

## 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.

Mark Kitchingman  
Te Anau  
New Zealand

5189

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/08/2013 8:47 a.m.

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

Full Names: Murray James Kite Email: Phone: Postal  
AddressA. Postal City: Napier Postal Region: Hawks Bay Postal  
Country: New Zealand Submission: The treaty not to be part of constitution.

Submitted on the 11 June 2013 at 07:25

128

**From:**

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

**Date:** 8/04/2013 11:02 p.m.

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

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

Full Names: jac kitt Organisation Name: Email: Phone: Postal  
AddressA: Postal AddressB: Postal City: Postal  
Region: hawkes bay Postal Post Code: Postal Country: New Zealand Submission: as  
long as its a clean slate and the treaty of waiting has no part to play in it all will be good you know one  
rule that applies to each and everyone the same

Sent on the 8 April 2013 at 22:00



1593

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 26/06/2013 9:51 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Rod & Karyn Klarwill Organisation Name: Private persons Email:  
 Phone: Postal AddressA: Postal  
 AddressB: Postal City: Postal Region: Auckland Postal Post  
 Code: Postal Country: New Zealand Submission: My wife and I are retired, having lived  
 all our lives in New Zealand and until two years ago, we spent the previous 24 years operating an  
 organic based liquid fertiliser manufacturing business and selling our product throughout New Zealand  
 and around the  
 world. We are passionate about our Country and we are proud of the way so many New Zealanders  
 'perform' so successfully in the spheres of sport, business, science and others, around the world.

However, we wish to express our dismay and extreme concern at the focus on everything 'Maori' that  
 has developed in the past few years. At school in the late fifties and sixties, I saw children of my age  
 admonished for speaking Maori at school. Today in the  
 next millennium it has gone the other way, I see far too much emphasis on Maori culture, language,  
 politics, poverty, crime etc etc.

We are a multicultural nation in a multicultural world and we need to get more of a balance in  
 recognising all the nationalities and cultures that comprise the population of our Country.

Research of our history provides a strong indication of occupation of this country way prior to the  
 claimed arrival of Maori, possibly by voyagers from China and other countries. Regardless of the  
 veracity of such claims, the recent and current politicians  
 pre-occupation with 'Compensating' today's Maori is irrelevant, unjustifiable, incomprehensible and  
 grossly unfair to the rest of our population, whose assets and income are being 'stolen' to provide the  
 value being 'given' to a tiny minority.

In our view, there is no justification for special Maori seats in parliament; they are very adequately  
 represented by MP's of Maori descent elected in 'ordinary' seats. Similarly, there is no justification for  
 non-elected Maori representation on local government  
 organisations. If Maori desire to be represented they have the same opportunities as any other group  
 to seek election and representation.

Having said all that, we wish to emphasise our abhorrence at the possibility of a new Constitution for  
 this country based on race, the Treaty of Waitangi, or any other excuse to enhance the power and  
 control of the entire country and deliver it to a chosen  
 few. This Country has been developed on democratic principles and to decide now, to elevate a race  
 based minority, to become the 'rulers' of our nation is totally contrary to those principles.

Preservation of all the cultures that are present and are represented within New Zealand, is important  
 for many reasons, but it seems that most ethnic groups accept responsibility for doing this in respect  
 of their particular culture whatever it may be. There

is no justification for one culture to be 'preserved and protected' more than any other, especially when that culture demands an unfair proportion of the nations resources to do so.

Sent on the 26 June 2013 at 09:49

997

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/05/2013 12:58 p.m.  
**Subject:** Constitution review

To the Constitutional Panel,

Having lived in New Zealand since 1962 and paid taxes since that time, I feel qualified to comment on the subject of Constitutional Review,

I can state without reservation that we are meant to be one people, share the cost and benefit of the system not based on race or creed.

Having read many books on the Treaty of Waitangi and several interpretations of it, came to the conclusion that it is a document of mixed messages and statements not belonging to today's time, so please do not include it in the constitution if you want an equalitarian society.

Finally, I am eternally grateful to New Zealand for the opportunities offered to me which I have taken by both hands and applied gratefully.

