and another, "We do not exploit the arcane rules of this House to ram through legislation that the majority of Aucklanders do not want"²¹. The concern for many opposition politicians was that Government's decisions varied significantly from that of the Royal Commission recommendations but yet Government were saying that the consultation had occurred through the Royal Commission process and therefore further scrutiny in select committees was not necessary. In response to the bill being introduced under urgency, without regard to the people of Auckland, the opposition used delaying tactics by requesting changes to much of the bill.

The use of urgency by the current Government has also recently been discussed in various blogs, including one which stated that this Government's abuse of urgency was such that they have used urgency more than three times as much as the previous three terms of Government²². Another blog states, "With very few checks and balances in our unicameral parliament, it's vital our already streamlined parliamentary process is not rushed. Fast Law is bad law."²³

This raises the question – why do all Governments not use the urgency procedures to rush through more controversial legislation? Granted, the previous Government did not have the support of its coalition partners to use urgency (except in extraordinary circumstances). It could also be that there is a widespread expectation that legislation will be subjected to the scrutiny of select committee

¹⁶ NZPA. (1991). "Marathon debate hits 'new depths'." *New Zealand Herald* 7 August.

¹⁷ NZPA. (1998). "Labour whip says urgency a sick joke." *Waikato Times*: 10.

¹⁸ Hansard (debates) 2009, *Volume 657, Page 6339*. Hansard and Journals, House of Representatives. Wellington

¹⁹ Hansard (debates) 2009, *Volume 657, Page 6403*. Hansard and Journals, House of Representatives. Wellington

²⁰ Hansard (debates) 2009, *Volume 654, Page 3136*. Hansard and Journals, House of Representatives. Wellington

²¹ Hansard (debates) 2009, *Volume 657, Page 6403*. Hansard and Journals, House of Representatives. Wellington

²² <http://norightturn.blogspot.com/2009/10/some-facts-on-urgency.html>

²³ <http://blog.greens.org.nz/2009/10/23/misusing-urgency/>

legislation. "Such is the level of legitimacy and desirability of New Zealand select committee process that a Government can expect a large degree of opprobrium for bypassing the committees."²⁴

On the contrary, the Australian experience could lead us to assume that select committees, being a microcosm of the House, could well be dominated by partisanship. According to one political commentator, "whenever important political issues arise, committees revert to partisan clashes. If this is the case then we should expect to see the committees making few politically significant changes. They could play a useful technical role and have an important legitimating role, especially by providing an avenue for public participation in the legislative process, but would not see major changes being made to important legislation."²⁵

Another approach the government can take to minimise the effectiveness of select committees, is to set up ad hoc committees to consider specific bills. In the case of the Auckland local government reorganisation, the government established the Auckland Governance Legislation Committee, chaired by a current Cabinet Minister, Hon John Carter (also Associate Minister for Local Government). In response to this George Hawkins, Labour MP for Manurewa, also a member on the committee, took exception to this. He said: "[h]e was not my choice to be the chair – I thought it was disgraceful to have a member of the executive chairing the committee".²⁶

Sharman argues that *"The whole point of reviewing legislation is to take control of the reviewing process away from the government of the day. Otherwise, the reviewing process is of limited use and subject to partisan control by the government parties. This is graphically illustrated by the ineffectiveness of lower house committees in reviewing legislation. To be brutal, the only way governments are going to be persuaded to negotiate with their partisan competitors is through the use of a powerful sanction, and the Senate's veto over legislation is the most powerful sanction it possesses. If that sanction were removed, the Senate's review of legislation would be largely ignored and the requirement for the government to negotiate over the final form of legislation would be removed. ... To pretend that the reviewing function would continue to work effectively if it were entirely dependent on the sweet reasonableness of governments is a fantasy."*²⁷

²⁴ Ganley M. 2000. *Select Committees and Their role in Keeping Parliament Relevant*. ASPG Parliament 2000 – Towards a Modern Committee System 2001.

²⁵ Mulgan, Richard. (1997). *Parliament: Composition and Functions*. *New Zealand Politics in Transition*. Auckland: Oxford University Press

²⁶ Hansard (debates) 2009, Volume 657, Page 6339. Hansard and Journals, House of Representatives. Wellington

²⁷ Sharman, Campbell. (1999). *The Senate and Good Government*. *The Senate and Good Government and Other Lectures in the Senate Occasional Lecture Series*, 1998 (Papers on Parliament No. 33). K. Walsh. Canberra: Dept. of the Senate.

New Zealand select committees have been described as 'making a real difference' in New Zealand's parliamentary system.²⁸ They do have considerable legislative influence, directing changes to the draft bill the committee reports back to the house. New Zealand's select committees are particularly effective when used as an almost automatic referral of all legislation introduced or amended and when they call for and hear submissions. While select committees might not alleviate all the perils of executive dominance, they go some way to enhancing the strength of a parliament to act as an effective legislature.²⁹ The use of urgency and ad hoc committees undermine this process.

New Zealand's Constitution

The paper of Rt Hon Sir Kenneth Keith (1990) on the Constitution of New Zealand is of such quality that it is reproduced verbatim in the beginning of the Cabinet Office, Cabinet Manual 2008. It is defined there, as the 'power of the state', describing the major institutions of government, their principle powers, regulating the exercise of those powers.

New Zealand's constitution is not one living document, it is a "common law" constitution written in legislation and various other legal instruments.³⁰

Sir Keith describes the underlying principle of the constitution to be democracy. The Queen reigns (appointing Ministers etc.), summoning and dissolving parliaments, assenting bills, through the Governor-General. The government rules (by convention) but only with the support of the House of Representatives, the responsibility and power to take decisions results from the electoral process and the political contest.

So what is democracy? The Oxford Dictionary describes democracy as "a form of government in which the people have a voice in the exercise of power, typically through elected representatives"³¹. The DecisionMaker website states that "New Zealand is a democracy ... [because] New Zealanders

²⁸ Mulgan, Richard. (1997). *Parliament: Composition and Functions. New Zealand Politics in Transition*. Auckland: Oxford University Press

²⁹ Ibid.

³⁰ Palmer, M. 2006. *What is New Zealand's constitution and who interprets it? Constitutional realism and the importance of public office-holders*. Public Law Records. Wellington.

³¹ http://www.askoxford.com/concise_oed/democracy?view=uk

have ultimate power over the way they are governed.”³² Of course we elect our Government, but we also need to have opportunities to have checks and balances along the way (to counter the potential for abuse), a free press, respect for minorities, a fair justice system, access to official information, protection for individual rights and freedom from corruption.

