

1339

**From:** leander kee  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 14/06/2013 6:03 p.m.  
**Subject:** CAP submission  
**Attachments:** submission-constitutionalreview.doc

CAP Submission attached

Regards  
Leander

This is a submission from Leander Kee, Greg Wyatt and Diane Kee of Hamilton regarding the NZ Constitutional Review. We do not want any change to NZ's unwritten constitution. We do not want a race based constitution. We believe in equality for all, one people, one nation which does not confer preferential treatment for one race over another.

Submitted on the 31 July 2013 at 10:44

482

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 16/04/2013 10:10 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Nadine Keenan Organisation Name: independant NZ citizen Email:  
Phone: Postal AddressA: Postal AddressB:  
Postal City: PALMERSTON NORTH Postal Region: Postal Post Code:  
Postal Country: New Zealand Submission:

Sent on the 16 April 2013 at 22:09



482a

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 16/04/2013 10:21 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Nadine Keenan Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB:  
Riverdale Postal City: Postal Region: Postal Post Code:  
Postal Country: New Zealand Submission: As a independant, Tax payer of NZ I would like  
to submitted that enough is enough.

All NZ Citizans should be treated equally no matter what the colour of their skin, nor their race.

The treaty has had its time and place, The claims have been submitted and will hopefully be settled.

It is racist to treat one nationality above another, All NZers should have equal rights and opportunities no matter what cread, colour or religion

There should be no special seats in parliment for any race, If the people of NZ vote for a person, that person (if willing) should have the opportunity to represent the people that have voted for then on the ratio that have voted for them.

The goverment of NZ should represent all NZers as a whole with no bias.

The treaty of Waitangi can be and has been manipulated by many NZers over history and in the present for their own reasons and asperations. It is time to move forward and look to the future while remembering and learning from the past.

The Treaty of Waitangi is part of NZ's history lets remember it, respect it and mve forward as ONE NATION, ONE PEOPLE, ONE GOVERMENT, ONE SET OF LAWS

Sincerely Nadine Keenan

Sent on the 16 April 2013 at 22:21

4826

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 16/04/2013 10:33 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Mrs Nadine Keenan      Organisation Name:  
Phone:      Postal AddressA:      Email:  
AddressB:      Postal City:      Postal Region:      Postal  
Post Code:      Postal Country: New Zealand      Submission: As a NZ'er I feel there is an  
inaequality within NZ there are more maori on benefits (goverement support) than any other  
nationality in NZ, There are more maori unemployed than any other nationality within NZ. It is not that  
they do not have the opportunities  
the same (or MORE) that anyone else it. NZ society is as become complacent and is acceptant that  
being on a benefit is a right and can be a lifestyle, I feel this is Wrong.

Benefits, including govement housing should be to help people onto their feet after a hard period, it  
should not be a long term solution. Time limits should be applied. Assistance and incentives should be  
in place to help people to help themselves, This should  
be one of the montrats of our government departments &quot; We will help you help yourself&quot;

Sent on the 16 April 2013 at 22:32

5221

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/08/2013 12:06 p.m.

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

Full Names: Brian Keene Email: Phone: Postal  
AddressA: Postal AddressB: Whangarei Postal City: Whangarei Postal Region:  
Northland Postal Post Code: Postal Country: New Zealand Submission: The  
"Treaty of Waitangi" is a senseless document upon which any opinion the proponent  
wants can base an argument to suit themselves. It is incapable of legal interpretation to a standard  
acceptable to reasoned and intelligent people and is impossible  
to

base a constitution on.

Whatever its supposed principles, they will be well covered by other human rights definitions and  
standards and by NZ legislation upon which a constitution can be developed There will never be  
consensus on what it "means" and the only acceptable path  
in my

view is to treat it as an historical anomaly and quaint piece of 19th century literature that brought  
some peace to a country for a brief period, now gone. To rely on this document to bring harmony to a  
country is to invite ongoing trouble.

Submitted on the 10 June 2013 at 12:10

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# Quick Submission

2981

Rec 11/6/13

Your name:

MERLE G. KEHN

Name of the organisation you represent (if applicable):

N/A

Postal address or email address:

TAURANGA -

## CONSTITUTION:

WE SHOULD HAVE A WRITTEN CONSTITUTION CONSISTING OF THE EXISTING LAWS, LEGISLATION & RIGHTS WE HAVE. IT SHOULD ALSO HAVE THE RIGHT TO HAVE AMENDMENTS CHANGING ITS CONTENT BASED ON A MAJORITY VOTE BY A BINDING REFERENDUM.

## TREATY:

THE TREATY OF WAITANGI SHOULD NOT BE A PART OF THE CONSTITUTION. ALL ETHNIC RACES & PEOPLE SHOULD ABIDE BY THE SAME CONSTITUTION EQUALLY.

## ELECTORAL MATTERS:

WE SHOULD HAVE LESS MEMBERS OF PARLIAMENT MOST CITIES LARGER THAN NEW ZEALAND HAVE LESS MEMBERS THAN US. ALL MEMBERS OF PARLIAMENT SHOULD BE ELECTED, NO LIST MP'S

## MY PREFERENCE IS:

THAT ALL MEMBERS OF PARLIAMENT, ONCE ELECTED, BECOME NON-PARTISAN AND VOTE AS A CONSCIOUS VOTE ACCORDING TO THERE CONSTITUANTS WISHES.

THANK YOU

SINCERELY,

### Privacy and Confidentiality

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

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

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



Tauranga.

2988

8th June 2013

REC 11/6/13

Re: Submission re Constitution Conversation  
Attended meeting in Tauranga Sir Michael  
Cullen as guest speaker

These are my views only

Why are we so afraid of Maori???

N.Z has a Constitution

Rule of law everyone in N.Z is equal

If so, we should NOT have Maori seats  
in Parliament.

Maori Keep Taking - Taking - Taking

The Treaty of Waitangi was 1840 & has  
Nothing to do with Constitution or  
Present day The Past is Past

Next we'll have Indian people demanding  
seats in parliament as India part of  
Commonwealth. Then Asians will want  
additional representation.

How many of so called Maori can claim  
100% Maori blood. Not many I expect.

The Treaty should not be part of a N.Z  
Constitution To quote an old saying "If it's  
not broke, don't fix it."

We should abolish any Maori electoral  
Roll N.Z belongs to all people equally.

Do any remote relatives of Abel Tasman demand  
Special Rights? If Maori want to go back in  
Time let them find another island & leave N.Z  
to New Zealanders N.Z is not Got carrow  
lets see how well they exist without the  
handouts No welfare, no benefits They'd  
have to work.

Recently as I was leaving shops a Maori  
came out of a liquor shop & loudly proclaimed  
to his buddies waiting in car "wouldn't you know  
it, it's an Indian owner!" Wake up Maori, at least  
Indians work, they deserve rights just as all  
of us do It's called hard work. TAKE OFF

Kehn 8 June '13

The hoodies an get a job  
The A.Z politicians keep believing that  
American Indians are all kept on Reservation  
& are destitute. Really! They must be  
Reading Fairy Tales. American Indians  
own fantastic Casinos, hotels etc. They  
don't all live in teepees.

Wake up New Zealanders. Your future  
and that of all your dependents are  
Counting on you

The Treaty has nothing to do with  
NZ constitution law.

This review is a waste of  
Tax payers money and will  
not be of any benefit to ALL  
people only small minority

Thank you

Sincerely,

-R. Kehn

Please reply with Confirmation  
Receipt of these letters  
Thank you

2923

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/07/2013 4:59 p.m.  
**Subject:** CAP Submission

These race produced seats should be abolished immediately. David Keir

1502

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 21/06/2013 8:18 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Michael James Frank Keir Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB:  
Postal City: Hamilton Postal Region: Waikato Postal Post Code: Postal  
Country: New Zealand Submission: Constitutional reform in NZ needs to be carefully thought out  
before it is implemented as the best intentions may have unintended consequences. I am concerned  
about the drift towards race based systems, Maori have demonstrated through the use of slave  
boats to harvest their fishery resources that they can be as or more exploitative than the worst of our  
commercial corporates. Their track record as asset managers of our nations resources is not great. I  
accept that they need to be given access to resources  
to be able to support their communities. The treaty settlement process is the vehicle for this. I  
strongly believe that citizenship and merit not race should be used to determine contributions to  
managing our country and its assets and that this is the direction  
any constitutional reform should take.

Hopefully these views and others supporting them can be taken into account in your review

Sent on the 21 June 2013 at 08:18



2537

**From:** "Neil Keiser"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 11:47 a.m.  
**Subject:** CAP Submission

I wish to record that I strongly feel that the Maori seats should be abolished. This option for Maori dating back to the mid 1980's is separatist and archaic. The Royal Commission of 1986 recommended that they be abolished. They should have been abolished long ago. There are many fine educated Maori, male and female who display admirable leadership qualities who would easily foot it in a competitive elective arena. The greatest hurdle to Maori in achieving in politics is that all current thinking by "Maori parties" is separatist based and racist. The constant reference by Maori and Mana party members is always "We work for OUR people.. We need to talk to OUR people" Our people being of course Maori only. Europeans or Chinese .. other ethnic NZ citizens are not considered by them to be worthy of any consideration. Non maori are never going to vote for a party who constantly display racist attitudes. There are many Maori too who will not vote for the racist Maori or Mana parties. I would vote tomorrow for Mike Pohio of Tainui if he stood for any non racist party. He is an outstanding talented man of Maori descent. I have often heard Pita Sharples or Turiana and now sadly Te Ururoa Flavell consistently state.. We need to talk to "OUR PEOPLE". How would Hone Harawera or Flavell react if John Key said he needed to talk to "Our People". i.e. Whites only... Get of this separatist path people and abolish Maori seats because they contribute to the separatist mindset.

Regards

Neil Keiser

C A M B R I D G E ,

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2202

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 4:38 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names:	Peter Rayner Kella	Organisation Name:		Email:	
AddressB:	Postal City: Hamilton	Postal AddressA:		Postal	
New Zealand	Submission: 1 No	Postal Region:	Postal Post Code:	Postal Country:	

We have inherited the Westminster system of government, the constitution like the English constitution is an amalgam of statute law developed since the Norman Conquest and seems to have worked well for the most part.

I am not inspired by the US Constitution which together with amendments seems unwieldy, inflexible and dangerously inadequate in changing circumstances - witness the tragedy of Congress failing to deal with gun control. The culture of the United States is in many ways quite foreign to New Zealanders & is not one I would like to see develop here.

2 No

We do have entrenched provisions in the Electoral Act and we do have the Treaty of Waitangi and the Bill of Rights. I oppose entrenched provisions except in very limited circumstances. I do not support entrenching the Treaty of Waitangi nor the Bill of Rights. The Treaty is ambiguous and I think it should be for Parliament and not the courts to have the final say

I am loath to accept a situation as exists in USA. We do need to ensure that Parliament is the ultimate court of our country and we do need to ensure that political appointments to our Supreme Court are minimised so that we don't have the situation which has prevailed in USA where the Supreme Court has been biased by political appointments and it seems rare (with obvious exceptions such as racial laws and recently gay marriage) that the court doesn't push an ultra conservative point of view

3 Parliament

I think courts should concentrate on the interpretation of the law not instead trying to make law and form social policy. I think the Supreme Court would like to see itself in the same position as the Supreme Court of USA and for the reasons stated above I oppose that. I feel that courts do not reflect popular opinion nor are they in many cases in touch with mainstream NZ. Parliament should be paramount not a group of crusading lawyers and judges

Parliamentary Term

I do see merit in investigating a 4 year term although I have heard various arguments by politicians against that most of which suggest that 3 Three year terms are better than 2 Four year terms. Logic dictates that if parliament can sit for 3 of 4 years without the distraction of elections that more will be achieved particularly in promoting that party's political agenda

I believe successful government in NZ can only be achieved through a centre right or centre left government. My views regarding the constitution are heavily influenced by that stance. There is no place for extremism, seperate development, financial extremes in wealth creation or a ghetto culture. We do need to progress and Parliament is in my mind the better tool to acheive a balanced outcome.