Yours with respect,

Frank Klement

396

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 15/04/2013 8:49 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Alexander Antonius Gerardus Kleven Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City: Auckland  
Postal Region: Postal Post Code: Postal Country: New Zealand Submission: I would like  
to suggest, that it should not be possible to rush through decisions on how the country is ran if the  
country is not in immediate danger. And even if the country, or part of the country is in a case of  
emergency, only relevant decisions should  
be able to be rushed. To ensure that motions don't get rushed unnecessarily, perhaps a committee of  
sorts or some governmental body should be formed to approve a rush.

Furthermore,

Sent on the 15 April 2013 at 20:48

3969

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 15/04/2013 9:07 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Alexander Antonius Gerardus Kleven Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City: Auckland  
Postal Region: Postal Post Code: Postal Country: New Zealand Submission: 1. For the country to be great in its own right. Now, for this I do not believe we need the acknowledgement of the rest of the world, instead, we need the acknowledgement of the people. As it currently stands, New Zealand is not nearly what it could be, public transport is bad, Drunk Driving is rampant, not just amongst youth, but in all levels of society, Domestic violence (I have heard) appears to be a significant problem as well, the schools care more about their image than raising proper, potentially great citizens, it sometimes seems like the country cares more about its relations with foreign countries than about its own people.

I hope that one day, that I can tell, with full pride, that I am a Kiwi (Even though I only recently immigrated here), without having this feeling gnawing in the back of my head that there is something wrong.

2. Most importantly: I want it to be run more intelligently, before a policy is made about something, those who pass policies should have a proper understanding of the subject, if they do not know anything about said subject, research should be done about the subject until everyone has a good understanding of the subject. If there is a point with multiple points of view, intelligent representatives of both points of view should be brought in front of those who pass the policies, and should be allowed to defend their point, and give arguments, which should, in turn, be researched for validity. This, especially at this time of change, should be important, as our country is ran by people who are relatively of age, and might not have full understanding of all the subjects.

If our country is ran on assumptions and guestimates, I fear for New Zealand...

Oh, and one more thing, Whenever the parties come together for whatever reason, it should be handled professionally, no making fun of other people, no cracking jokes, no hate, if anyone does something unprofessional, they should be removed from the hall as they are obviously not fit to take the situation serious. It is very anti-productive to have people yell at each other, as any psychologist will tell you that if people yell at each other, they usually don't listen fairly, and will only push their own opinion.

I understand that you, as a government will get a lot of these messages, and I understand that things are hard to change, but to whoever reads this, I hope this makes you think that there are indeed things wrong here. Some of the problems, especially in the answer to point 1. will be really hard to solve, however the points I made in answer 2 should not be hard, if you compare it to the significance it will have.

Not only will it make the government seem more professional, it will also cause fairer, and better thought out policies for the country, which should eventually lead to a better country. Emotion is for individual life and the stage, it has no place in government, a government should act based on facts and partially the opinions of the people, not based on the government's opinion.

Thank you for reading this.

2338

**From:** "Doug and Jackie Klever" <  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 7:36 p.m.  
**Subject:** CAP Submission

ABOLISHED, PERIOD

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946

**From:** [constitution@justice.govt.nz](mailto:constitution@justice.govt.nz)  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 29/05/2013 1:19 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission  
**Attachments:** Constitution ConversationSubmission..pdf

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

Full Names: Alice Frances Knight Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal  
City: Christchurch Postal Region: Postal Post Code: Postal Country: New Zealand  
Submission: Submission Upload: Constitution Conversation Submission..pdf

Sent on the 29 May 2013 at 13:17

946

**From:** [redacted]  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 29/05/2013 1:19 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission  
**Attachments:** Constitution ConversationSubmission..pdf

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

Full Names: Alice Frances Knight Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal  
City: Christchurch Postal Region: Postal Post Code: Postal Country: New Zealand  
Submission: Submission Upload: Constitution Conversation Submission..pdf

Sent on the 29 May 2013 at 13:17



## LAWS 110 2000 Word Essay

Word Count 1989

**Q.3** The Constitutional Advisory Panel is presently asking New Zealanders to make submissions with regard to the New Zealand Constitution.