Conclusion

Has the reorganisation of Auckland Local Government been a process adherent to the underlying principle of the New Zealand Constitution, democracy?

The Royal Commission on Auckland Governance terms of reference was signed and agreed in October 2007. There is no debate that Auckland’s local government arrangements were problematic, nor is there any substantial negative discussion over the work of the Royal Commission or the terms of reference it was provided. The issues have come from the decisions made since the report was delivered and the process that has followed, including the development and introduction of legislation and the establishment of the transition authority.

In the Commission’s own words, they listened carefully with an open mind to all it has been told. It consulted widely and received a large number of submissions. Did this negate the Government’s need to consult on the decision? The Government chose to regard some of the Commission’s recommendations, such as the establishment of one unitary Council and a Mayor elected at large. However, the significant change was the decision to implement a set of 20-30 local community boards with no financial or decision making ability. Effectively the role of these community boards will be to provide a point of contact between the community and the Auckland Council.

Another inconsistency exists where the Royal Commission wanted to see a lesser number of elected representatives across the region, in response to the calls from submitters who largely favoured a reduction in the number of councillors. The Royal Commission reduced the total number of elected representatives from 110 (excluding the current 145 community board members) to a recommended 106. The Cabinet paper suggests that the indicative analysis indicates that under their option, there will be up to 150 elected representatives from the 20-30 local boards. This seems to lack logic, and a clear argument for exactly why there are more elected members under the Government’s recommendations, especially given the Commission considered that having up to 20 community

³² <http://www.decisionmaker.co.nz/guide2003/tbp/howitfits.html>

(boards) would be costly to establish and run, and disruptive to existing staff and services.³³

The matter which has raised the most publicity and controversy is the issue of Maori seats on the Council, as recommended by the Commission. This has been an issue raised in media, in large, widely publicised protests and demonstrations and finally raised in the select committee process on the second bill.

The most concerning element of the decisions and the Government's actions to date, is the lack of an opportunity for those affected to have a say on the Government's decisions on the reorganisation of Auckland's local government. The Government are quick to note that the Royal Commission consulted widely. They did. The Government also are quick to note that the second bill did call for submissions and host select committee hearings, albeit in shorter than usual timeframes. They received a large amount of submissions, many calling for review of the original decisions, already legislated under urgency. It is concerning that the Government did not consult on its original decisions on the Royal Commission's recommendations and report. Instead, it took two weeks to radically change the structure of suggested recommendations.

The Auckland Governance Legislation Committee was chaired by the Associate Minister of Local Government, an executive government Minister. To use Sharman's point from earlier in this paper, *"The whole point of reviewing legislation is to take control of the reviewing process away from the government of the day"*. In this case, was the Government too close? Did the opportunities exist for meaningful dialogue and feedback on these important decisions? The government are simply seen to be avoiding process to ensure that their agenda is passed.

The report of the Auckland Governance Legislation Committee was telling. The New Zealand Labour Party minority view states, "The legislative process has been similarly rushed, disjunctive and inadequate. That the Local Government (Tamaki Makaurau Reorganisation) Act was passed without allowing the public to comment on key aspects of the structure was disappointing ... These reforms amount to a fundamental constitutional change to our system of government, in a territory that is home to one-third of the nation's population. The Auckland public are entitled to a say on these critical reforms." The comments from the Green party echoed that of Labour, while the Maori party noted that a key theme of the submissions, called for reserved seats on the new Auckland council for Maori. It noted, "Flying in the face of this support, the committee has elected not to recommend that the bill

³³ Taylor Duignan Barry, *Financial Analysis: Reorganisation of the Councils in the Auckland Region*.

provide for Maori seats on the proposed Auckland Council... It calls into serious question the fundamental basis of the parliamentary democratic process that is to reflect decision-making "of the people – for the people".³⁴

Has the Government been as democratic as it should have been? The decisions facing this government were of a scale that it affected the governance of New Zealand's single largest mass of population, its biggest business centre, and approximately \$28 billion in assets. The decision also potentially affects over 6000 employees of existing councils, and potentially affects the rates paid by all of the region's household's. There could have been further consultation, and potentially a referendum. The recommendations of the Government was substantially different, and was arrived at quickly and with no public consultation and with little evidence of its proposal's effectiveness. There has been no proposal for review, and no opportunity for public to have a say on the Government's original decision.

The use of urgency to ensure the first bill was passed without need for consultation ensured that the checks and balances ordinarily afforded through the select committee process were non-existent. Does this practice represent a failing in the constitution and the ability of New Zealanders to effect change to legislation that affects them. Sure, they could vote the Government out at the next election should they not be happy, but for decisions of this magnitude, should the process of checks and balances not be mandatory? This is perhaps a matter for further investigation, but in this paper, it would seem that the reorganisation of Auckland's local government has not seen the best use of democracy it could have.

While this case study examines just one major piece of legislation, it does make an example of the unbridled power of the current Government. More recent examples include the post 2013 budget response to the Auckland housing supply shortage, allowing Government to permit housing even if the Local Government decline applications. This completely undermines local democracy and is an extremely powerful and dangerous signal to the underlying principle of the New Zealand Democracy.

³⁴ Local Government (Auckland Council) Bill, *As reported from the Auckland Governance Legislation Committee.*

3909

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 27/07/2013 9:13 p.m.

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

Full Names: Christopher James Galloway Organisation Name: Email:
Phone: Postal AddressA: Postal
AddressB: Postal City: Postal Region: Whangaparoa/Rodney Postal Post
Code: Postal Country: New Zealand Submission: I believe the Treat should be respected
as it is now but that there is no need for it to be incorporated into a constitution. I believe in a
multicultural New Zealand -- not one which is seen as essentially bi-cultural.

Submitted on the 27 July 2013 at 21:12

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.

Louie Galloway
Raglan
New Zealand

4858

From: Chris Gane
To: "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.gov...
Date: 31/07/2013 4:57 p.m.
Subject: Constitutional Review submission
Attachments: ConstitutionalReview Submission - C.Gane.doc

Attached please find my submission on the above.

Yours faithfully,

Chris Gane (contact details as per the attached).

At the outset, I am unsure why the question of a "new constitution" is even being asked. I have talked with numerous people and none see any reason for it nor have expressed any desire to go down that road. They are happy with the present arrangements and are puzzled by attempts to change the status quo, which they feel is working very well. I agree with them wholeheartedly.