Sent on the 3 July 2013 at 16:36

4085

**From:** Alan Kelly  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 29/07/2013 6:06 p.m.  
**Subject:** Constitution review

Good Evening

The sooner all parties realise that New Zealand can not and should not support multiple versions of constitution and legislation the better.

The country is too small to sustain so called treaty settlements .multiple voters roles and duplicated health services and educational facilities.

One land one nation one vision of the future. Apartheid ans separate development programmes worldwide have failed when written into legislation.

The best gift that can be given to any nation is education that focuses outwards rather than on meaningless "culture".

Sure if moari wish their culture to remain this is not the responsibility of government rather provided by iwi with grants from government .

Alan Kelly



4982

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 26/07/2013 10:40 p.m.

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

Full Names: Andrew Kelly Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Dunedin  
Postal Region: Postal Post Code: Postal Country: New Zealand Submission: just 4  
principles.

Equality.

Freedom.

Community.

Natural justice.

Submitted on the 26 July 2013 at 22:39

4602

28 July 2013

## THE CONSTITUTION CONVERSATION

Submission from Anne Holden, Bernice Kelly and Barbara Mabbett, who are members of the Wellington Branch of the New Zealand Federation of Graduate Women.

### A. ASPIRATIONS for NEW ZEALAND

1. To continue to be an independent Parliamentary democracy in which its adult citizens elect their representatives and participate in the business of government. While currently New Zealand is also a constitutional monarchy under Queen Elizabeth II of New Zealand we foresee that in due course it is likely to become a republic, but this is not a matter of urgency.
2. That all people have access to adequate income, education, and good health services to ensure their general wellbeing and enable them to lead fulfilling lives.
3. That all people are valued for their personal attributes rather than wealth, ethnicity, or position in society.

### B. FUTURE ARRANGEMENTS

#### 1. THE CONSTITUTION

##### 1.1 SINGLE DOCUMENT

New Zealand already has a Constitution Act, under Supreme Law (see below) which sets out the principles and framework for our governance. Related legislation, such as the Electoral Act, develops the details. We **do not support** bringing all related matters into a single document because of its inherent inflexibility.

##### 1.2 HIGHER LEGAL STATUS (SUPREME LAW)

- a) We interpret **Supreme Law** as requiring a 75 percent parliamentary majority to establish this status for new law or to amend existing legislation. This should be scrupulously adhered to and confirmed by the Courts.
- b) We consider certain elements of the current law, for example the Constitution Act 1986 and the New Zealand Bill of Rights Act 1990 **fit this category**.

##### 1.3 LEGISLATION CONSISTENT with the CONSTITUTION - Parliament or the Courts to decide.

We consider this aspect needs to be **decided by the Courts**. There is a danger in relying on a particular Parliament for a longterm solution in the case of a contentious issue.

## 2. THE BILL OF RIGHTS

### 2.1 HIGHER LEGAL STATUS (SUPREME LAW)

We believe the Bill of Rights should have the same Supreme Law status as the Constitution Act. It provides clear principles and guidance on the rights of citizens that need to be observed by all parties.

### 2.2 CONSISTENCY of LEGISLATION with the CONSTITUTION - Parliament or the Courts to decide.

In the rare cases of amendment to the Bill of Rights, Parliament should be able to reach the required 75 percent majority, but in the event of continued disagreement, the issue should be decided by the Courts.

## 3. THE TREATY OF WAITANGI

3.1 We see the spirit of the Treaty of Waitangi as **establishing a relationship of mutual respect and good faith**. It should be recognised in these terms within our Constitution.

3.2 We **do not support** the inclusion of the Treaty of Waitangi as a separate element within the Constitution. It is more desirable that it should continue to be considered as one of the factors as legislation on all matters is developed.

## 4. MAORI REPRESENTATION

### 4.1 IN PARLIAMENT

We see the decisions on the value of these electorates as being best developed by the Maori people.

4.2 IN LOCAL GOVERNMENT this needs to improve, but is a matter for each local authority to consider in relation to its own catchment.

## 5. ELECTORAL MATTERS

### 5.1 NUMBER of MEMBERS of PARLIAMENT

We **favour 120 member** Parliament with 60 percent constituent members and 40 percent list members. This number ensures sufficient members to fill Cabinet and select committee positions while providing a diversity of views and experience.

### 5.2 LENGTH of PARLIAMENTARY TERM

We favour a **4 year term**. This would provide a better opportunity for **full consideration of Bills**. Currently legislation is rushed through the submission and select committee stages.

A well advertised period of public participation at the committee stage is essential for robust legislation.



A minimum period should be allocated and advertised for all Bills when submissions are called for, and for the hearing, in person, from submitters.

#### 5.3 ELECTION DATE DETERMINATION

We recommend a **fixed date** for the general election as this avoids misuse of the process such as a by-election or snap election close to the end of the statutory term. It should only be over-ridden in the event of a national emergency.

#### 5.4 SIZE and NUMBER of ELECTORATES

**Population size alone** does not provide an adequate basis for setting electorate size and boundaries. Electorate boundaries need to be designed to take account both of the need for all citizens to have reasonable access to their representatives, and also the ability of the M.P. to service the electorate.

#### 5.5 M. P. PARTS COMPANY WITH PARTY for which they were elected

- a) Constituent Member should resign from Parliament and contest a by-election as an independent, or as a candidate for their preferred new party.

Voters chose the person as a party representative, and deserve the right to have that choice respected.

- b) List Member should resign from Parliament and not assume the status of an independent member to retain a seat. The affected party should replace the departing member from its party list.

Thank you for the opportunity to participate in the Conversation.

Anne Holden,

Tel

: email

Bernice Kelly,

Tel

, Wellington

Barbara Mabbett,

Tel

email

, Wellington

*Bernice B. Kelly*  
*On behalf of the listed submitters*  
*29/10/2013.*



1382

**From:** Bryan Kelly  
**To:** "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.gov...  
**Date:** 17/06/2013 7:36 a.m.  
**Subject:** constitutional review

NZ 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.

Bryan Patrick Kelly

2567"

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 2:39 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Daniel Kelly Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City:  
Auckland Postal Region: Postal Post Code: Postal Country: New Zealand  
Submission: My aspiration for Aotearoa New Zealand is that we might build a legal system that recognises and provides for social and environmental flourishing, as well as economic stability. There are a number of ways this might be achieved but the ultimate success of this shift will require recognition of our place within the wider global ecosystem. We are not masters of nature; on the contrary, we owe her a huge debt and must look to frame our behaviour and development within her ecological limits.

This shift is captured by the ethic of sustainability. This doesn't refer to sustainability in its weak form (where sustainability's fundamental character is rendered by its pairing with development, as in section 5 of the Resource Management Act 1991) but places sustainability at the apex of our legal hierarchy. Sustainability of this flavour recognises the intrinsic value of the environment – it has value in and of itself – and involves a shift from the singular rights perspective of ownership to a dual concept: one that acknowledges use rights while offsetting them with a duty to preserve our natural world, so that future generations might have the same opportunities we enjoy. Inherent in this ethic is a further focus on intergenerational equity – the idea that our society will be better off if we are all more equal.

The inclusion of such a concept within higher status law would do much to address the current government's overbearing focus on economic growth, coming as it does at the expense of our society and environment. However, it is important to recognise that such a shift doesn't exclude considerations of economic progress; it merely acts to frame them within the context of the world we live in.

The adoption of the ethic of sustainability could take a number of different legal forms, the scope of which go beyond this submission. However some examples may be of use in helping flesh out the concept.

Earth Charter 2000: The Earth Charter is a document arising out of discussions between a number of NGOs. It has received support from more than 5000 different organisations and continues to grow in influence, with its key focus democracy, peace and strong sustainability.

Principle 1 requires all people to "recognize that all beings are interdependent and every form of life has value regardless of its worth to human beings." Principle 2 clearly states that "the right to own, manage, and use natural resources" comes with the "duty to prevent environmental harm and to protect the rights of people." Principle 3 deals with characteristics democratic systems need to have, namely that they be: "participatory, sustainable, and peaceful." Principle 4 explicitly notes with the temporal focus of these above principles, setting out a requirement to "secure Earth's bounty and beauty for present and future generations."

Bolivian Constitution of 2009: The Bolivian Constitution was enacted as a direct response to the effects of colonisation, and attempts to set out goals for the nation that "puts behind [them] the Colonial, Republic, neoliberal state."

A key principle in this rejection of a purely economic governance system is the inclusion of *suma qamaña* (living well) in Principle 8. This concept helps to frame the ultimate purpose of law – not to live better (with all the negative results that competition to be better than others entails), but to live well: within their means and within the context of a limited ecosystem. *Suma qamaña* is mentioned a number of other times and can be viewed as a guiding principle for redistributive justice and equality within the Bolivian system.

As well as enshrining a right to a healthy environment (Article 33), the constitution also establishes duties for its citizens. Crucially for our purposes these include the duty to "protect and defend the natural resources and contribute to their sustainable use, to preserve rights of future generations" and to "protect and defend a suitable environment for the development of living beings." (Article 109.).

The focus in these documents reflects a fundamental connection with the earth. In their adoption we might also see a strengthening of Maori perspectives in government – including the valuable and underutilised concept of *kaitiakitanga* (guardianship). This would go a long way towards recognising the promises inherent in the Treaty of Waitangi as well as giving Maori the recognition in law that their status as *tangata whenua* requires.

New Zealand has a proud history of environmentalism and social justice and we would be foolish to let the last few years blind us to this. In considering our future we are given an opportunity to ask some hard questions: does the current framing of our law provide for a society that produces the greatest amount of good for the greatest amount of people? A written constitution is the ideal document to set this out, and strong sustainability the ideal ethic to underpin it. At the heart of it is the idea that a consideration of these less tangible values might provide us with the platform necessary to build a society that isn't just growing, but flourishing too. Now, wouldn't that be a nice country to live in?

Sent on the 4 July 2013 at 14:38



2567a

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 3:09 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Daniel Kelly Organisation Name: Email: Phone:  
Postal AddressA Postal AddressB: Postal City:  
Auckland Postal Region: Postal Post Code: Postal Country: New Zealand  
Submission: What additional rights, if any, could be added to the Act? Why?

The Draft Universal Declaration of the Rights of Mother Earth 2010 contains a number of rights beyond those in the Bill of Rights Act 1990. These rights might be used to place our law within a wider framework – and help to address the current fixation on economic goals as the one valid outcome of a society. Included in this document is Article 2, which states: “Mother Earth has the right to exist, to persist and to continue the vital cycles, structures, functions and processes that sustain all beings.” This is matched by Article 6, which states that human beings have fundamental duties to ensure the protection of Mother Earth.

The inclusion of principles such as these would go a long way towards addressing the current individualistic rights-oriented focus and provide some much needed balance within our legal framework. Such an approach is not without precedence and is captured cleanly by the Kantian ethic of dual rights and responsibility: never one without the presence of the other. The historical focus of our law on utilitarian concepts has failed to address the responsibilities inherent in Kant’s categorical imperative (“Act only according to that maxim whereby you can, at the same time, will that it should become a universal law”) - reflecting the Golden rule of so many of the world’s religions (Do to others as you would have done unto yourself).

The result has been the loss of a sense of duty in wider society. We no longer ask “what should we do?” - but instead, “what can we do?” This fuels a sense of entitlement that ignores all other factors to the contrary, and acts to the detriment of our society as a whole. The reintroduction of duty in a constitutional context would allow us to frame our idea of human progress in a sustainable manner. It would place limits on both existing and as-yet unrecognised rights, requiring that their exercise also serve the public well-being and the sustainability of natural systems. Again, it should be noted that this doesn’t require positive steps; the concept of “serving” merely requires that behaviour have no adverse impact in these areas. Or, put differently, behaviour that offends these areas is no legitimate exercise of the right, and so cannot expect the protection such status provides.

A constitution is the ideal place for the inclusion of these higher level normative principles, allowing for them to infuse not just our legal system – but our wider society too.

Sent on the 4 July 2013 at 15:08



2178

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 11:19 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Daniel Clifford Kelly Organisation Name: Email:  
Phone: Postal AddressA: t Postal AddressB:  
Postal City: Auckland Postal Region: Postal Post Code: Postal Country: New  
Zealand Submission: Do you think our constitution should be written in a single document? Why?