**As an informed and engaged citizen draft your submission to the Panel** (in essay form).

New Zealand is one of only three nations with an unwritten constitution. The structure of our current 'constitutional framework' was inherited from England upon colonisation. Consequently New Zealand has a Westminster-style of government and adheres to the separation of powers. While having the constitution in a single document has its advantages, throughout New Zealand's constitutional history it has proven vital that our constitution remains unwritten. Constitutional documents proposed under supreme law status have been rejected in the past. It would protect citizens and the state from 'unbridled' power, however moral reinforcement and conventions of the constitution support the current framework. Interpreting the constitution, even though it is not currently written, is under the power of the judiciary and should remain this way. Viewing law in social context, the courts have developed a significant ability to fill 'gaps' in statutory law, developing the common law. All of these proposed changes would be crucial in changing the current method through which society is regulated, and are not essential to the status of the current constitution.

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

Within Western legal systems usually lies a written constitution that assumes the status of supreme law. Depending on the political and legal arrangements of any country, there develops a continuum of constitutional and parliamentary supremacy. This continuum defines where the most supreme law making body lies. In New Zealand this power lies with

2

Parliament as the general consensus it that there is no apparent need for a formal, entrenched and written constitution.

Written constitutions have advantages and disadvantages. Formal, written constitutions identify the sources of power and institutions of government. These entrenched constitutions contain the individual rights and freedoms of all citizens under the ruling authority. Anything that infringes the constitution under judicial review<sup>1</sup> will be ruled by the courts as invalid or *ultra vires*<sup>2</sup> and beyond the powers of government under the constitution. Written constitutions are difficult to amend, therefore providing protection to the citizens and the state from radical government. The downfall of this difficulty is it does not account for social change. This issue is a key factor in the debate surrounding whether New Zealand should have a written constitution.

New Zealand's constitutional framework was inherited from Britain upon colonisation. Consequently, our constitution is not pertained in a single document that assumes the status of supreme law. Instead, an ad hoc assortment of statutes contains sections of constitutional significance. If the British were to impose a written constitution upon colonisation, then all rights and freedoms of the citizens and the state would be 'frozen' in an entrenched document, not allowing for New Zealand to gain independence from the monarch.

Using constitutional conventions, New Zealand has 'sleepwalked' through its journey to parliamentary supremacy. Constitutional conventions are "not the law in the sense that

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<sup>1</sup> Geoffrey Leane, LAWS110 lecturer, "Introduction to Constitutional Law" (LAWS110 lecture, 2012, University of Canterbury school of Law, Christchurch, 23 March – 03 May 2012)

<sup>2</sup> McDowell, Morag and Webb, Duncan. *The New Zealand Legal System* (4<sup>th</sup> edition, LexisNexis, Wellington, 2006) at 73

they are enforceable by the Courts,”<sup>3</sup> they are informal and flexible rules that alter with the evolution of society, modifying constitutional behaviour and relations between branches of government. Using constitutional conventions, the legal system in New Zealand has enabled freedom to progress alongside society, and has not been restricted by the rigidity of entrenchment.

There seems no pressing need to entrench a single written constitution. This is because “public power is still the most awesome human force in the nation state of New Zealand.”<sup>4</sup> Authoritarianism and trust in the government to solve numerous issues is an important part of the current framework. Indeed, New Zealand’s colonial history has been “a story of looking to the government to fix things.”<sup>5</sup> Social equality and egalitarianism are equally important, making government equal to citizen status, subject to the “rule of law, not of men”<sup>6</sup>. Enforcing the constitutional culture of New Zealand is the value placed in pragmatism. While these may not enforce the constitutional ‘norm’, these “salient New Zealand cultural attitudes” do reinforce the powers in the current constitutional framework, these being parliamentary sovereignty, representative democracy and the evolving nature of the unwritten constitution.<sup>7</sup> There appears no need to entrench the current framework into a written document, as New Zealand’s constitutional culture appears to operate just fine without one.

<sup>3</sup> John McSorley “The New Zealand Constitution” (15 February 200, Updated 03 October 2005) Parliamentary Library. <[http://www.parliament.nz/NR/rdonly res/AC9829DF-32D8-4569-A672-FFFFA2BC6278/664\\_1/2005Constitutionupdate1.pdf](http://www.parliament.nz/NR/rdonly res/AC9829DF-32D8-4569-A672-FFFFA2BC6278/664_1/2005Constitutionupdate1.pdf)> at 4

<sup>4</sup> Matthew SR Palmer, “New Zealand Constitutional Culture” (2007) *New Zealand Universities Law Review*, Vol. 22, p. 565-597. Accessed: <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1069061](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1069061)> at 565