Given that there is a review underway, however, I wish to make the following submissions :

A Parliamentary Review found that our present constitutional arrangements are working well. No recommendations for major change were made. Therefore that finding should be respected.

Our system has been described as one of the most flexible and successful in the world. Why change it ?

There is no better system than Parliament as sovereign, and Members of it who are elected by the people, and are accountable to the people. Regimes (overseas) which have tried to subvert this process have never been successful. Leave the present system alone, because the vast majority of NZ citizens are happy with it.

I want to see one parliamentary system which applies to ALL New Zealanders fairly. One law for all. There is no place for a two- or multi-tier system. There must be no distinction on grounds of race or creed, or similar. I do not want a race-based future for New Zealand, and for my descendants, and strongly oppose any action which could lead to such an undesirable outcome.

The original Treaty Of Waitangi document made no mention of "partnership" or "co-governance". This myth and distortion has been perpetuated and advanced in recent years by vested interest groups, but it is entirely false. The Treaty is not our "founding document" as some try to maintain, and should therefore not be enshrined or referenced in any constitutional document. Any references in existing legislation should be removed or rewritten.

If there are to be any changes to the Constitution, these must only be enacted after a binding public Referendum. There must be full public consultation (TV/radio/newspaper advertising etc) and a full process of education and awareness prior to this. There must be nothing less than a Referendum because every New Zealander will potentially be affected, and must be given the chance to express their opinion in a democratic and transparent and fully-informed way. I vehemently oppose any attempt to do otherwise.

The consultation process so far has been invisible to anyone outside the various vested interest-groups. Given the magnitude and scope and impact that any potential constitutional changes would have on every New Zealander, I believe this is shameful and unconscionable, and must be redressed.

I support there being only one electoral roll (and therefore no Maori electoral option) because I want to see one system for all. Also, we have a mix of cultures in NZ today (not just Pakeha and Maori) and it has become impossible with inter-marriage, immigration etc to measure the genetic percentile makeup of any person claiming a particular racial heritage. Why not just have all permanent citizens treated as New Zealanders for the purposes of the parliamentary and justice systems ?

I would like to see the Maori seats abolished as they have served their purpose but are now an anachronism. As I see it, all races have equal opportunity to be elected to the parliamentary system, and the democratic process ensures that candidates are elected on merit. It is (or should be) insulting to Maori (or any other ethnic groups) to suggest otherwise.

Similarly, I would like to see the Waitangi Tribunal abolished. I believe in past wrongs being righted, if they can be accurately and historically proven, but "full and final" settlements should be (and remain), full and final. I believe the Waitangi Tribunal has played a major part in distorting this whole process in recent years, grossly insults and misrepresents rank-and-file Maori by their

pronouncements and actions, and no longer has any credible support amongst thinking mainstream New Zealanders (both Maori and non-Maori).

I would like to see a Citizen's Veto option investigated, as this is working successfully in other countries.

I would like to see the number of MPs reduced. We should not need 120+ MPs to run a country of this size.

I would like to see the term of Parliament remain at 3 years – until such time as the identified inadequacies of MMP are addressed and responsibly resolved. If that were to be done, I would then favour a 4-year term.

I would like to see private property rights being included in NZ's Bill Of Rights, which should itself be entrenched.

I have read the Declaration Of Equality as proposed and promoted by one interest-group. I feel that this is entirely reasonable and should be supported or enacted by Parliament at an early date.

Thank you for reading my submissions, which I hope will be seriously taken into account.

Chris Gane

Hastings.

31st July 2013

4564

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 1/08/2013 10:26 p.m.

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

Full Names: Gavathiri Ganeshan Organisation Name: Email:
Phone: Postal AddressA:
Postal AddressB: Postal City: Auckland Postal Region: Postal Post Code:
Postal Country: New Zealand Submission: I want Te Tiriti to have a meaningful and real
place in our constitutional landscape. I want the environment (and ecological rights) to be recognised
in a manner that puts it before short-term and anthropocentric consumption. I want the NZ Bill of
Rights
Act to be supreme and entrenched legislation; I also want it to include economic, social and cultural
rights.

Submitted on the 1 August 2013 at 22:25

3068

Submission for the Constitution Conversation

From: Elsa Noeline Gannaway

Wellington

Ph.

Email :

I welcome this opportunity to offer a submission to the Committee, having become aware of New Zealand's failure to fulfil all its obligations in the area of human rights.

The 1948 Universal Declaration of Human Rights sets out fundamental human rights to be enjoyed by everyone and, while political and civil rights are included in the Bill of Rights Act, economic, social and cultural rights, as found in the International Covenant on Economic, Social and Cultural Rights (ICESCR) have not yet been enshrined in NZ law. Our rights should be made law.

With some 27 thousand children reportedly living in poverty, it's time to take economic and social rights seriously. These include the right to an adequate standard of living, as well as a right to housing, education, health, water, sanitation, social security, food and work.

We should be mindful of former Prime Minister Peter Fraser who championed these rights when the Declaration of Human Rights was being drafted. "Freedom from want" should be the birthright of all New Zealanders. To this end, I urge that a Minister for Children's Affairs be established, with special attention given to the needs of the children of prisoners. I recommend that economic, social and cultural rights be incorporated into the Bill of Rights Act, and that the Act be entrenched in law.

I also urge

- * that judges be given the power to provide remedies where rights are infringed.
- * that a human rights select committee be established. and
- * that the ICESCR be ratified.

I suggest that greater care be taken to ensure the rights of incoming refugees are not infringed, We have a shameful record in the treatment of Ahmed Zaoui.

The rights of those sensitive to fluoride – a minority of perhaps 5% of the population - have for years been neglected in areas where water is fluoridated. For my part, I would welcome compensation for ongoing costs of water filtration.

Because human wellbeing is closely bound up with the health of Planet Earth I recommend the expansion of Human Rights to embrace the Rights of Nature.

Already a landmark case has seen legal personhood granted to the Whanganui River.

This is an important first step. At international level, there is need to create and ratify a binding instrument to protect the rights of the Earth and all its life. Locally, a frightening degree of ecosystem poisoning is being carried out in the name of pest

control. Those who protest 1080 drops have received police warnings. This is not the New Zealand I want.