A single document demonstrates that New Zealand is a nation with a united vision for its future, to the world and us as a country. This provides clarity and cohesion, and allows for normative principles to sit alongside laws that ensure that these are recognised in a democratic, transparent, fashion. In their framing within a single document we see in the most explicit fashion how these relate and can begin to work towards their achievement confident in their cohesion.

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

The goal of enshrining constitutional law as supreme or higher status is an admirable one that New Zealand should work towards. It achieves a number of functions. It provides certainty for the future that goes beyond the current instability inherent in three-year parliamentary terms. It allows us to hold our governments to account against a set of principles that we have agreed on as a nation, and ensures that any action they take to change these laws is well considered and supported by more than a current majority. Given the whimsy inherent in our electoral system this is a crucial component and one that we must move towards if we are to have faith in our legal system as a setter of boundaries.

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

The role of acting as gatekeepers to the Parliamentary legislative function has traditionally fallen to the courts, and should stay so. This is a key principle of the separation of powers and prevents Parliament from overstepping. While criticisms of this approach that focus on the lack of democratic validity in our judiciary are not without merit, it should be sufficient reply to note that they are merely upholding supreme law that we the people have helped enact - in a direct application of democracy. If a perversion of this should occur then our recourse should be to our representatives in parliament. This could be supported by a specific system of disciplinary action if the courts overstep. However it should be noted that the courts are limited by what has been enacted in the constitution, as so a first step should be careful and considered drafting – thereby reducing the risk of future issues.

Sent on the 3 July 2013 at 11:19

4519

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 10:54 p.m.  
**Attachments:** NZ CONSTITUTIONAL REVIEWEGK.doc

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

Full Names: Errol Graham Kelly Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City:  
Wanaka Postal Region: Otago Postal Post Code: Postal Country: New Zealand  
Submission: Submission Upload: NZ CONSTITUTIONAL REVIEW EGK.doc

Submitted on the 31 July 2013 at 22:54





## PANEL

- *It is clearly impossible to have a panel that would satisfy even a significant majority of people. But one would have hoped that a better effort would have been made. Without denigrating those selected, the panel does have a distinct appearance of being "loaded": both with regard to declared affiliations, and for relatively extreme views. While there is a place for such characteristics, the essential requirement for panel members is that they are capable of analyzing the views presented without preconceived ideas, and while some of the Panel are well known for their critical analytical capabilities, I do not feel that there are sufficient of them on this panel.*
- *It is also disturbing that the panel has no science/engineering/technology representation. Given the enormous issues facing the world, particularly regarding climate change and energy problems, the significance of these to our future society cannot be ignored.*
- *But time will tell, and I would be delighted to be proven wrong.*

## SHARE YOUR ASPIRATIONS

- *My primary aspiration would be for New Zealand to return to the more egalitarian society it has been in the past*
- *All New Zealanders should be equal under the law and constitution.*
- *That the New Zealand Constitution remains unwritten.*
- *No race or group has privileges or special conditions which differ from the privileges and conditions available to other New Zealander citizens or residents.*
- *New Zealand does not have the shame of enshrining apartheid in our laws.*
- *The Waitangi Tribunal's deliberations must be completed, settled, and finalized.*

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

- *I would like to see a situation where parliament is concerned about the long term good of the population, rather than the current situation where the primary concern seems to be about their re-election.*
  - *For example, we have the situation where the government has undertaken a review of the MMP system, and then has the audacity to deny the changes that the public have requested; on the grounds that parliament cannot reach a consensus. It is not for Parliament to decide how it is elected – that is the public's right.*
  - *And then there was the situation where Parliament recently took a "conscience" vote, yet the ruling party were told that they must vote the party line. This is not responsible, or democratic, government.*

## NZ's CONSTITUTION

1. Do you think our constitution should be written in a single document? Why?
  - *No, it should not be a single document. Any single-document Constitution is only a document of the time. Even with the best of effort and intention it reflects how society sees things at a given time. It is not possible to perceive the future and determine how*

*unknown situations should be treated.*

- *Sadly, it is extremely difficult to ensure people behave honorably, but any changes to the existing Constitution must attempt this.*
2. Do you think our constitution should have a higher legal status than other laws (supreme law)? Why?
    - *While the UN has its problems, and can all too easily become deadlocked, I still feel that International laws about human rights offer the best basis and solution. The poor behaviors of the United States since 9/11 tends to support this argument. International Law (e.g., with regard to torture) may have not have stopped their poor behavior, but it has at least shown it up, and one would hope would eventually lead to better behavior in the future.*
  3. Who should have the power to decide whether legislation is consistent with the constitution: Parliament or the Courts?
    - *Sadly, either power can fail. But on balance, I would prefer the Courts, in that, although they are often considered to be inappropriate because they are not responsible to the electorate, they are more likely to take more care and be more reflective in reaching a decision.*
    - *This raises the question of how the "Court" would be appointed. The US Supreme Court shows fairly clearly that political appointments, and appointments for life, do not work well. I have much more faith in the concept of professionalism. The concept works well in Law, Medicine and Engineering, where effectively qualified members of the profession police their profession, because only they have the qualifications to judge their own members. Thus, I feel the legal profession (practicing judges and lawyers), would be a group of people better able to select a suitable Supreme Court for New Zealand, free of political patronage.*

## **MAORI REPRESENTATION**

1. How should Māori views be represented in Parliament?
  - *The Maori seats must be eliminated. There is simply no place in the modern world for racial representation in Parliament. This country for years made strong representation for South Africa to eliminate Apartheid: how can we say the current situation is any different?*
  - *However, in view of the history of the Treaty, Iwi should still have some formal way of making representation to Parliament*

## TREATY

1. Thinking of the future, what role do you think the Treaty of Waitangi could have in our constitution?
  - *The Treaty no longer has a place in Legislation.*
  - *The Treaty is akin to the foundation stone of a building. It is significant in that it effectively gives birth to the building, but eventually the building becomes the functioning identity. The symbology of the foundation stone may retain significance, but it is no longer required for the building to function.*
  - *The Treaty is virtually always presented as being between two races, and continuation on that basis is simply racist, and has no place in modern society.*
  - *Basically, neither of those two "races" (Maori and "British") exist in NZ today – intermarriage and immigration over 170+ years has ensured that, and modern genetics prove it.*
  - *The reality is that the Treaty was between two cultures.*
  - *We greatly under appreciate the concept of culture because it is so amorphous and fluid. Some culture persists for long periods, but more often it changes very rapidly. And the situation is further complicated by the fact that each individual exists in a large number of cultures at any given time.*
  - *Sufficient to say that the two original cultures no longer exist, but that there is now a "New Zealand" culture.*
  - *Within this "New Zealand culture", there are many subcultures, which include a variety of "Maori" cultures (e.g., rural, urban, gang, etc), a variety of "European" cultures (e.g., English, Scottish, Irish, Dutch, etc), and other cultures (e.g., Muslim, Jewish, Pacifica, Asian, etc).*
  - *What is important to note is that most New Zealanders belong to a vast number of cultures, and the relative importance of each depends on genetics, nurture, choice, and luck.*

***There is no way that culture can, or should be, legislated.***

2. Do you think that the Treaty should be made a formal part of the constitution? Why?
  - *Emphatically not – see above*

## ELECTORAL

1. How many members of Parliament should we have?
  - *I have heard many say we need fewer MP because politicians are so (insert suitable word here). The argument for more is that there is a better pool to select Ministers from. Given the combative nature of politics everywhere, I doubt that there is little to be gained by changing the numbers. The change to MMP was potentially the best improvement we could hope for – implementation of the recommended changes might be the best we can hope for at this time.*



2. How long should the term of Parliament be? Why?

- *I cannot see that increasing the Parliamentary term would achieve anything. My impression (not checked) is that most Parties generally hold on for a second term, so in effect the political term is already 6 years.*
- *Currently, Parties seem capable of achieving anything they want in the given 3 year term.*
- *The difference that would occur as their thinking went from 3 to 4 years would still not address the current inability to think in the longer time scales that are urgently required to deal with the world's current longer term problems. (See my initial comment about lack of science representation on the Panel.)*

**ConstitutionalReview - <http://www.ourconstitution.org.nz/> form submission**

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**From:****To:** <constitutionalreview@justice.govt.nz>**Date:** 20/03/2013 3:48 p.m.**Subject:** <http://www.ourconstitution.org.nz/> form submission

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Sent from The Constitution Conversation.**Full Names:** Emma Jean Kelly**Organisation****Name:****Email:****Phone:****Postal  
AddressA:****Postal  
AddressB:****Postal City:****Postal Region:** Auckland**Postal Post  
Code:****Postal  
Country:** New Zealand

**Submission:** I only wish to comment on one aspect of the discussion. That aspect is The Treaty of Waitangi. The Treaty of Waitangi should be embedded in our Constitution. It provides a platform from which to create a fruitful partnership for all New Zealanders â€œ Maaori and Paakehaa. However people need to understand that â€œPaakehaaâ€™™ in this context means all non-Maaori. If this were better understood I think people would feel included and not alienated by the Treaty.

The Treaty is what makes us all who we are in Aotearoa New Zealand today. It is an opportunity and a partnership model to which other countries can only aspire, but it requires conversation, reflection, debate and ongoing engagement. It is a living breathing document for us all and as such should be embedded in one document which governs and guides us - a Constitution.

I would be happy to speak on this issue.

Sent on the 20 March 2013 at 15:46

Wellington



NEW ZEALAND COUNCIL OF TRADE UNIONS

*Te Kauae Kaimahi*

30 July 2013

Sir Tipene O'Regan  
c/- Secretariat, Constitutional Advisory Panel  
Ministry of Justice  
DX SX 10088  
Wellington

Dear Sir Tipene

### **Changes to the Employment Relations Act**

I am taking the unusual step of writing to you to seek your support in regards to the Government's proposed changes to New Zealand's workplace laws. Two things New Zealanders agree on at this point in our history are that our work is not safe enough and that wages are too low.

The implications of this are at least threefold.

- Firstly thousands of workers are injured each year with a death and injury rate much higher than most other developed countries.
- Secondly two in five children living below the poverty line are in homes where there is at least one full time or self-employed worker, and
- Thirdly, for business, the model is driven off low labour costs leaving an economy struggling because of lack of investment in skills, technology and labour.

Current labour laws are very weak and international ratings consistently show that. Most workers' pay is determined unilaterally by the employer. They can choose to "take it or leave it."

This isn't just about small businesses. 70% (1,345,040) of New Zealanders work for enterprises of 20 or more people and in many industries those doing the cleaning, the catering, looking after the aged and homecare, the retail work, the bank work and the service work are often on wages that leave them with insufficient money to live a dignified life. Even workers in the skilled trades are now often on wages of \$18-\$22 per hour with very poor accompanying conditions. These low wages and poor conditions in turn lead to long hours and poor safety protections.

The labour market has become progressively more and more deregulated. The recent Government Health and Safety Taskforce Report noted the contribution of this deregulation to the poor health and safety record of the country. Not only is our safety record bad, but the deregulation has seen labour costs in a dangerous industry like forestry for example, fall from 70% of income in the 1980's to 30% now and still falling. Forestry workers have some of the longest hours and most dangerous conditions in New Zealand. The forestry labour market is completely deregulated.



Inequality has gotten worse. The top 10 percent of income earners get 9 times as much as the lowest 10 percent. It was 5 times in the 1980s.

The CTU wants a better mechanism for income distribution. In a country which had the fastest growing inequality gap in the OECD in the 1980's and 1990's, and is in the top third most unequal in the OECD, this is essential to everyone's wellbeing. While tax, benefits and public services are important distributional issues, income must be set more fairly for inequality to really be addressed. International research shows that widespread industry level collective bargaining is the best mechanism to ensure fair income distribution and in the long run it also contributes to thriving and successful economies, encouraging higher productivity and lowering household debt.