<sup>5</sup> Palmer, above N4, at 575

<sup>6</sup> Geoffrey Leane, LAWS110 lecturer, “Introduction to Constitutional Law” (LAWS110 lecture, 2012, University of Canterbury school of Law, Christchurch, 23 March – 03 May 2012)

<sup>7</sup> Palmer, above N4, at 565



4

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

New Zealand's constitution is not written, not guaranteeing anything stated within it. Parliamentary sovereignty is supreme in the current framework. If the constitution was made supreme law, it would conflict with this. Opposing the supremacy of Parliament is opposing the political system under which it runs, effectively creating a democratic deficit.<sup>8</sup> As of yet, no government has taken advantage of supremacy in passing outrageous laws, because public pressure, general election and international pressure providing sufficient checks.<sup>9</sup>

In 1962, the White Paper was introduced by Geoffrey Palmer as 'A Bill of Rights for New Zealand.'<sup>10</sup> The paper proposed an entrenched Bill of Rights; the recognition of the Treaty of Waitangi as a foundational constitutional document; and judicial review empowering courts to strike down inconsistent legislation. Rejected by the opposition and some of Palmer's own labour government, the Law Reform Select Committee said that New Zealand was "not yet ready (if it ever will be)" for a Bill of Rights as proposed by the White Paper.<sup>11</sup> The rejection of this, a part of New Zealand's constitutional framework, clearly highlighted the hesitation and distaste for entrenched legislation. Matthew Palmer noted that the strongest force of opinion in New Zealand is the public people.<sup>12</sup> Without the consideration of culture, there will be no proper treatment of the constitution as supreme law.<sup>13</sup>

<sup>11</sup> Leane, above N1, 23 March – 03 May 2012

<sup>9</sup> Peter Dunne, "Inquiry to review New Zealand's existing constitutional arrangements" Report of the Constitutional Arrangements Committee (August 2005) <<http://www.parliament.nz/en-NZ/PB/SC/Documents/Reports/e/9/b/e9b156d30c1840eb8ffa20c6b28277de.htm>> at 147

<sup>10</sup> Leane, above N1, 23 March – 03 May 2012

<sup>11</sup> Leane, above N1, 23 March – 03 May 2012

<sup>12</sup> Palmer, above N4, at 565

<sup>13</sup> Palmer, above N4, at 568

The Electoral Act 1993<sup>14</sup> is the only document in New Zealand's entire legislature that is entrenched however it is only singularly entrenched. This acts as a check on the concentration of power as every three years Parliament must be democratically re-elected. As this section is only singularly entrenched, it can be amended via the legislative loophole known as the "two -step-legislative process", deliberately left to preserve parliamentary sovereignty. However moral reinforcement has proven an imperative convention of the current constitution, resisting it as supreme law. No government has ever taken advantage of this loophole, for the purposes of the democratic framework under which the country progresses.

The introduction of Mixed Member Proportional (MMP) style of government in 1993 illustrates the moral sustainability of Parliament and resistance to the constitution as supreme law. During the Muldoon era, Lord Cooke indicated this outlining that: "some common law rights presumably lie so deep that even Parliament could not override them."<sup>15</sup> This statement was made during a time when the rights and freedoms of New Zealand's peoples were most at risk, however it does not detract from the point that no constitution is needed as supreme law. With trust placed in parliamentary supremacy, under the check of single entrenchment and moral reinforcement the current unwritten constitution should be upheld.

Entrenchment of the constitution, however, would protect the state and citizens of New Zealand from the 'unbridled' power of Parliament.<sup>16</sup> In the absence of an Upper House, and an entrenched written constitution, all rights and freedoms of New Zealand's citizens are vulnerable. The entrenchment of the constitution would provide certainty, as it would be

<sup>14</sup> McSoriley above N3, at 2

<sup>15</sup> Cooke J. Taylor v New Zealand Poultry Board [1984] 1 NZLR 394, 398 (CA) at 399

<sup>16</sup> Leane, above N1, 23 March - 03 May 2012

6

somewhat 'frozen' and very difficult to amend. "Public opinion, international condemnation and democratic electoral incentives would"<sup>17</sup> limit power, as the culture surrounding New Zealand's constitution has proven vital to any proposed changes. In the past society, and even members of Parliament, have rejected the entrenchment of documents. As the New Zealand Law Reform Committee said, New Zealand may not yet be ready for an entrenched constitution and all that it entails.<sup>18</sup>