The Universal Declaration of the Rights of Mother Earth, proclaimed in 2010, includes such inherent rights as:

the right to life and existence

the right to be respected

the right to water as a source of life

the right to clean air

the right to integral health

the right to be free from contamination, pollution and toxic or radioactive waste

the right to not have its genetic structure modified or disrupted in a manner that threatens its integrity or vital and healthy functioning

the right to full and prompt restoration for the violation of the rights recognized in this Declaration caused by human activities

(Excerpted from *The Rights of Nature*, 2011, p13-14)

Thank you for considering my submission.

Noeline Gannaway

22.7.13

1807

The Secretariat
Constitutional Advisory Panel
c/- Ministry of Justice,
DX SX 10088,
Wellington.

Mrs. P. C. Ganwood,

15th June, 2013

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.

Parliament should have the right to change the constitution within the rules laid out in that document (e.g. with a 75% vote if that is so specified). The courts should have the power to interpret the rules/laws as they do now.

Any constitution should be based on a multi racial society not a bi-cultural society. Each citizen treated equally.

Government and local council representation must be based on votes from the electorate. There should be no ethnic seats in the local councils. Maori seats in Parliament should be on the same proportion of representation as the general seats. That is if the general seats are allocated on the basis of 60,000 seats per electorate then the Maori seats should be the same.

The rules for MMP should be changed in line with the recommendations of the Review ~~Board~~ subject to approval from a binding referendum.

15.6.13

2110'

From: "Kevin Gardener"
To: <constitutionalreview@justice.govt.nz>
Date: 3/07/2013 8:20 a.m.
Subject: CAP Submission

Please abolish the racial separate Maori electorate seats

Kevin Gardener

1818'

John W Gardiner

18/6/2013

Tauranga

Dear Panel Members,

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 respectfully

1 1 1

1533

From:
To: <constitutionalreview@justice.govt.nz>
Date: 23/06/2013 4:46 p.m.
Subject: FW: constitution review

From:
Sent: Sunday, 23 June 2013 5:49 a.m.
To: 'constitutionalreview@justice.govt.nz'
Subject: constitution review

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.

Robin Gardiner

Mount Maunganui

1527

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 22/06/2013 9:55 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Miranda Gardiner-Rodden Organisation Name: Email:
: Phone: Postal AddressA: Postal
AddressB: Postal City: Wellington Postal Region: Postal Post Code:
Postal Country: New Zealand Submission: I am a fourth year law student at Victoria University.

I strongly believe that New Zealand should retain the monarchy. My reasons for that is:

A constitutional monarchy is uncommon around the world and we should retain it as part of our unique identity. The monarchy also has strong links with Maori. The fact that it is undemocratic shouldn't be a reason to get rid of it. In practical terms, even if legal power is vested in the Queen or Governor General they never act without the Minister's instructions so in reality it is it works democratically. Also even if the Queen isn't elected she is only a figure head and she actually means something to people.

A New Zealand figure head just wouldn't be the same. Democracy is good for order and law but maybe what matters to people is something that doesn't make logical sense. The current system has had no issues since 1840 so why get rid of it? Also another practical reason to maintain the monarchy is that it would cost too much money to change the face on coins and notes. Even if it's decided to become a republic when the Queen dies, many would be disappointed to not wait for William to become King. New Zealand has strong ties to Britain which we should be proud of instead of trying to assert phony independence.

Sent on the 22 June 2013 at 21:54

2050

From: arthur gardner <...>
To: "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.gov...>
Date: 2/07/2013 8:42 p.m.
Subject: Submission

If we wish to have a fair Constitution, there must be NO recognition of the Treaty of Waitangi in the Constitution. This document has been manipulated and distorted so much in recent years by a greedy elite creaming tax money off their fellow New Zealanders to the detriment of this country. These people should be ashamed of themselves.

The Maori seats need to be abolished, there is NO place in the 21st century where you can have special representation because of your ethnicity. Every Citizen of this Country must be treated exactly the same, whether that person was born here, or became a citizen in the last plane load, or for that matter can trace his or her lineage back 20 odd generations. There can be no difference. WE ARE ALL NEW ZEALANDERS.

Regards
Arthur Gardner
Christchurch
New Zealand.

652

From:
To: <constitutionalreview@justice.govt.nz>
Date: 28/04/2013 8:05 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Bernard John Gardner Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal City:
Postal Region: North Canterbury Postal Post Code: Postal Country: New
Zealand Submission: (1) None, Treaty activation and implimentation should have finite date.

(2) Absolutely NO.

Sent on the 28 April 2013 at 20:04

652a.

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 7/08/2013 3:30 p.m.

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

Full Names: B J Gardner Organisation Name: N/A Email Address:
Phone: Postal AddressA:
Canterbury Postal City: Postal Region: Canterbury Postal Post Code:
Postal Country: New Zealand Submission: (1) Treaty documents should only be used for
consultative opinion and reference.

(2) Absolutely no. It only deals with one so called race of people and the crown totally excluding all other sections of the NZ population who would have no say in any agreement reached between those two parties if included and would always be seen as being racially

devisive.

Submitted on the 17 June 2013 at 15:29

1616

From: Microtech <
To: Constitutional Advisory Panel c/- Minisry of Justice <constitutionalrevi...
Date: 26/06/2013 1:44 p.m.
Subject: CAP submission
Attachments: Submission Constitutional Advisory Panel 26 Jun 13.pdf

Good Afternoon,

Please accept the attached submission.

Thank you, cordially yours, Graham R Gardner
Tauranga.

To : Constitutional Advisory Panel, c/- Ministry of Justice, DX SX 10088 Wellington.

e-mail : constitutionalreview@justice.govt.nz

Greetings,

Submission regarding the N.Z. Constitutional Review

I submit the wish that no changes be made to the present Constitutional Act of 1852 and its collective Statutes, Conventions and Common Law rights that associated together set out the rules by which our country is governed. It is our founding document; equality for all, one people, one nation – a democracy.

I believe democracy should be based on Citizenship, not ethnicity – all New Zealand citizens should be treated equally with equal right and equal opportunity.

I support that any matters involving the suggestion of changes being made to New Zealand's existing Constitutional arrangements be made only by the favouring result of a majority vote of more than 66%, of a binding Citizens Referendum.

It is my strong belief that harmony, equality and fairness must be returned to all New Zealanders irrespective of colour, race or creed by all kiwis picking up the spirit and importance of the big capital letter K and together going forward as Kiwis as was the kernel, the spirit and entreaty of Governor Hobson to each of the 45 signatories of the day in 1840 – now history.

Forward together, cordially yours, G.R.Gardner, Tauranga.
Wednesday 26th.June 2013.

Please acknowledge receipt – thank you.

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.