We cannot as a country reduce poverty and inequality while ignoring the 'wages' question. Wages make up three-quarters of income of households with working age members. Yet Treasury research shows that from 1988 to 2010 the lowest income half of New Zealand households had no increase in income from wages and other "market" income in real terms – after rising prices were taken into account – despite the economy growing by one-third per head of population during the same time. During a similar period (1989-2011), labour productivity in the private sector rose 48% but the real average hourly wage rose just 14%. Lifting the minimum wage can help, lifting productivity can also, but the fundamental problem is that the system of wage bargaining is just too weak.

In New Zealand, only 24% of workers are covered by collective agreements and only 9% of private sector workers. However at least some employees are covered by a collective in half of large employers (100+ employees) and in a third to a quarter of employers with 6-99 employees so the influence of collective bargaining is greater than that figure, but in other countries the influence is much wider. Under the current law, there is a very high threshold to achieve a collective agreement – for many workers where there is not a traditional union model – it is completely out of reach even under the current law.

Yet at a time when collective bargaining is needed, the Government is passing a law to deregulate it further. In our view this will drive wages down and make work even less safe. The core changes currently in the Parliament even include removing the right to a tea and lunch break, but this is not the worst of it.

Currently, the rather weak law at least provides for good faith bargaining, and requires the parties to the bargaining, to conclude a collective agreement unless they have genuine reasons not to do so. A genuine reason cannot be just an ideological objection to a collective agreement.

Bargaining usually occurs when a collective agreement is already in place and is about to expire and needs replacing. After expiry the agreement runs on for a year, maintaining the status quo and allowing the Parties' time to renegotiate. During this year period, the workers retain the protection of the collective and new workers coming into the workplace are also covered if they wish. In fact, under the current law, new workers accepting a job in a workplace with a collective agreement are automatically on identical terms to that agreement, so they can decide once they are in the workplace if they want to retain coverage of it by joining the union.

The proposed law dismantles this regime. Firstly it removes the duty to conclude a collective agreement. This means employers can turn up to negotiations but refuse to settle irrespective of the issues on the table. The law change proposes in effect that when an employer has "been through the motions" it can apply to the Employment Relations Authority for an order declaring the bargaining at an end. This order has two effects:

- Firstly it cancels the previous collective agreement altogether, leaving all existing and new workers on individual agreements.
- Secondly it creates a “no rights” period of 60 days where unions cannot seek to continue bargaining, workers cannot strike and employers are not bound by the good faith bargaining provisions. This will allow employers a “free hit” period, to pressure workers to sign individual agreements, or to (for example) threaten contracting out of work as the Ports of Auckland tried to do.

The other big change proposed is the removal of the right new workers have to be paid the collective conditions for the first 30 days of employment. This allows, as the Cabinet paper says, employers to offer “lower terms and conditions than the collective agreement” to new workers.

We need your help. These laws are unfair and are not good for the country. Unions are recognised in international conventions and the Universal Declaration of Human Rights as fundamental to maintaining the balance needed for a decent society. But they have been severely weakened and can't be the only ones defending the rights of workers to a decent working life. We need strong allies, willing to speak up and support those who depend on paid work to make a living to have a decent wage. All of us have an interest in facing up to the growing power imbalances in society in order to protect some semblance of decency at work and at home for the next generation.

I am asking for your support to do three things:

- Write publicly in support of the union campaign to oppose the Bill – a letter to the editor, open letter to the PM, press release etc. Please let us know so we can follow up.
- Invite me or another speaker to talk to any organisations in which you participate about these changes and what is going on in New Zealand workplaces.
- Make contact with us and discuss any ideas you might have to support the campaign.

Yours sincerely

Helen Kelly  
**President**  
**NZ Council of Trade Unions Te Kauae Kaimahi**



4520

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 10:59 p.m.  
**Attachments:** NZ CONSTITUTIONAL REVIEWJKelly.doc

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

Full Names: Jan Isobel Kelly Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Wanaka  
Postal Region: Otago Postal Post Code: Postal Country: New Zealand Submission:  
Submission Upload: NZ CONSTITUTIONAL REVIEW JKelly.doc

Submitted on the 31 July 2013 at 22:58



Submission to the New Zealand Constitutional Review

by

Jan Kelly

Wanaka

email

ph

31 July 2013.

## SUBMISSION.

### SHARE YOUR ASPIRATIONS

*A constitution is the set of rules that determines how we are governed and how we live together as a country. It reflects who we are – our unique history, values and aspirations.*

*You are invited to tell us what's important to you about how New Zealand is run in the future.*

*Submissions received on these questions will help shape the Panel's final report.*

*Share your aspirations. You can send us your views solely on these questions or use them as a basis for framing the rest of your submission. You're welcome to be creative with your responses to these questions.*

As a preamble, I am very unhappy with the statement made on the web site for this consultation that the consulting panel is widely representative of New Zealanders.

It is not reasonable to presume that any of the Panel members hold a bias, that would be disrespectful and I do not wish to be so. But the Panel quite definitely has the appearance of having a bias, and perception is a very important part of fairness. For example -

- Four of the twelve people come from Waikato, three of them from Waikato University (the other universities are not represented). This is not representative of the general New Zealand population. One Panel member from the Waikato region would be more appropriate.
- Five of the twelve acknowledge, or have been identified so by the web page writer, as having Iwi affiliations. The other seven do not supply detail of a special interest or affiliation. Why is this difference included in a discussion of the Constitution?. If one panel member is to identify a special interest, then all should do so, or none.
- The recent immigrants of the last decade or so, who have their greatest concentration in Auckland, are New Zealand citizens too and they have no representation on the panel..
- "Hello, Talofa, Mālō elelei, Kia orana, Mālō ni, Fakaalofa atu, Ni Hao, Anyong, Namaste. Kia ora". Who speaks for all of these people in this consultation?

- All of the persons on the panel are in social sciences of some kind, there are no scientists, engineers, medical personal. These significant professions – other views, educational paths, experiences - are absent.

This is really not good enough as representation, for such important matters.

Secondly, the consultation is available by the web site. Nonsensically, the instructions say that if one does not wish to submit electronically, one should download the document and mail it.

If one does not have a computer, how does one do that? The considerable number of New Zealanders who do not have computers (or use one for email only and do not wholly understand what “download” means) are disenfranchised. This is an older generation which, if democratically and widely included in this consultation, could have added much experience and wisdom to the findings of the panel.

I strongly suggest that the panel abolishes itself and starts this process again by a more democratic representation of New Zealanders, including taking the time to place large advertisement in newspapers, and printing the entire consultation document so that people may cut it out and fill it in, or by mailing a copy to all persons registered on the electoral roll.

1. What are your aspirations for Aotearoa New Zealand? How do you want our country to be run in the future?

In the future:

- New Zealand is an egalitarian society
- New Zealanders are equal under the law and constitution.
- New Zealand has a fair system of government which is as representative as it can be, and a working Bill of Rights which is reviewed from time to time.
- The New Zealand Constitution remains unwritten.
- No race or group has privileges or special conditions which differ from the privileges and conditions available to other New Zealanders
- That is, New Zealand does not have formalised discrimination, with differences in legal and societal rights based on the race/culture of one people, we should not. Many see the ongoing move towards different circumstances and rules for Maori, through Treaty negotiations, as a form of apartheid, and no thinking person or society would willingly go down that road.
- The Waitangi Tribunal’s deliberations are finalised and settled satisfactorily, and have come to an end.
- The Treaty of Waitangi is respected as a document to deal fairly with a culture as it was known and understood in the 1840s.
- The Treaty is not written into the NZ Constitution.
- New Zealand is a democratic country where the government and people have clearly defined democratic rules, checks and balances to live and work by.

## **NZ’s CONSTITUTION**

*New Zealand has a constitution – it’s just not all written down in a single document. Our constitutional rules include legislation such as the New Zealand Bill of Rights Act 1990 and the Constitution Act 1986, foundational documents such as the Treaty of Waitangi signed in 1840 and established constitutional principles.*



*Our constitution determines who exercises power in our country, and the checks and balances on that power. It also protects the rights of the people.*

#### Submission Questions About New Zealand's Constitution

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

No. Its various parts work very well, there are not many of them, it is not a difficult system to operate.

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

No. All of our laws have legal status.

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

Parliament, on advice from the Attorney General

Once a court process is set up as the ultimate arbiter of rules, then ordinary people lose access to it. They do not have the knowledge or funds to take on the law. If parliament is in control, it may not be perfect but it is accessible to all, whoever they are, through the ordinary, democratic processes of voting, and by personal communication with one's MP.

#### BILL OF RIGHTS

*The New Zealand Bill of Rights Act 1990 (the Act) confirms fundamental rights and freedoms. It contains important rules about the relationship between the state and the people in New Zealand.*

*The Act covers a broad range of civil and political rights, including the right to freedom of expression, religion and belief, assembly, association and the right to vote.*

*The Act helps us to know what our rights are and sets minimum standards about how New Zealanders can expect to be treated by the state and in law.*

#### Submission Questions About New Zealand's Bill of Rights Act

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

No not entirely. We have reasonable expectations of how Government should work in a democracy, and when it doesn't there seems to be no way to stop it. For example the present government has recently approved a Casino-enabling Bill by a "conscience vote" in which the PM ordered his party to vote the way he wanted them to, and they did. He is similarly working on a Bill to legitimize the government's illegal actions in spying on New Zealanders, by making that retrospectively legal.

We have recourse to voting at the next election, but there should also be a balancing rule whereby bad faith actions are not legitimate and can be challenged through a Constitutional pathway. A reasonable, workable expectation of honesty and good faith in a government's dealings with the process, and with the citizenry, should be built in.

2. What other things could be done to protect rights?

Equal, equal, equal - fairness and respect for citizens, checks and balances to keep Parliament in line.

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

Why?

No. All of our Acts have legal status, either an Act is legal or it doesn't exist.

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

The Attorney General and Parliament.

## MAORI REPRESENTATION

*The Māori seats in Parliament are a unique feature of New Zealand's democratic system. These seats ensure that a guaranteed minimum number of members of Parliament (MPs) can represent Māori views and perspectives in Parliament. There are currently seven Māori seats.*

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

*Local government is encouraged to consult Māori on decisions under the Local Government Act 2002 and on decisions about natural resource management under the Resource Management Act 1991. The Local Electoral Act 2001 provides councils with an opportunity to create Māori wards; these wards can only be created with the support of the majority of voters in the region.*

### Submission Questions About Māori Representation

1. How should Māori views be represented in Parliament?

The same as for any other New Zealand citizen – by elected representatives

2. How could Māori electoral participation be improved?

The same as for any other New Zealand citizen – by taking the opportunity to vote

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

The same as for any other New Zealand citizen – with respect, knowledge, learning and inclusiveness.

## TREATY

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

*The Treaty is generally regarded as New Zealand's founding document and influences the relationships between the Crown and Māori. The Treaty is one of the factors that may be taken into account in law-making and public decision-making.*

### Submission Questions About the Treaty of Waitangi

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

The Treaty retains its present status, as an important founding document that was initiated in good faith to respect the culture of the first peoples to travel to these islands. How it worked in practice is the subject of ongoing negotiations. It does not override general New



Zealand law which applies equally to all citizens. It is not written into the (unwritten) Constitution.

We are all part of a beautifully varied world, of which we occupy a gem of a country in a far corner. The world's future is becoming increasingly uncertain as things change around us that we cannot control. We should settle the differences and get past them.

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

No, not under any circumstances. To do so would be to set up formal apartheid in New Zealand, based on one race but not on other races who are also citizens. This would be unimaginably damaging to our society, it is a recipe for disaster, as has been well proven throughout world history. We should have the very good sense to not go down that road.

It is also unworkable to have the Treaty embedded in the Constitution, what would that look like? Through the Census processes one can choose to acknowledge a particular ethnicity if one wishes to, or not. If one selects that option, there is no rule about the percentage of relevance - and nor should there be, because there should be no reason to. Once we start defining ourselves by just one part of our ancestry, then we have sort of lost the plot. In practical terms, if there are rights and privileges available for one segment of the population and not for others, through an ethnically defined history, what is it that constitutes the defining qualification for any advantage or purpose gained through those rights? Hardly personal choice, as in the Census - and anything else is unthinkable as a working process. DNA tests for access to privilege or difference? Goodness no.