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

Montesquieu believed that the liberty of citizens was safeguarded by the division of powers through the legislative, executive and judicial functions of government. He believed "power should be a check to power."<sup>19</sup> The separation of powers in New Zealand is not complete. Giving the courts the authority to rule out inconsistencies in regard to the constitution would maintain the separation of powers and provide a check to the current overlap between the legislative and executive branches. The crucial point is that "as long as each actor stays within their conventional role, the whole structure is stable."<sup>20</sup>

The courts are better equipped to interpret statutory law passed by the legislative. They would check the 'unbridled' powers of Parliament, if they could strike down and declare *ultra vires* any law that is deemed inconsistent with the constitution.<sup>21</sup> Indeed "some common law rights presumably lie so deep that even Parliament could not override them."<sup>22</sup>

<sup>17</sup> Dunne, above N11, at 147

<sup>18</sup> Leane, above N1, 23 March – 03 May 2012

<sup>19</sup> Scragg, Richard. *The principles of legal method in New Zealand* (2<sup>nd</sup> edition, Oxford University Press, South Melbourne, Vic., 2009) at 8

<sup>20</sup> Dunne, above N11, at 148

<sup>21</sup> McDowell and Webb, above N2, at 73

<sup>22</sup> Cooke J., above N19, at 399

This clearly indicates the ability of the judiciary to 'legislate' through their decisions. Through statute interpretation, the courts step in where Parliament fails to recognise legislative loopholes. For example, *Baigent's case*<sup>23</sup> is indicative of the courts broad interpretation of statutory legislation passed by Parliament, in order to account for social context. No remedy was included for breaches of the Bill of Rights. The courts accommodated for this 'gap' by awarding damages for the breach. The courts have clearly illustrated their ability to account for 'holes' in law even without a supreme constitution. If roles were reversed, the expertise and social context and change would quite possibly be neglected.

The courts ability fill the 'gaps' in statutory law, has clearly influenced the shaping of common law and society. Removing the ability of the courts to check for inconsistencies in the constitution, written or otherwise, may result in the exploitation of loopholes and increasing overlap in the separation of powers. The legal system is founded in the importance of the judiciary as a branch of government powers under parliamentary supremacy, ruling on all inconsistencies, and should remain so in future.

The uniqueness of New Zealand's constitution has proven essential to constitutional evolution and there appears no need for change. Putting the constitution into a single document rejects the culture surrounding the current framework. Supreme law status is unlikely to benefit society, as moral reinforcement supports the current system. Courts interpretive power of inconsistencies with the constitution, regardless of whether it is written on unwritten, has proven vital to the development of strong common law. New Zealand's constitution should remain unwritten and adhere to parliamentary supremacy. The power of the people has proven important in the past, what is to say that the reaction would prove dissimilar under today's circumstances?

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<sup>23</sup> *Simpson v Attorney General* [1994] 3 NZLR 667; (1994) 1 HRNZ 42 (CA)

## Bibliography

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Cooke J. Taylor v New Zealand Poultry Board [1984] 1 NZLR 394, 398 (CA)

Simpson v Attorney General [1994] 3 NZLR 667; (1994) 1 HRNZ 42 (CA)

McDowell, Morag and Webb, Duncan. *The New Zealand Legal System* (4<sup>th</sup> edition, LexisNexis, Wellington, 2006)

Scragg, Richard. *The principles of legal method in New Zealand* (2<sup>nd</sup> edition, Oxford University Press, Australian and New Zealand, 2009)

John McSoriley. "The New Zealand Constitution" (15 February 200, Updated 03 October 2005) *Parliamentary Library*. <[http://www.parliament.nz/NR/rdon lyres/AC9829DF-32D8-4569-A672-FFEFA2BC6278/664\\_1/2005Constitutionupdate1.pdf](http://www.parliament.nz/NR/rdon lyres/AC9829DF-32D8-4569-A672-FFEFA2BC6278/664_1/2005Constitutionupdate1.pdf)>

Matthew S R Palmer, "New Zealand Constitutional Culture" (2007) *New Zealand Universities Law Review*, Vol. 22, p. 565-597. Accessed: <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1069061](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1069061)>

Peter Dunne, "Inquiry to review New Zealand's existing constitutional arrangements" *Report of the Constitutional Arrangements Committee* (August 2005) <<http://www.parliament.nz/en-NZ/PB/SC/Documents/Reports/e/9/b/e9b156d30c1840eb8ffa20c6b28277de.htm>>

9

Geoffrey Leane, LAWS110 lecturer; "Introduction to Constitutional Law"

(LAWS110 lecture, 2012, University of Canterbury school of Law, Christchurch, 23 March --  
03 May 2012)





2912

**From:** "David Knight"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/07/2013 1:20 p.m.  
**Subject:** CAP Submission

Remove Maori Seats we should all be one and treated as one we do not need racial headstones in parliament.