Joyce K Gardner
Christchurch
New Zealand

655

From:
To: <constitutionalreview@justice.govt.nz>
Date: 28/04/2013 8:32 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: John Gardner Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City: Kaiapoi
Postal Region: North Canterbury Postal Post Code: Postal Country: New Zealand
Submission: (1) Yes, multiple documents will create interpretation confusion.

(2) Parliament. Should decide, as our present courts have a current racial bias.

(3) No, As Parliament can change the law as they see fit so why bother.

Sent on the 28 April 2013 at 20:31

655a

From:
To: <constitutionalreview@justice.govt.nz>
Date: 28/04/2013 9:05 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: John Gardner Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City:
Postal Region: North Canterbury. Postal Post Code: I Postal Country: New
Zealand Submission: (1) If a person of Maori decent wants to stand for parliament ,they should
put there name up on general role , Maori seats are seen and are racially devisive

(2)Maori particaption should be the same as any body else. Particaption is an indivdual choice,
Enthnic back ground should not be a concideration

(3) By Maori Standing for local body elections , If they are not considered good enough they will not
be elected .Tough";

Sent on the 28 April 2013 at 21:04

655b

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 7/08/2013 3:30 p.m.

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

Full Names: John Gardner Organisation Name: N/A Email Address:
Phone: Postal AddressA: Postal AddressB:
Postal City: Postal Region: Canterbury Postal Post Code:
Postal Country: New Zealand Submission: (1)Goverence.and control would be equally shared.

(2)The country should be run and controlled by those elected from one common role.

Submitted on the 17 June 2013 at 14:49

655c

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 7/08/2013 3:30 p.m.

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

Full Names: John Gardner Organisation Name: N/A Email Address: . . .
Phone: . . . Postal AddressA: . . . Postal
City: . . . Postal Region: Canterbury Postal Post Code: . . . Postal Country: New
Zealand Submission: (1) A single document. This document only deals with one nation and should
be all incombent for our nation

(2)No. The law is the law regardless of status.

(3)Parliment should decide as it reflects the current mood of the people at any given time.

Submitted on the 17 June 2013 at 15:52

655d

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 7/08/2013 3:27 p.m.

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

Submission: (1)By maori indivually or colectively putting there names foward on the general role where if elected there views will be heard the same way as anyone who wishes to stand for parliment. If they are good enough there views will be heard.

(2)By accepting the fact that they are a participating part of the general population which would in time eliminate the racial tension maori are creating by wanting special treatment.

(3)By putting there name foward as a candidate and being elected like any body else. Full Names:
John Gardner Organisation Name: N/A Email Address: Phone:
Postal AddressA: Postal
City: Postal Region: Canterbury Postal Post Code: Postal Country: New
Zealand

Submitted on the 17 June 2013 at 16:42

2530

From: "Kath Garland"
To: <constitutionalreview@justice.govt.nz>
Date: 4/07/2013 11:13 a.m.
Subject: CAP Submission

We should all be the same and have one vote.

4256

From: Geoff Garlick
To: "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.govt.nz>
Date: 30/07/2013 8:42 p.m.
Subject: Cap Submission

ATTN: The Constitutional Review Committee.

I address the points raised in the terms of reference in that order;

1/ I believe the number of MP's in our Parliament should be reduced to 99

2/ The Parliamentary term should be three years maximum.

3/ The number of Parliamentary Electorates should stay the same, and the method of size calculation should stand.

4/ Electoral Integrity legislation should be re introduced.

5/ The maori electoral option is racist, discriminatory and unfair, and should be abolished forthwith. The same applies to the exclusively maori electoral seats in Parliament, which have no place in our country today.

6/ The Treaty of Waitangi has long ago played its intended part and is no longer of any practical equitable use. The so-called Treaty has no place in our modern egalitarian New Zealand, today and in the future.

7/ Consideration should be given to protection of Property Rights in a Bill of Rights, but any Bill of Rights resulting should not be entrenched by legislation.

8/ New Zealand has no place for a written and therefore inflexible and limiting Constitution. Parliamentary Sovereignty must be preserved, unelected persons of any status or persuasion should never make, enact or formulate legislation in any circumstances.

9/ Any formulation of a written constitution, or amendments to any existing constitution, should be decided by Public Referendum alone. Parliament should never be permitted to formulate and/or enact constitutional details.

Regards,

Geoff Garlick

Massey
Auckland

4413"

From: "Hugh Garlick"
To: <constitutionalreview@justice.govt.nz>
Date: 31/07/2013 11:36 a.m.
Subject: Constitutional Review Submission

<http://www.nzcpr.com/guest345.htm>

As a part of my submission to the Constitutional Review Panel, I adopt & support the article by Judge Anthony Willy (refer to link above)

Hugh Garlick
Phone
Mob:
Email:

AUCKLAND
NEW ZEALAND

_____ Information from ESET NOD32 Antivirus, version of virus signature
database 8629 (20130730) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>



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Judge Anthony Willy

Judge Anthony Willy is a Barrister and Solicitor, and former Lecturer in Law at Canterbury University. He was appointed a District Court Judge and a Land Valuation Court Judge in 1985, an Environment Court Judge in 1993, and an Accident Compensation Appeal Judge in 1999 - retiring from those positions in 2005.

He presently acts as an Arbitrator, a Commercial mediator, and a Resource Management Act Commissioner, and is a Director of several companies.

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NZCPR Guest Forum
Comments on constitutional review
Judge Anthony Willy
16 July 2013

My submissions concerning possible constitutional changes in New Zealand are under the following headings

1. Status quo.
2. Social implications of change .
3. Political implications of change.
4. Economic considerations
5. Legal considerations.

1. Status Quo.

It is understood that the Constitutional Review Committee has been established as part of the political process by which The Maori Party agreed to support the National Party on matters of confidence and supply following the 2112 general election. The terms of reference make it clear that the committee's remit is wide ranging.

I comment generally under the above headings.

The status quo is that New Zealand has a unicameral Parliament elected pursuant to the Mixed Member Proportional system (MMP). This means that the party winning the most electorates does not necessarily govern. It is the party with the most list votes which carries the day.

Since the inception of MMP this has resulted in coalition governments comprising more than one party. The perceived advantages of MMP are that it provides for a wider spread of opinion in The Parliament and allows minor parties the opportunity of a real voice in government. This in turn reflects the overall unity of New Zealand society within a system which allows for a wider variety of opinion and input into the political process.