## ELECTORAL

*New Zealand's Parliament usually has at least 120 members of Parliament. The current Parliament is made up of 63 general electorate members, seven Māori electorate members and 51 list members.*

*The number of electorates is determined by ensuring that all electorates have more or less the same number of people in them.*

*Parliament can run no longer than three years after an election. The Prime Minister decides when the term of Parliament ends and the date of the next General Election.*

*The Electoral (Integrity) Amendment Act 2001 enabled the Speaker to declare a seat vacant if an MP parted ways with their party or their party leader reasonably considered the member had distorted the proportionality of representation in Parliament. The Act expired in 2005.*

### Submission Questions About Electoral matters

1. How many members of Parliament should we have? Why?

Between 99 and 120. This is a small country, access to elected representatives is important to us, we need to have enough MPs to make sure that just occasionally, one actually meets one.

2. How long should the term of Parliament be? Why?

Three years. Most ruling parties manage a second term, it would be disastrous to have a bad government remain in power for eight years at least.

3. How should the election date be decided? Why?

A set date in November, such as the first, second or third Saturday – some workable formula that cannot be manipulated for political gain.

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

Geographical boundaries that enclose more or less the right number of persons – plus some adjustment to allow for areas that are geographically huge and have smaller populations. No fiddling with the boundaries for political advantage.

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

If List MPs, then when they leave the Party, they leave Parliament. They are there in the first place because voters chose the Party as a preference. If they cannot any longer represent that voter choice, then they logically have no legitimacy. The next person on the List should replace them. They also do not earn a life-long pension, as List MPs.

This is because in all honesty, if one cannot live up to what was promised in electioneering, then one should step aside, and if need be try again in a different election with whatever different message. There is something terribly good about keeping one's word, that seems to escape many people as a principle.

If an elected MP, then the Voters have chosen that person, for whatever reason, and the elected person should stay until another election is held. A by-Election would thus be helpful, to fairly maintain the balance in lawful representation. They once again should not be permitted to change in mid stream, as an Independent, to views that the voters did not elect to support when selecting them. Election promises would thus have to hold some weight.

## OTHER ISSUES

1. Do you have any other comments or suggestions about New Zealand's constitution?

It is sad that this discussion turns out by default to be all about the Treaty, the discussion is supposed to be about the Constitution, but it has a built-in emphasis that seems designed to lead to an outcome.

I see little wrong with the present situation, there is actually no need to change. It is hard to see why all of this effort is being made, however incompletely, for something which is not exactly an issue. We have an unwritten NZ Constitution which works fairly well, we have a Bill of Rights, we have rules for parliament and representation. My vote is that we leave things as they stand.

*J Kelly 31 July 2013.*



1252

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 10/06/2013 10:28 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: Jason Kelly Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Hastings Postal Region: Postal Post  
Code: Postal Country: New Zealand Submission: 1. What role do you think the Treaty of  
Waitangi should have in our constitution? - none.

2. Do you think that the Treaty should be made a formal part of the constitution? - no.

Why? The document was drawn up in 1840 to address issues at that time. Revisionist history is attempting to change its purpose. It needs to be recalled that one of the clauses in the Treaty in fact guarantees Maori the same rights and privileges as the British i.e. the British and Maori have equal rights. As such, non-Maori should also be able to file Treaty claims under the current interpretations.

Any honest interpretation of the treaty needs to be made in accordance with the social, legal and moral norms etc of the time i.e. 1840 society as it existed then.

Yes, there have been historical wrongs but by both parties and also between various Maori factions/tribes. How far back in history do we want to go back and try and address past alleged wrongs? 10 years? 20 years? 100 years? 1,000 years? 5,000 years? Current accepted history is that Maori have only been in New Zealand for less than 1,000 years and have caused the extinction of various species e.g. moa. How do we account for these facts?

Further, not all Maori tribes signed the Treaty yet some non-signatories have had claims entertained. How can this be rational? Other tribes have had a number of "full and final" claims. The treaty gravy train needs to be stopped.

As such, the Treaty needs to be consigned to it's 1840 history rather than being misinterpreted to serve ever increasing and unrealistic demands e.g. airwaves, water rights etc. It can be reasonably assumed that there was no such contemplation of these issues in 1840. An illustration of the irrational decisions to date include fisheries - yes, these may have been contemplated in 1840 but only with canoes and fishing equipment available at that time which would have minimal effects on fishery stocks and only relatively close to shore. No canoes would have been aware of the 200 nautical mile economic zone as it simply did not exist at the time.

The Treaty of Waitangi should have no part in our New Zealand constitution as everyone should be

equal, the simple definition of democracy, which is what our country is supposed to be.

Sent on the 9 June 2013 at 20:25

2616

**From:** Phil Kelly  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 8:30 p.m.  
**Subject:** CAP Submission

The Maori seats should be abolished.

Having Maori seats is a form of racism.

We are all New Zealanders.

Regards

Phil Kelly

70

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 28/03/2013 5:09 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Peter James KELLY Organisation Name: Nil Email:  
Phone: Postal AddressA: Postal AddressB:   
Puna Postal City: Postal Region: Postal Post Code. Postal  
Country: New Zealand Submission: For a start I don't believe New Zealand should be called  
'Aotearoa New Zealand like you've written. We live in NEW ZEALAND and under one flag and under  
the Crown. Take a good look at the Treaty, I have, many times, and it clearly states that the Crown  
(King  
or Queen) will give ALL people living in New Zealand protection. To me that mean equality, not  
division, separatism and ultimately apartheid.

Get rid of the Maori Party, not required, and the Maori Seats in Parliament.

If the Maori Culture is strong enough it will stand up and be strong and survive WITHOUT all the  
handouts and help from others.

Sent on the 28 March 2013 at 17:09





70a

**From:** Peter Kelly  
**To:** <ConstitutionalReview@justice.govt.nz>  
**Date:** 31/05/2013 12:20 p.m.  
**Subject:** Re: May update from the Constitutional Advisory Panel

On 30/05/2013 4:53 p.m., ConstitutionalReview@justice.govt.nz wrote:

- >
- > Tēnā koutou and good afternoon to all
- >
- > A month to go until close of submissions in the Constitution
- > Conversation! Plenty of time to find out more about our
- > constitution, write down your thoughts and send them through to the
- > Panel. A text version of the submission guide is attached-you can just
- > fill it out and send it back to this address. And please feel free to
- > send this email on to your friends, families, whānau, hapū, iwi,
- > colleagues and communities. Find out more on our website:
- > www.ourconstitution.org.nz <<http://www.ourconstitution.org.nz>>
- >
- > Panel members are attending meetings and hui all over the country. The
- > Panel has been invited to meet with individuals and organisations in
- > venues ranging from community law centres to living rooms, to hui on
- > the marae. Some fascinating themes emerge as people discuss the issues
- > at these events, including:
- >
- > · the values and aspirations we have in common
- >
- > · participation and representation in the decisions that affect us
- >
- > · the balance between majority power and minority rights
- >
- > · protection of Māori culture and identity
- >
- > · New Zealand's changing population
- >
- > · ensuring equality for the people of New Zealand
- >
- > · processes and principles of constitutional change
- >
- > · the checks and balances on the exercise of power by the three
- > branches of state (judiciary, parliament, and the executive)
- >
- > · improving the level of knowledge about our constitution
- >
- > These themes, along with many others, are also reflected in the 950
- > submissions the Panel has received to far. No doubt these themes will
- > develop as the conversations continue.
- >
- > \*What you can do to participate\*
- >
- > · Read and consider the information resources on the Panel's website
- > <[www.ourconstitution.org.nz/Our-Constitution%20](http://www.ourconstitution.org.nz/Our-Constitution%20)>. You can
- > download submission guides, factsheets, booklets, quizzes and
- > conversation cards. And a handy glossary
- > <<http://www.ourconstitution.org.nz/Glossary>>. Order hard copies from
- > the toll free number 0508 411 411. For even more information, you can
- > read our longer booklet
- > <<http://www.ourconstitution.org.nz/New-Zealands-Constitution/Resources>>,
- > "The Conversation so Far," explore the articles in the bibliography
- > <<http://www.ourconstitution.org.nz/Bibliography>>, or explore other
- > websites <<http://www.ourconstitution.org.nz/External-Links>>.

- >
- > ·Share the Facebook page with your friends:
- > [www.facebook.com/theconstitutionconversation](http://www.facebook.com/theconstitutionconversation)
- > <<http://www.facebook.com/theconstitutionconversation>>
- >
- > ·Put a notice into your school's newsletter or community group's panui
- > pointing people to the Panel's website and encouraging participation
- >
- > ·Talk to a teacher about sending in the class's values and aspirations
- > for Aotearoa New Zealand
- >
- > ·Write a letter to the paper on any of the topics
- >
- > ·Get together with some friends, whanau, family, community or
- > neighbours to talk about the issues. You can find material to support
- > meetings <<http://www.ourconstitution.org.nz/Host-a-Meeting>>on the
- > website. Invite a Panel member to attend!
- >
- > ·Send in a submission!
- >
- > We look forward to hearing from you. This is your constitution, your
- > conversation.
- >
- > Maori are the best people to guard their identity, just like any other
- > race who have settled in NZ it doesn't take any Constitution to do it,
- > and CERTAINLY NOT A CONSTITUTION WITH THE Treaty Enshrined.Or copious
- > amounts of \$\$\$s's either. That would be disaster for this already
- > racially divided country.The Treaty of 1840 needs to be scrapped and
- > maybe the Kohimarama Meeting 1860 (which all the paramount Chiefs
- > attended (and by then fully understood), be brought in as a 'start
- > date' for a unified NZ. EVERYONE I talk to, including plenty of
- > Non-Radical Maori, DO NOT WANT THE TREATY ENSHRINED IN ANY NZ
- > CONSTITUTION and agree it would be disaster for NZ. That Pakeha bloke
- > Chris FINLAYSON needs to Zip up and shut up and stop inducing racial
- > disharmony. We are all Kiwis and should just get on with our lives. I
- > personally know Buck Shelford (served in the Navy with him) and also
- > Ken Mair. Ken Mair is nothing but a Tutai stirrer and always has been,
- > he was not a popular person in the Navy. I've got more Maori blood in
- > my veins than he ever had.

>

He's a disgrace to this Country. On the other hand Buck is just a good Kiwi bloke who happened to be an AB Captain.He ain't no racist like many other Maori in this Country (the small majority I might add). It's always the Squeaky wheel that gets the oil.

So, please kick all this bloody nonsense into touch once and for all and let us all live in peace.

This is all about Politics and \$\$\$s's , nothing more.

Pete KELLY

> =====

- >
- > Confidentiality notice: This email may contain information that is
- > confidential or legally privileged. If you have received it by
- > mistake, please:
- > (1) reply promptly to that effect, and remove this email and the reply
- > from your system;
- > (2) do not act on this email in any other way.
- > Thank you.

>

> =====

2185

**From:** k  
**To:** "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 11:38 a.m.  
**Subject:** CAP Submission

The Maori seats have no place in a multi-racial society that aims to have every one free and able to vote for the candidate of their choice. Racial preference for one group strikes at the very heart of democracy - it is apartheid.

Sent from Windows Mail



238

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 12/04/2013 1:28 p.m.  
**Subject:** [RELEASED FROM QUARANTINE] [SUSPECT SPAM]  
[http://www.ourconstitution.org.nz/form\\_submission](http://www.ourconstitution.org.nz/form_submission)

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

Full Names: Charles Elliot Kelsall Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City:  
Campbells Bay Postal Region: Auckland Postal Post Code: Postal Country: New  
Zealand Submission: New Zealands' constitution should be written up in 1 document that is made  
public and must be followed by all New Zealanders. It should not be able to be changed at any point  
as this is the reason why people will choose to live in the country and should  
be able to live with the knowledge that their way of life wont be effected by any new laws. A separate  
court from the government should be set up to enforce the constitution with a jury of random New  
Zealand citizens to make the ruling. The constitution should  
clearly state what rights citizens of New Zealand will always have, what will always be outlawed, and  
what the country stands for. Everything in the constitution should be based on fact not opinion and  
should protect New Zealands' history and close relationship  
to Britain. It should also protect from discrimination based on race, gender, sexual orientation, and  
religion unless it is immediately harmful to the country as a whole.