The MMP system is the only political check on the exercise of political power by any single group within the process. Specifically New Zealand lacks the oversight provided for by a second chamber, neither does it enjoy the checks and balances afforded by a Federal system of government which requires constant balancing of the rights and powers of states with those of the Nationally elected government.

2 Social Implications of departure from existing constitutional conventions.

In my view the necessary protections of fundamental human rights and enforcement of obligations, rests heavily on the collective tolerance and common sense of the electors. To date this has delivered stable and effective government.

Any constitutional change which has the potential to erode this tolerance and common sense is not only unnecessary it is positively harmful. In that sense the present constitutional arrangements are not "broken and do not need fixing".

The elephant in the room in any New Zealand constitutional debate is always the status and rights of the indigenous people, and presumably that is why The National Party was persuaded by its coalition partner to set up the present review committee. I focus on this group because there does not appear to be any agitation by more recent immigrant groups or the descendents of the early European settlers for added, or amended constitutional rights.

It seems clear that Maori are not content with their status within the present constitutional arrangements but seek political influence disproportionate to the size of their voting population. This is apparently based on the dubious notion that they are the "first people of the land" and has in turn been encouraged by the pattern of Treaty Settlements, and the legal significance given by the Courts in more recent years to the Treaty of Waitangi. These added rights are pursued against the background of absolute political equality currently enjoyed by Maori people, including the unique privilege of race based seats in Parliament enjoyed by no other group of electors and therefore any change can only alter the present balance of political equality currently enjoyed by all New Zealand citizens.

By definition if added political rights are given to Maori than then that will diminish the political rights enjoyed by all other New Zealand citizens. The constitutional cake is finite and to cut it more generously in favour of one group is to leave less for all of the others. That will without doubt erode the collective tolerance and commonsense upon which the present constitutional arrangements rest and which is crucial to the government of a society by means of an unwritten constitution.

It has been demonstrated repeatedly in other countries which do not enjoy a truly representative system of

government^[1] that this will lead to widespread resentment and given the necessary spark will lead to civil unrest. This is particularly so of New Zealand which historically has presented as a truly egalitarian society having its settler roots in rebellion against unrepresentative ingrained privilege.

The problem for the committee is compounded by the fact that Maori society has no such tradition. Left to itself it is historically more akin to a feudal society in which the power and the wealth is shared unequally among members of the group. There is no reason that any additional constitutional rights acquired as a result of the recommendations of the committee will be shared in any other way. Indeed if it were to be supposed that Maori would exercise any newly created privileges in some way more compatible with the existing arrangements then they would not need them, because they already enjoy complete political equality.

3.Political implications.

A central tenet of the Maori agitation for increased constitutional rights is the enshrining of the Treaty of Waitangi as a document having constitutional significance. The implications of this are as unknowable. Of necessity the significance of such a constitutional change will be left to the Courts to decide and as in the case of some earlier judgments of our higher Courts this will depend on the political and social predilections of individual judges.^[2]

In the way in which these matters come before our courts it will take many years before the altered constitutional arrangements are bedded in, and when finally revealed they will represent not the democratic views of the voters but the views of a small and unrepresentative group of Judges.

In addition there will, of necessity occur a prolonged period of political uncertainty which will damage the economy and result in a loss of public confidence in the government of the day.

Before the Committee considers the place of the Treaty in the present day New Zealand constitutional arrangements it needs to do two things:

(a) Be satisfied to the highest standard of proof precisely which iteration of the Treaty is the valid original. There is respectable body of literature to suggest that the document included as a schedule to the Treaty of Waitangi Act 1975 is a modern revision which contains material crucial to the current debate which is not found in the original document signed by the Chiefs^[3]. On a matter of such enduring political significance Parliament has a duty to all New Zealand citizens to review this matter afresh and not be caught up in revisionist history no matter how well intentioned it was at the time of writing.

(b) The committee should look afresh at the legal status of the Treaty in the light of the validity of the pronouncements of various courts over the years since the Treaty was signed, and having regard to the social conditions which existed at the time of signing. There is much talk of the "principles of The Treaty" but beyond a vague association with a notion of "partnership" these have never been enunciated. Even a cursory reading of the text of the original document is sufficient to demonstrate that there are no "principles" enshrined in the treaty. It was a pragmatic Victorian political document which simply evidenced an exchange of the Sovereign rights enjoyed by the Maori signatories, for the protection of the British Crown; and a guarantee that lands and rights currently enjoyed by some of those Maoris^[4] would be respected by the Crown.

There is a great deal of published material on both of these matters, much of which does not accord with the thinking current in some political quarters. Parliament is the highest court in the land and it has the power, indeed the obligation to revisit these matters before making any far reaching constitutional changes which may affect the peace and good governance of New Zealand . It is to be hoped that the work of the committee will confront these issues before making any recommendations to Parliament.

4. Economic considerations

The New Zealand economy rests on a narrow base largely dependant on its primary industries to pay its way in the world. Any constitutional change which makes it more complicated for business to function profitably will have an immediate impact on our terms of trade, and therefore our standard of living.

If the constitution is changed in such a way that any minority group is allowed what may well become vetoes on economic growth (as is very likely under the new Seabed and Foreshore arrangements) business competitiveness and individual wealth of New Zealanders will suffer. It matters not that this comes about by a moratorium on development imposed by the minority, or by "rent" extracted by that minority as the price of development the result is the same; unwarranted costs and less competitiveness. To allow this sort of economic privilege will also give rise to social resentment in the majority.

5. Legal considerations

As mentioned above much of the current debate about the place of Maori people in the constitutional arrangements of New Zealand arises not from determinations of the elected representatives of the people but from judgments of the courts. It is therefore crucially necessary that the committee revisit the more important of these judgments and decide for itself whether they represent conclusions which are relevant to a debate about the Constitution of New Zealand in the twenty first century.

In doing so the Committee should satisfy itself firstly: Whether the views of the various judges are simply that, personal views of individual judges, or represent the law developed having regard to the doctrine of precedent (binding on all judges); and secondly against the background of doctrine of the separation of powers enjoyed by the judiciary on the one hand and Parliament on the other.

The source of the current debate about the place of the Treaty of Waitangi as a constitutional instrument with a place in New Zealand law is The decision of the Court of Appeal in New Zealand Maori Council v Attorney General.^[5] The decision in the case was in a sense a foregone conclusion because s 9 of The State Owned Enterprises Act 1986 required the Crown to have regard to the principles of the Treaty of Waitangi, and the Court both at first instance and on appeal so ruled.

What is more contentious and for which there was no prior authority is the exposition by the Court of what comprises the principles of The Treaty. They are referred to in the long title to the Treaty of Waitangi Act^[6]

above but no attempt is made in the Act to define what the principles are.

It is against this uncertain background that the Court of Appeal essayed its own definitions of those principles. Cook P said at pg. 663 that:

differences between the texts (sic The Treaty) and the shades of meaning do not matter for the purpose of this case. What matters is the spirit...the Treaty needs to be seen as an embryo rather than a fully developed and integrated set of ideas.

His Honour then went on to make the crucial determination that the:

treaty signified a partnership between races and it is in this context that the answer to the present case is to be found.^[7]

From this analogy Cook P then extrapolated the well understood common law requirement that partners must act toward each other:

with the utmost good faith which is a characteristic obligation of partnership.

Richardson J defined the Treaty as:

a solemn compact between two identified parties The Crown and The Maori....that basis of the compact requires the Crown to act reasonably and in good faith....an obligation of honour, and:

There is one paramount principlethat the compact between the Crown and the Maori called for the protection by the crown of both Maori interests and British interests and rested on the premise that each party would act reasonably and in good faith towards the other within their respective spheres. That is I think reflected both in the nature of the treaty and its terms....if the treaty was to be taken seriously by both parties each would have to act in good faith and reasonably towards the other

Somers J adopted the dicta of an earlier Court^[8]:

The Crown is bound both by the common law of England and by its own solemn engagements to a full recognition of native proprietary right

His Honour considered that the principles of the Treaty:

must be the same today as they were when it was signed in 1840^[9]

and referred with approval to the instructions of Lord Normanby for the drawing up of the Treaty that:

all dealings with the aboriginals must be conducted ...on the principles of sincerity justice and good faith

And crucially

Each party owed the other a duty of good faith. It is the kind of duty which in civil law partners owe to each other

Casey J and Bisson J expressed similar views. The important point which emerges from the Courts careful analysis of what are the principles of the Treaty relevant to both the time it was signed and in 1986 is that the parties owed and continue to owe each other obligations of sincerity, justice and good faith. By way of analogy these are similar to the duties which partners in a commercial venture owe each other.^[10]

On any careful reading of the Maori Council case the Court did not decide as has become commonly supposed that Maori and non Maori were in partnership with each other, a partnership created by the Treaty, merely that the Crown and Maori owe each other duties which are akin to those owed by partners to a commercial transaction. In the context of a constitutional debate and in particular whether the Treaty is a constitutional document the distinction is fundamental.

In the result Maori and the Crown are not partners in any sense of the word. Indeed it is constitutionally impossible for the Crown to enter into a partnership with any of its subjects^[11]. The true position is that the Crown is sovereign but owes duties of justice and good faith to the Maori descendants of those who signed the treaty.

Once this distinction is understood there can be no question of the sovereignty of the Crown in New Zealand represented by the Governor General and The New Zealand Parliament, being shared with any other person or entity. It is one and indivisible.

The Treaty has served its constitutional purpose in transferring sovereignty in New Zealand to the British Crown. That sovereignty has been exercised for the last 173 years both de jure and de facto. It may be that various Maori groups can establish some historic breaches of the Crown obligation to act towards them in good faith but that says nothing about the Treaty as a constitutional document.

Summary

1. The collective common sense and tolerance of the majority is a crucial ingredient in the current constitutional mix. To endanger that unspoken tenet of New Zealand's unwritten constitutional arrangements will have unknowable social consequences none of them benign, and possible resulting in widespread social dislocation.
2. The Constitutional cake is finite. To increase the power of one group will diminish the rights of all other groups.
3. The creation of one privileged minority group with either powers of veto, or to extract rent from necessary economic developments will damage New Zealand international competitiveness, suppress wealth creation, and

give rise to widespread social resentment.

4. In a constitutional context The Treaty has served its purpose by transferring Sovereignty over New Zealand to the British Crown. that is a fait accompli, and therefore that element of the treaty has expired and has no continuing force. The obligation of the Crown to act toward Maori with justice and good faith remains.

5. There is not, and never has been a constitutional partnership between the Crown and Maori people. The judgment in the Maori Council case has been misinterpreted. The point which all of their Honours were making in that case was that the Crown has ongoing duties to act justly and in good faith towards Maori people in ensuring that they are not dispossessed of any of the class of assets owned by them mentioned in the original treaty document. That is the overriding principle to be extracted from the wording of the treaty.

[1] For example South Africa under the apartheid rule, and any of the numerous theocracies and one party dictatorships which currently exist around the world. We do not wish to ever see a "New Zealand Spring" or the need for "Velvet or Orange Revolutions" in New Zealand .

[2] See below

[3] See essay by Bruce Moon- Real treaty , False Treaty Tross Publishing 2013

[4] Clearly not the great proportion of Maoris because of the feudal nature of the society, in which ownership and tribal power was vested in the few. There is also the problem of whether or not Maori society ever practiced or understood ownership of property in the way which was common in the British Legal system of the day

[5] [1987] 1 NZLR 641

[6] See also at the time of the judgment: The Environment Act 1986 and the Conservation Act 1987

[7] Pg. 664

[8] Nireaha Tamaki v Baker (1894) 12 NZLR 483

[9] Pg. 692

[10] But not exclusively so under The partnership act 1908 the also includes the obligation to act justly and faithfully to each other.

[11] Ministers of the crown and senior Government official regularly enter into joint undertakings with outside entities but they do so as servants of the crown and not qua The Crown.

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

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

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

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Nazarene Garmonsway
Dunedin
New Zealand

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Avis Garner
Lower Hutt
New Zealand

5205

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 8/08/2013 11:49 a.m.

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

Full Names: mark qarner Email: Postal AddressA:
Postal AddressB: Postal City: Hastings Postal Region: Postal
Post Code: Postal Country: New Zealand Submission: The Bill should re-iterate our
fundamental inherent rights as sovereigns of the land such as the right to travel the queens highways
(not drive), the right to private property, the right (under the magan carta) that fines and forfeiture of
porperty before

conviction is illegal and void

Submitted on the 10 June 2013 at 16:53

935

From: "Ray Garrard"
To: <constitutionalreview@justice.govt.nz>
Date: 28/05/2013 2:40 p.m.
Subject: constitutional review

To whom it concern,

My submission regarding the N>Z> Constitutional Review is that I want no change to New Zealand's unwritten constitution. It has served us well since the 1852 NZ Constitutional Act, our founding document, was passed. It may require some alterations in the future, but not a race based Constitution.