Sent on the 11 April 2013 at 20:09

2303

**From:** Marie Kemelmager  
**To:** "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.gov...  
**Date:** 3/07/2013 4:57 p.m.  
**Subject:** CAP Submission

I firmly believe that Maori seats should be abolished.

yours faithfully

Marie Kemelmager

2169

**From:** "Serge Kemelmager" <serge.kemelmager@gmail.com>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 11:07 a.m.  
**Subject:** CAP Submission

Maori seats should be abolished. all seats should be New Zealand (s) seats  
not racist seats.

---

Serge Kemelmager

Upper Hutt

Wellington - New Zealand

708

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 30/04/2013 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: Darren Peter Kemp Organisation Name: n/a Email:  
Phone: Postal AddressA: Postal AddressB:  
Postal City: Wellington Postal Region: Wellington Postal Post Code: Postal Country:  
New Zealand Submission: Please don't touch our Constitution. It works as it is. I don't support any  
change to it, even a review. We have a democracy in New Zealand and our democracy is based on  
our Constitution. If you change our Constitution, even with the best intentions, our  
democracy may disappear. I don't trust anyone who wants to review our Constitution. Please just  
leave our Constitution as it is.

Sent on the 30 April 2013 at 20:04



4263

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 30/07/2013 9:03 p.m.  
**Attachments:** Parliamentary Submission -Should the Treaty of Waitangi Be Made a Formal Part of Our Constitution.docx

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

Full Names: Siobhan Kemp Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City:  
Auckland Postal Region: Auckland City Postal Post Code: Postal Country: New  
Zealand Submission: Submission Upload: Parliamentary Submission - Should the Treaty of  
Waitangi Be Made a Formal Part of Our Constitution.docx

Submitted on the 30 July 2013 at 21:02



Tuesday 30 July 2013

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## **Submission on “The Constitution Conversation”**

To The Constitutional Advisory Panel

This submission is from Siobhan Kemp

Auckland

I can be contacted at

Submission

I support the formal inclusion of The Treaty of Waitangi in any future constitutional document or arrangements New Zealand may have.

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

Although always controversial, the place of the Treaty of Waitangi in New Zealand's future has become a particularly contentious issue since the establishment of the constitutional review panel in 2008. Many see it as a divisive document that promotes disunity; affording special privileges to Maori while discriminating against non-Maori. I think these and other claims against a Treaty-based New Zealand are misguided, and in this essay I mean to discuss why. I will argue that if we are to move towards a formal written constitution, it is vital that the Treaty has a place within that constitution.

Seen by many as our founding document, the Treaty of Waitangi is obviously already an important part of New Zealand's history. It is considered the contract that – depending on how you interpret it – legitimised British sovereignty in New Zealand (Cabinet Office, 2004, p.3) and gave Pakeha a right to be here (NZ Parliament, 2006). If we consider the Treaty to be the legitimising force of the New Zealand government's authority, it follows that disregarding the Treaty renders its promise of shared power between Pakeha and Maori void, essentially making the state as it currently exists fundamentally illegitimate. From this standpoint, exempting ourselves from the Treaty would mean a return to the state of affairs that existed prior to its signage. This is obviously not a conceivable option, but pointing it out reminds us where New Zealand's current constitutional arrangements derive from, drawing attention to the fundamental place of the Treaty in the construction of our society.

The Treaty's relevance in New Zealand goes beyond this historical, ceremonial sense, though. It is present in much of our current legislation, and has influence in all three branches of the state. In the Judiciary, it manifests in the Maori Land Court; in the Executive, the Minister of Maori Affairs, the Race Relations Office, the Minister for Treaty of Waitangi Negotiations and also at various levels in the public sector; and in the Legislature, the dedicated Maori seats in Parliament, the Maori Affairs Select Committee, and statutory references to the Treaty of Waitangi all show a commitment to the terms of the Treaty (Cabinet Office, p. 6). This entrenched place in our legislation provides an argument for the continued upholding of the Treaty on a practical basis at least.

However, that legal commitment is unstable and inconsistent. Unless given force of law by an Act (for example, The Treaty of Waitangi Act 1975, and the State-owned Enterprises Act 1986, which both refer to the "principles of the Treaty"), there are no legal obligations on the Crown to refer to the Treaty; duties are merely a matter of conscience on "the honour of the Crown" (Te Puni Kokiri, 2001, p. 15). According to the State-owned Enterprises Act, binding recommendations can be made for the return of certain lands to Maori ownership (Te Puni Kokiri, 2001, p. 21), but this is an exceptional case. The overarching problem with this lack of legal obligation is that the status of the Treaty is vulnerable to changing political weather and "the whims of any sitting Parliament" (Treaty Advocacy Group, 2012) a problem seen manifest in The Foreshore and Seabed Act 2004, what Tama Potaka describes as the "sedation and complete rejection of the Treaty in legislation where it would have



been reasonably expected that Treaty clauses would have been included.” (2010, p. 91)

As well as being disregarded, the lack of adequate legal force behind the Treaty subjects it to interpretive manipulation. The fact that there exists no definitive list of “Treaty principles” (there are guides, however) from which to refer is a source of frustration for many who would see the discussion-based, case-by-case nature of the principles twisted to suit their political agenda. At the first reading of Rodney Hide’s failed Treaty of Waitangi (Principles) Bill, opponents to the Bill explain that attempts like Hide’s to “define those principles” in fact “render the Treaty worthless” because non-Maori are deciding for Maori “what the Treaty means for them, and saying that if they do not like it there is no avenue for redress.” (NZ Parliament, 2006) If part of the purpose of the Treaty is to give Maori control of their own affairs (see article two of the Treaty), then having Parliament dictate their interests destroys the purpose of the Treaty altogether. This problem reveals a great need for better education on the concept of the Treaty being a living document, with principles that reflect that (Te Puni Kokiri, 2001, p. 15) and also a need to guarantee Maori autonomy in their own interests, both of which could be helped by the fair representation of the Treaty in our constitutional and legislative framework.

Speaking of “Maori interests” begs the question why they should be deemed so important in the first place. Many anti-Treaty advocates argue that they shouldn’t, because to place importance on one group’s rights is to discriminate against another. In most cases this is a view born out of an interpretation of neutrality and fairness – that we should all be subject to the same rules. However, this argument would only serve if governments took a neutral position towards cultures, and they don’t. Generally, notes Smits, governments “support – both tacitly and expressly, the dominant societal culture” which dooms minority cultures that do not receive that level of support to “increasing marginalization, and eventual disappearance.” (Kymlicka cited in Smits, 2009, p. 53) Various thinkers argue that the culture in which we are born and raised is deeply connected to our personal identification, self-respect, freedom and autonomy; with indigenous people this culture is territorially concentrated, and based on a shared language (Ibid, p. 54-55). To take away land and language, which the Treaty of Waitangi sets to preserve (and which the Waitangi Tribunal sets out to give back), is to prescribe “alienation” and “marginalisation” as aspects of the Maori identity. In this way, the idea of “common rights” is hardly an act of decolonisation for Maori, but rather one that leaves them destined to be worse off (MacDonald and Muldoon, 2006, p. 210). Here we can see the role the Treaty plays in rectifying cultural imperialism in New Zealand.

While this discussion could certainly go on a lot further, in the bounds of this essay I hoped to get across a few basic arguments for the entrenchment of the Treaty of Waitangi as a formal part of New Zealand’s constitution, specifically concerning the important role the Treaty plays in safeguarding the status of Maori as New Zealand’s indigenous people, and how giving it more legal force would ensure that that role was adequately fulfilled. The next

step in the conversation would be coming up with a way to successfully implement the Treaty as an entrenched constitutional document, an exciting prospect which I think we can look to other successful Maori initiatives to draw inspiration from.

## References

Cabinet Office, 2004, *New Zealand's Constitution – Past, Present and Future*, Wellington, viewed 16 April 2013, <http://www.beehive.govt.nz/Documents/Files/NZ%20Constitution%20Cabinet%20Office%20backgrounder.pdf>

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Potaka, T 2010, 'Legislation and Legislature', in Mullholland M and Tawhai V (eds.), *Weeping Waters: The Treaty of Waitangi and Constitutional Change*, Wellington, Huia Publishers

MacDonald, L and Muldoon, P 2006, 'Globalisation, neoliberalism and the struggle for indigenous citizenship', *Australian Journal of Political Science*, v. 41, no. 2, pp. 209-223

New Zealand Parliament, 2006, *Treaty of Waitangi (Principles) Bill – First Reading*, Wellington, viewed 16 April 2013, [http://www.parliament.nz/en-NZ/PB/Debates/Debates/a/c/2/48HansD\\_20060222\\_00001307-Treaty-of-Waitangi-Principles-Bill-First.htm](http://www.parliament.nz/en-NZ/PB/Debates/Debates/a/c/2/48HansD_20060222_00001307-Treaty-of-Waitangi-Principles-Bill-First.htm)

Smits, K 2009, *Applying Political Theory: Issues and Debates*, Hampshire, Palgrave MacMillan

Te Puni Kokiri, 2001, *He Tirohanga o Kawa ki te Tiriti o Waitangi*, Wellington, viewed 17 April 2013, <http://www.tpk.govt.nz/en/in-print/our-publications/publications/he-tirohanga-o-kawa-ki-te-tiriti-o-waitangi/>

Treaty Advocacy Group, 2012, *Understanding the Treaty of Waitangi*, Auckland, viewed 17 April 2013, <http://www.scoop.co.nz/stories/PO1205/S00283/2012-understanding-the-treaty-of-waitangi.htm>





**ConstitutionalReview - Re: January 2013: News from the Constitutional Advisory Panel**

---

**From:** Ken  
**To:** <ConstitutionalReview@justice.govt.nz>  
**Date:** 17/01/2013 8:46 a.m.  
**Subject:** Re: January 2013: News from the Constitutional Advisory Panel

---

On 15/01/2013 2:22 p.m., [ConstitutionalReview@justice.govt.nz](mailto:ConstitutionalReview@justice.govt.nz) wrote:

Tēnā koe, hello,

**Starting the constitution conversation**

We hope you have had safe festive seasons and wish you all the best for 2013.

During the first half of this year members of the Constitutional Advisory Panel will be out and about hearing from you, the people of Aotearoa New Zealand. The Panel see this as a great opportunity for people to share their aspirations for this country and what matters to them most about how Aotearoa New Zealand is run in the future.

The Panel are currently preparing information resources and meeting toolkits. It is hoped the toolkits will assist communities, whānau, organisations iwi or hapū to facilitate their own conversations about New Zealand's constitutional arrangements. The resources will be available in February. The Panel are committed to attending as many meetings and hui as possible. If you are interested in holding a meeting, please contact the Panel's Secretariat: [constitutionalreview@justice.govt.nz](mailto:constitutionalreview@justice.govt.nz). An engagement website where you can get more information about the topics and make submissions will also be published shortly.

The Panel issued a media release yesterday 14 January with further details. English and te reo Māori versions are available here [www.cap.govt.nz/Media-Releases](http://www.cap.govt.nz/Media-Releases).

Further information about the constitution conversation and the Panel's *The conversation so far* information booklet (issued in September 2012) are available on the Panel's new website: [www.cap.govt.nz](http://www.cap.govt.nz).

**Blurb for newsletters**

A few organisations have asked for a paragraph to paste into their newsletters. We have drafted the paragraph below - please feel free to use any of the information in this email if you think it would be of interest to your readers.