'Equality for all. One People One Nation'

R. Garrard

1958

Paul & Eileen Garratt

23 June, 2013

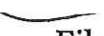
The Secretariat
Constitutional Advisory Panel
c/o Ministry of Justice
DX SX 10088
WELLINGTON,

RE: Constitutional Review:

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

Please note our opposition to this consideration or proposal.

Paul Garratt


Eileen Garratt

662

From:
To: <constitutionalreview@justice.govt.nz>
Date: 16/04/2013 2:39 p.m.
Subject: The form on your contact page has just been submitted

Sent from Constitutional Advisory Panel #link:<http://www.cap.govt.nz/>.

Contact Name: Paul Garratt Phone: . Email:
Comment: One the basis of the media reports and publications I have read, I AM VERY HAPPY WITH THE CURRENT situation of an Unwritten constitution that has served the far greater proportion of NZ citizens well for more than 160 years - rather that we are governed by a race-based constitution.

I have been amazed and very disappointed at the excessive influence and expenditure that seeks to justify a disproportionate allocation of resources, finances, and influence to our so-called "indigenous" Maori population, or that entitlement is passed down to descendants with such a very low % of descendency.

Sign Up For Updates: Yes

Sent on the 16 April 2013 at 14:38

662a

Paul & Eileen Garratt

TAURANGA,

23 June, 2013

The Secretariat
Constitutional Advisory Panel
c/o Ministry of Justice
DX SX 10088
WELLINGTON,

RE: Constitutional Review:

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

Please note our opposition to this consideration or proposal.

Paul Garratt

Eileen Garratt

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.

Malcolm Garrett
Motueka
New Zealand

734

From:
To: <constitutionalreview@justice.govt.nz>
Date: 3/05/2013 5:16 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Alexander Garside Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal City: Wellington Postal Region:
Postal Post Code: Postal Country: New Zealand Submission: I have absolutely no confidence
that the current circus of officials discussing this idea could ever conceivably arrive at an acceptable
constitution, so feel no need to continue. If you must persist, be sure to insist on enshrining the
sovereignty of

NZ and the self-determination of its people. Many openly corrupt factions are wishing to impose their
will upon us, and without discrimination we must assert the independence of this country and the
rights and freedoms of its people. Lower the threshold for
citizens to initiate referendums, and ensure the results are respected.

Sent on the 3 May 2013 at 17:15

734a

From:
To: <constitutionalreview@justice.govt.nz>
Date: 3/05/2013 5:24 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Alexander Garside Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal City: Wellington Postal Region:
Postal Post Code: Postal Country: New Zealand Submission: How long should the term of
parliament be? Three years or shorter. The power of a disciplined majority government is
unaccountable and unchallengable during their term, a momentary lapse in the country's attention
should result in as short a punishment
as possible.

Sent on the 3 May 2013 at 17:23

5109

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 7/08/2013 3:47 p.m.

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

Full Names: John Garwood Email: Phone: Postal
AddressA: Postal AddressB: Postal City: Te Puke Postal
Region: BOP Postal Post Code: Postal Country: New Zealand Submission: a) There
should not be a written constitution - if it is not broken don't fix it

b) If there is a written constitution it should be above all other legislation

c) Parliament should have the right to change the Constitution within the rules laid out in that document (e.g. with a 75% vote if that is so specified). The Courts should have the power to interpret the rules/laws as they do now.

d) The Treaty of Waitangi should not be part of the Constitution.

e) The Constitution should be based on a multi racial society not a bi-cultural society. Each citizen treated equally.

f) Government and Local Council representation must be based on votes from the electorate. There should be no ethnic seats in the Local Councils. There could be the ethnic (Maori) seats in Parliament but on the basis of the same proportion of representation

as the general seats. That is if the general seats are allocated on the basis of 60,000 seats per electorate then the Maori seats should be the same.

g) The rules for MMP should be changed in line with the recommendation of the Review Board subject to approval from a binding referendum.

Submitted on the 16 June 2013 at 13:48

2946

From: albie gaskin
To: <constitutionalreview@justice.govt.nz>
Date: 9/07/2013 4:18 p.m.
Subject: CAP Submission

Dear Sir/Madam

We do not need a constitutional review.
Our system has served us well for the last 173 years.
It is obvious and very concerning that the Maori activists on the
Government funded review panel, chaired by Sir Tipene O'Reagan, is hell
bent on persuading the Government to set in place a Constitution based on
the so called principles of the Treaty of Waitangi.

These principles and interpretations have ever since 1940 been changed to
fit in to what the Maori activists want us to believe. Granted there were
injustices inflicted on Maori in our early history but few would deny that
they haven't been generously compensated.
To pass a constitution that gives them more power, based on the
Treaty, would be detrimental not only to all non-Maori but to Maori
themselves.

If it's not broke don't fix it!

Albie Gaskin

1678

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 27/06/2013 5:13 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Margaret Claire Gasquoine Organisation Name: Email:
Phone: Postal AddressA: Postal
AddressB: Postal City: Cambridge Postal Region: Waikato Postal Post Code:
Postal Country: New Zealand Submission: Why do we need a written Constitution?

Does not the Bill of Rights Act 1990 safeguard our rights as individuals?

Trusting Parliamentary Democracy is surely a fairer system than being under the power of the Judicial system which can be a narrow interpretation of the law.

Under the present Bill of Rights there is the opportunity to make changes to the Electoral System i.e. parliamentary term, "party hopping", numbers of MPs etc and with a Maori Party do we need separate Maori seats?

New Zealand is a multicultural society and it is essential that we all learn to live by the same set of laws..

Sent on the 27 June 2013 at 17:12

3624

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 16/07/2013 10:52 a.m.

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

Full Names: Michael James Gatehouse Organisation Name: Email:

Phone: Postal AddressA: Postal AddressB: Postal City: Te
Anau Postal Region: Postal Post Code: Postal Country: New Zealand Submission: 1.
yes I do. it makes t much easier to reference when you only need to find and read 1 document,
instead of several.

2. Yes, because all laws are based off the constitution, so it should be the overriding factor of law
3. the courts. because lately politicians have repeatedly showed that they don't care about the rights of the population, or the rule of law when making their decisions.

I also believe that the constitution should include a clause stating that if a referendum is called, and a majority of the population holds a certain stance as shown by said referendum, then the government should be required to act on that referendums outcome.

Submitted on the 16 July 2013 at 10:51