*The Constitutional Advisory Panel will actively seek a broad range of views on New Zealand's constitution in the first half of 2013. We encourage you to participate in this not-to-be-missed opportunity to discuss the fundamental rules about how to run the country. Information resources and meeting toolkits will be available in February to help individuals, communities and organisations facilitate their own conversations about New Zealand's constitution. For more information about the Panel and the constitution conversation please visit: [www.cap.govt.nz](http://www.cap.govt.nz)*

**During 2013, we will send regular news updates, including information about relevant upcoming public events. Please reply to this email if you do not want to receive the Panel's updates.**

**Upcoming public events**

24 & 31 January 2013, 6.30 - 8.00 pm Treaty debate series 'My Voice Counts' hosted by Te Papa and the New Zealand Centre for Public Law (Wellington). For more information: [My Voice Counts](#)

Kind regards, Ngā mihi, nā



**Constitutional  
Advisory Panel**

**Secretariat, Constitutional Advisory Panel**

c/- Ministry of Justice | DX SX10088  
Wellington | 04 494 9776 [www.cap.govt.nz](http://www.cap.govt.nz)

=====  
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Thank you.  
=====

May I propose the following.."Government shall make no law that applies to the citizens of the New Zealand that does not apply equally to the Members of Parliament and other Representatives. Government shall make no law that applies to the Members of Parliament and any other Representatives that does not apply equally to all the citizens of the New Zealand."



## Submission to the New Zealand Constitutional Advisory Panel 2013

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

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

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

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.

Brian Kendrick  
Nelson  
New Zealand



117

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/04/2013 6:37 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Amanda Kennedy Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB:  
Postal City: Auckland Postal Region: Auckland Postal Post Code: Postal Country:  
New Zealand Submission: State schools should not be allowed to close each week for the purpose  
of religious "education" as this is a violation of their secular nation.

It is appalling that this still happens in 2013.

Sent on the 8 April 2013 at 17:35

4538

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 1/08/2013 7:27 a.m.  
**Subject:** The form on your contact page has just been submitted

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

Contact Name: Bryce Kennedy Phone: Email:  
Comment: Why does the ourconstitution.org.nz website  
propagate the lie that the Maori version and the English version of the Treaty of Waitangi are different,  
when the discovery of the verifiable "Littlewood" Treaty shows that they are in fact the same?

Sent on the 1 August 2013 at 07:26

696

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 29/04/2013 8:36 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: DOUG KENNEDY Organisation Name: Email:   
Phone: Postal AddressA: Postal AddressB: Postal City:   
KAWERAU Postal Region: BAY OF PLENTY Postal Post Code: Postal Country: New Zealand Submission: TO BETTER UNDERSTAND OUR CONSTITUTION IT MUST BE DISPLAYED AS A SINGLE DOCUMENT AS MOST ACTS AND REGULATIONS IN NZ

IT SHOULD HAVE A HIGHER LEGAL STATUS THAN THE COURTS AND BE DECIDED BY PUBLIC REFERENDUM AND DEBATED IN PARLIMENT

VIEWS OF MAORI ARE ALREADY REPRESENTED IN PARLIMENT

IMPROVEMENT CAN ONLY BE MADE BY OPEN PARTICIPATION

ANY VIEWS AND PERSPECTIVE MUST BE EQUAL WITH OTHER NZ RESIDENTS

ROLE OF TREATY

THE ROLE OF THE TREATY IS ALREADY IN EFFECT IN NZ IE LAND RETURNS MAORI ASPERATIONS BEING RECOGNISED REVERSE RACISM

THE ROLE OF RANGATIRATANGA (TRIBALISM) IS NOT NEEDED IN PRESENT DAY POLITICS.WE SEE TRIBALISM(CHIEFTANSHIP) OPERATING DISASTEROUSLY IN AFGANISTAN

Sent on the 29 April 2013 at 20:35

2447.

**From:** "Lyle Kennedy"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 8:55 a.m.  
**Subject:** CAP Submission

We wish to strongly support the abolition of race based, Maori, seats in the New Zealand parliament. It is so important, for the future of our country, that we promote the equality of all citizens regardless of race.

Sincerely,

Lyle and Margaret Kennedy.



749

**From:** <mmkennedy@xtra.co.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/05/2013 4:06 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Margaret Mary Kennedy Organisation Name: Email:   
Phone: Postal AddressA: Postal AddressB:   
Postal City: Wellington Postal Region: Postal Post Code: Postal Country: New Zealand  
Submission: I wish to see NZ remain fairly unchanged, but would like to see the following incorporated:

- 1) 4-5 year parliamentary and local government terms.
- 2) The Treaty of Waitangi should be retained as a founding document, but I do think that there should be a definitive final date for claims.
- 3) Maori seats in parliament should be retained for now, but I also think that, at sometime in the future the necessity for them may become redundant. Therefore, there should be a clause in the constitution for a 10 yearly review on this point, by general referendum, but perhaps with some weighting for the Maori population at that time, since their numbers are much fewer than the general population, and it is their particular electoral representation that would be affected. Choice on which role to register with should be reviewed every second election, i.e. 8 or 10 years.
- 4)a) At this stage in our history, I would like to see the monarchy retained, but this should be reviewed by referendum every 15-20 years, i.e. every 3rd or 4th election time. Therefore, the current system of an appointed governor general who represents the monarch is also suitable, in my opinion, as long as the monarchy is retained.
- 4)b) If, and when the decision to become a republic should occur, I would like to see our membership of the British Commonwealth continue, as I think it is of value - perhaps not so much in monetary terms, but definitely in cultural terms - to us as a small nation. I do strongly believe that 'value' should not be restricted always to dollars and cents; there is a lot more to life, including constitutional life, than mere coinage.
- 5) I think the capital of NZ should remain in Wellington, however, there could possibly come a time when that is no longer appropriate or viable, especially if Wellington should suffer a cataclysmic earthquake, from which it would most likely take some years to recover, e.g. Christchurch. However, it should also be noted that the whole of NZ sits on the Ring of Fire, and therefore almost all our main centres are vulnerable to natural cataclysm of earthquake or volcanic eruption.
- 6) It is most important that the freedom to express opinions, the freedom to worship in whatever religion, or not, and the right of habeas corpus be constitutionally guaranteed.
- 7) However, having set out all the above, I would like add that written constitutions are laudable, but can be restrictive or misleading, can also be misconstrued, if not prepared with extreme care in the content and wording. I cannot express strongly enough the fear I have that this might not be handled with sufficient care. One only has to look at some of the sloppily worded legislation of recent years to see how pertinent this is!

End

Sent on the 5 May 2013 at 16:05

86

**From:** ~ ~  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/04/2013 12:43 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Submission: What the Hell is Aotearoa New Zealand???

This is New Zealand, Possibly; New Zealand (Aotearoa), but NOT Aotearoa New Zealand !

I am not aware of any act of parliament changing the name of my country.

and secondly, looking at the tv ad that lead me here to this site and the site itself, it looks like this is just another way for a very small percentage of New Zealand's population to force their views and wishes on the the majority of New Zealanders.

Am I wrong in thinking that ? Full Name: Martin Kennedy Email:

Sent on the 8 April 2013 at 11:41

97

**From:**

**To:** <constitutionalreview@justice.govt.nz>

**Date:** 8/04/2013 9:25 p.m.

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

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

Full Names: Shane Kenny Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City: Postal Region:  
Auckland Postal Post Code. Postal Country: New Zealand Submission: For the future  
of our country I would like to see one set of laws for all instead of different cultural privileges for the  
different races which share our land.

Sent on the 8 April 2013 at 20:24

97a

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/04/2013 9:20 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Shane Kenny Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City: Postal Region:  
Auckland Postal Post Code: Postal Country: New Zealand Submission: The one area of  
New Zealand law which worries me the most is the part where there does not appear to be one law  
for everyone. Even though we are all apparently united as a country we are given different rules to  
live by depending which race we belong to.

I'm not sure if this is the correct place for my to voice my concerns but I am getting tired of feeling like  
our great country is being divided into cultural groups with different privileges and laws to follow.

Sent on the 8 April 2013 at 20:19



## 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.

Erina Kent  
Royal Oak  
New Zealand

5052

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 7/08/2013 3:10 p.m.

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

Full Names: Gregory Kent Organisation Name: None Email: ;  
Phone Postal AddressA: Postal AddressB: ;  
Postal City: Wellington Postal Post Code: Postal Country: New Zealand Submission: I  
believe that beyond addressing historical injustices, and incorporating Maori culture within New  
Zealand law and practice we should be working towards an integrated Kiwi culture and not a dual  
social and political state or partnership.

Helen Clark's Labour Government introduced a September 2008 deadline for the lodgement of all  
historic claims, and with the settlement of those claims now coming to an end; I believe that the  
Waitangi Tribunal should be wound up. Any outstanding grievances

could be processed through the Court system.

Submitted on the 19 June 2013 at 20:47

Received 14 May

email: [constitutionalreview@justice.govt.nz](mailto:constitutionalreview@justice.govt.nz). Website [www.ourconstitution.org.nz](http://www.ourconstitution.org.nz) to submit on-line, or call 0508411 411

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

My Name: Andrea Ann Kepes

Name of Organisation: Civics Education Action Group – Nelson Ph:

or Civics Education Action Group

Postal or email address: \_\_\_\_\_, Nelson

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

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

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

Signature: \_\_\_\_\_

25/04/13



1996

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 30/06/2013 8:58 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Elisha Richard Joseph Kerin Organisation Name: Email: \_\_\_\_\_  
Phone: Postal AddressA: Postal AddressB: Postal City:  
DUNEDIN Postal Region: OTAGO Postal Post Code: Postal Country: New Zealand  
Submission: These additional things need to be basic rights.

The right of everyone to a healthy standard of living.

That is:-

- \* The right to adequate housing
- \* The right to sufficient food
- \* The right to clean water.
- \* The right to work

Sent on the 30 June 2013 at 20:57

3660

**From:** michael kerkhove  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 17/07/2013 1:15 p.m.  
**Subject:** CAP Submission

It is more than time that the people of New Zealand all the people stand up to Governments past and present who allow the railroading of the very basic of rights for all races if our constitution is reviewed with the correct intent it should be based upon fundamental rights of the citizens of NZ and that it should protect those people from Government whom do not listen to the people any reviews should have no reference to race and no special privileges should exist for race all lands assets etc belong to all of NZ not to the crown the Maori but to all of the people Any actions that effect the larger population should be agreed or disagreed by those people the larger population We all bleed the same colour blood and its about time those politicians start recognizing that if we continue along the current path we will have a country divided that can never be whole again mike kerkhove

1908 "

**Submission to the Constitutional Advisory Panel**

From: Liam Kernaghan

Dunedin

Please note: this submission was an essay written for the Department of Politics at the University of Otago.





## What opportunities does the Treaty of Waitangi provide for our future constitutional arrangements?

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The Constitutional Advisory Panel – set up by the fifth National Government – is charged with the task of reviewing and offering a vision for New Zealand’s constitutional future. As part of that, an important question posed by the Panel is the role that the Treaty of Waitangi should play – if any at all – in any future constitutional development. This essay will contend the main opportunity the Treaty of Waitangi offers any future constitutional arrangements is whether there could be power-sharing arrangements and keeping Maori Electorate seats based on Article Two of the Treaty, or whether it would be necessary to abolish all separate representation based on Article Three. This essay will further discuss the possibilities of what future constitutional arrangements could and would be created if New Zealand was to adopt a written constitution which incorporated the Treaty of Waitangi as part of its terms.

### *Current role of the Treaty of Waitangi in our Constitution*

To explain the opportunities the Treaty may offer in the future to our constitution, it is important to examine its role up until the present. The Treaty of Waitangi has not had a continued present in New Zealand’s constitutional history. Whilst there is general consensus which “reflects the fact that the Treaty of Waitangi is regarded as a founding document of government in New Zealand”<sup>1</sup>, it has not come about through a clearly defined past – the chequered history of the role the Treaty plays “is the result of decades of ‘back and forth’ between iwi and the Crown”<sup>2</sup>. It is, therefore, not a surprise that the role it plays currently is a source of great “discord and confusion” which has been promulgated over the last 25 years of its position<sup>3</sup>.

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<sup>1</sup> Constitutional Advisory Panel, *New Zealand’s constitution: The conversation so far* (Wellington: New Zealand Government, 2012), 8.

<sup>2</sup> Ibid, 52.

<sup>3</sup> Matthew Palmer, “New Zealand Constitutional Culture.” *New Zealand Universities Law Review* 22 (2007): 573

What role the Treaty does play in our Constitution currently is two-fold – its common law functions, and its legislative functions. While the treaty has never been recognised as a constitutional document in statute, its principles – which are not defined in the Treaty itself – have been incorporated into New Zealand legislation since 1975. Their inclusion into the Treaty of Waitangi Act, and the State-Owned Enterprises Act 1986<sup>4</sup> required due consideration for these principles in their respective pieces of legislation. For example, the Waitangi Tribunal were to take “complaints against laws, policies and acts of the Crown which were ‘inconsistent with the principles of the Treaty’” as a function of their power<sup>5</sup>, and the Crown were not to act “in a manner that is inconsistent with the principles of the Treaty of Waitangi”<sup>6</sup>. This legislative language ensured at least a very basic inclusion into domestic law.

It was not until the *Land’s* case which directed the country on what the principles were. They included a duty of active protection on the Crown, a general duty of consultation, protection of rangatiratanga, Crown-Maori partnership, and the freedom for the Crown to govern<sup>7</sup>. From this, both the Parliament and the Courts have asserted these principles as being the current ‘consensus’. However, it is worth noting that the courts have been very careful to establish the Treaty as a “living” document; Justice Richardson made it very clear that “it cannot yet be said that there is broad general agreement as to what those principles are.”<sup>8</sup>

Therefore, what we can say about the current role of the Treaty in our constitutional structure is mixed. On the one hand, it shows the “deep level of challenge that the Treaty of Waitangi poses to New Zealand’s constitutional culture”<sup>9</sup> and how difficult it may be to have it sit neatly within our constitutional framework. On the other, it shows – at least – how the Treaty

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<sup>4</sup> D J Round, “Two Futures: A Reverie on Constitutional Review.” *Otago Law Review* 12 (2011): 530.

<sup>5</sup> Ibid.

<sup>6</sup> State-Owned Enterprises Act 1986, s 9.

<sup>7</sup> *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641.

<sup>8</sup> Ibid at 672–673.

<sup>9</sup> Matthew Palmer, “New Zealand Constitutional Culture.” *New Zealand Universities Law Review* 22 (2007): 581.

may influence constitutional arrangements - its principles and articles go some way to explaining how Crown/Maori relations may influence constitutional development in the future.

#### *Maori Parliamentary Representation*

One way in which the Treaty of Waitangi provides opportunities for our future constitutional arrangements is through Maori Parliamentary Representation. The difficulty arising from the Treaty in terms of Maori Representation is a contradiction in terms; article two of the Treaty suggests the Crown & Maori could form power-sharing arrangements and the continuation of Maori Electoral Seats, whereas under the equality article (Article Three) it could be suggested that Maori Electoral Seats stand contrary to the principles and terms of the Treaty of Waitangi. At the outset, it is important to note, as Philip Joseph makes clear, that the Maori Seats were "intended to last for five years while the Native Land Court converted communal Maori land tenure into Crown grants,"<sup>10</sup> which shows two things; one, it was not an inherent right under the Treaty of Waitangi, and two, that its involvement was purely a means to an end.

Much has been made of the importance of Article Two and Article Three; "In constitutional terms this could be seen as entitling Maori to a measure of autonomy" at the very least, and guaranteeing Maori representation<sup>11</sup>. Article Two of the Treaty of Waitangi mandates that Maori may continue to hold control of their land, and cede or sell if they see fit. It is a fundamental part of the Treaty, and amplifies the third article by giving "to Maori the possession of their property, a right possessed by subjects."<sup>12</sup> The Broadcasting case suggests "rangatiratanga embraces the right of self-determination which, in the context of this claim, means the form and nature of political representation which gives Maori the maximum control over their political representation" and that the "Crown is under an obligation to ensure all is

<sup>10</sup> Philip Joseph, *The Maori Seats in Parliament* (Wellington: New Zealand Business Roundtable, 2008), 5.

<sup>11</sup> Waitangi Tribunal, "Chapter 2: Maori Representation in Parliament: An Historical Overview" in *Maori Electoral Option Report*, <http://www.waitangi-tribunal.govt.nz/reports/downloadpdf.asp?reportid=C04FF009-8245-455E-9BF2-A8998413132F> (accessed 26 April 2013).

<sup>12</sup> D J Round, "Two Futures: A Reverie on Constitutional Review." *Otago Law Review* 12 (2011): 530.

done to enable Maori to achieve the maximum number of Maori seats through the exercise of the imminent Maori electoral option.”<sup>13</sup> However, it is important to note that this not a political right guaranteed by the treaty, but a legal one – it is not about any property right of representation, it is about protection of a legal property right. Joseph confirms that “Article II of the Treaty of Waitangi does not embrace political rights, and to entrench the Maori seats would give further legal sanction to a separatist policy founded on ethnicity.”<sup>14</sup> Sharp offers that Article Two of the Treaty was not seen by the Crown as enforceable, and in any case “did not provide any additional guarantee of Maori Rights” in respect the treaty being constitutionally entrenched or not<sup>15</sup>. These rights also did not extend to Maori having special electorally based seats.

Article Three provides the basis for my thesis – that the Treaty of Waitangi provides no opportunity for Maori Representation in a future constitution. As Philip Joseph points out, “The concepts of partnership and the Crown’s duty of active protection define the Treaty relationship but neither concept mandates separate Maori representation.”<sup>16</sup> It is left to Article Three and the citizenship model to fully justify representation. At its very basic level, Article Three gives to “all the ordinary people of New Zealand ... the same rights and duties of citizenship as the people of England”<sup>17</sup>, to which Sir Tipene O’Reagan suggested gave Maori “no greater and no lesser rights in social and legal terms than [were] available to the general populace”<sup>18</sup>. If we are all equal citizens under the Treaty, and all equal citizens under the rule of law, then the natural progression from that – constitutionally – is that we do not need different seats to be equal, and in fact what follows from that is an unequal representation of citizenship. Whilst it might be

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<sup>13</sup> Waitangi Tribunal, “Chapter 3: Treaty Principles” in *Maori Electoral Option Report*, <http://www.waitangi-tribunal.govt.nz/reports/downloadpdf.asp?reportid=C04FF009-8245-455E-9BF2-A8998413132F> (accessed 26 April 2013).

<sup>14</sup> Philip Joseph, *The Maori Seats in Parliament* (Wellington: New Zealand Business Roundtable, 2008), 1.

<sup>15</sup> Andrew Sharp, “The Treaty, the Tribunal and the Law: Recognising Maori Rights in New Zealand” in *New Zealand Politics In Perspective*, ed. Hyam Gold (Auckland: Longman Paul, 1992), 126.

<sup>16</sup> Philip Joseph, *The Maori Seats in Parliament* (Wellington: New Zealand Business Roundtable, 2008), 17.

<sup>17</sup> The Treaty of Waitangi 1840.

<sup>18</sup> Sir Tipene O’Regan, “A Ngai Tahu Perspective on Some Treaty Questions” *VUWLR* 25 (1995): 178.



acceptable for us to suggest that we owe a social or moral obligation to Maori to uphold their abilities to be represented, at least based on the Treaty we cannot say for absolute certainty that the opportunity for continued representation under Maori Electoral Seats is secured. This is not to say that they would not stay as part of the constitutional make up, because their importance and place in the Parliament is well documented as being a positive experience, and one that has brought Maori closer as equal citizens rather than further away<sup>19</sup>. A natural inference, therefore, is that the Treaty of Waitangi would not necessarily bind the Crown through any future constitutional arrangements to upholding what could be deemed positive discrimination.

#### *Crown/Maori Relations*

Putting aside the difference of legal and political opinion on Maori representation, there is general agreement that the Treaty of Waitangi, if properly applied, could increase positive relationships between the Crown and Maori. The Court of Appeal in the Lands Case said “the Treaty signified a partnership between Pakeha and Maori requiring each to act towards the other reasonably and with the utmost good faith”<sup>20</sup>. However, as Viscount Simon stated in *Hoani Te Heu Heu Tukino v. Aotea District Maori Land Board*, the Treaty is legally “unenforceable of itself in the New Zealand Courts except to the extent that it had been given effect to by statute.”<sup>21</sup> This presents a dilemma for Maori who wish to use the Treaty as an argument for discrimination – the Treaty can only be invoked if it is given effect by statute.

If future constitutional arrangements were to include the Treaty of Waitangi as a constitutional document, much more weight could be given to their contents. Whilst it is true that the “partnership” argument is illogical - DJ Round points out “One cannot be a partner and a

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<sup>19</sup> Janine Hayward, “Treaty Policy,” in *New Zealand Government & Politics*, ed. Raymond Miller (Melbourne: Oxford University Press, 2006), 602.

<sup>20</sup> *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 at 654.

<sup>21</sup> New Zealand Parliament, *The New Zealand Constitution*, <http://www.parliament.nz/NR/rdonlyres/AC9829DF-32D8-4569-A672-FFEFA2BC6278/6641/2005Constitutionupdate1.pdf> (accessed 25 April 2013), 4.

subject at the same time”<sup>22</sup> – it is hard to argue in a practical sense that there is not some animosity by some sects of the Maori community towards the Crown for not upholding what they see as important constitutional rights. The plain fact is, currently, those rights are not constitutional, but at best statutory instruments that may guide the government and at worst moral obligations. Whilst it is important to recognise that the mood of New Zealand in general is against the entrenchment of Treaty rights into constitutional law, “many Maori and some non-Maori wish to have the Treaty made part of domestic law with the capacity to be enforced in the courts in its own rights”<sup>23</sup>. It is also likely to appease Maori, as it did when the principles were included in important pieces of environment legislation<sup>24</sup>, which is likely to further Crown/Maori relations and continue to support a harmonious bond. Indeed, D J Round offers that “establishing, as some entrenched and overriding superior law ... the principles [of the Treaty]. It is the principles of the Treaty which various statutes have referred to since the 1980s.”<sup>25</sup> There is no doubt that their inclusion formally would foster better relations between the Crown and Maori, and therefore be an opportunity which the Treaty of Waitangi provides to future constitutional arrangements.

#### *Finality and the importance of clarity*

An opportunity that entrenching or including the Treaty of Waitangi offers for future constitutional arrangements is certainty and conclusion. Similarly to the above argument, there is much animosity regarding the treaty as to where it sits in the constitutional structure. As has been proven before, the Treaty does not sit within a stringent constitutional framework, but more stands beside legislation as a set of principles which – if included in a statute – should be adhered to. If that sounds vague and uncertain, it is because it is. The law and the constitution needs certainty and clarity for it to be effective, and with the Treaty sitting outside of the neat

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<sup>22</sup> D J Round, “Two Futures: A Reverie on Constitutional Review.” *Otago Law Review* 12 (2011): 538.

<sup>23</sup> Bruce V Harris, “Constitutional Change” in *New Zealand Government & Politics*, ed. Raymond Miller (Melbourne: Oxford University Press, 2006), 121.

<sup>24</sup> Janine Hayward, “Treaty Policy,” in *New Zealand Government & Politics*, ed. Raymond Miller (Melbourne: Oxford University Press, 2006), 600.

<sup>25</sup> D J Round, “Two Futures: A Reverie on Constitutional Review.” *Otago Law Review* 12 (2011): 538.

constitutional framework means its uncertain nature will continue to prove difficult for our legal system. Accepting the Treaty of Waitangi and its principles into our constitutional framework would mean the principles – as they are accepted now – would be entrenched, and the articles part of our constitutional law, thus providing more clarity and finality on the questions of legitimacy and legal force.

### *Conclusion*

The opportunities the Treaty offers future constitutional arrangements are both positive and negative, and both possible and improbable. They are three fold. Whilst it might be contemporarily appropriate to suggest the Treaty will offer an entrenchment of Maori Representation in the form of separate Maori Electorate Seats, constitutional theory would suggest the Maori seats do not have a place in our future constitution based on the articles and principles of the treaty. Further, Crown/Maori relations would be improved by the inclusion of the Treaty in future constitutional arrangements through acceptance of the Treaty as an important document. Finally, the Treaty of Waitangi provides opportunities for future constitutional arrangements because it offers the potential of finality and certainty on the terms of the treaty, and an end to the politicking of the Treaty which has come from the Treaty being uncertain in law and its terms and principles being misunderstood.