David

Quote from Dame Whina Cooper: "Take care of what they hear,  
take care of what they see  
take care of what they feel,  
for how the children grow  
So will be the shape of Aotearoa."

My introduction to the "Constitution Conversation"

1. At Tauranga <sup>Library</sup> lunch-time - brief overview.
2. Followed by 2½ hour session at 17<sup>th</sup> Avenue Historic Village Hall with Michael Cullen as a member of a Panel of 12; with over 300 public present.
3. Plus studying the Submission Guide, and 6 separate papers which made the subject easier to talk about, follow & give my 'take' on proposed changes.

I am 78 yrs old, fifth generation arriving at New Plymouth in 1842 [NZ] have three (3) children and three grandchildren (so 6<sup>th</sup> + 7<sup>th</sup> generation) and very concerned at what "State" will N.Z. be subject to when they mature.

Love N.Z., we are so blessed to be living here. All previous & present generations have worked consistently hard in developing N.Z. since 1842; raising families, caring for their needs, good education etc etc; without any history of violence or wrongdoing during 171 years since paying to be transported to NZ from Scotland & England, buying land & bringing animals, trees seeds etc to create farms.

It is very important to us all who have aspirations to educate, work, build & consolidate & continue to treasure these islands of N.Z.

Constitution pros & cons - evidently already in several documents which via Parliament & Courts have been set into law at different times. This must allow for changes if necessary, to be discussed & debated, as times change, rather than be limited to one totally binding document.



2.

As we are supposed to be "one people" in N.Z., and the Treaty of Waitangi has been well & honestly discussed; apology given, claims honoured and nearly finished, this Treaty is now a Historical Document.

No one I know makes any exception to the Maori Iwi keeping their language, culture & enjoyment of the same & be proud, but not force-feed it into other people's lives & working conditions.

All NZ's have of necessity, to work honestly & hard at our 'back-bone' industries, that are required for trade purposes to keep NZ on even keel in par with the World & NZ boyant financially; educated, plenty of jobs (not benefits) to build upon our self-esteem & be proud of our abilities & N.Z.

There is no sense or necessity for use of Maori language in creating good business deals with trading partners or communications. Waste of time & effort.

As Kiwis we applaud "anyone" who excels in science, career sports, music, art etc as they promote our small nation.

"Constitutional" principles are the "rule of law" - which all must follow. Parliament governs & Public power is shared between Government & courts - good system of checks & balances!

Majority respect the Queen of England, her dedication & concern for all people, which is the role of the Governor General within NZ. Law & advice of Prime Minister & Government of the Day. Policy directions often change laws or make new ones for the current times. This makes for a balance not just allowing Courts to have the "upper hand" - a sharing has much better results.

The Bill of Rights Act 1990 & protection of the Act seem to be well structured & balanced.

Both the Public Works Act of 1981 & Human Rights Act 1993 protect the people of NZ & provide the services required. The Magna Carta 1297 deals with basic rights as does the Treaty of Waitangi, our historical document.

This Treaty of Waitangi 1840, its principles are ever-



expanding beyond the 1840 era & times have dramatically changed.

Firstly, intermarriage has greatly reduced the Maori blood-lines & the effects of different cultures in NZ's multi-cultural society are to be welcomed & enjoyed.

Following this direction of thought there are equal opportunities for any culture to apply for selection in Electorate seats in Parliament. Every applicant need screening to have honest background & attitude; education, proven work abilities etc to make them considered candidates.

Maori applicants should have proven 50% of Maori blood. It is creating divisions of race in NZ, not the European based voters.

The same selection should apply for Local Governments & not give them a seat on councils "as of right"! Councils need to consider any issues presented, the pros & cons.

Electoral Matters: The role of Parliament has 5 very clear issues - easy to understand so that's good.

M.M.P. still has a majority absolutely against its format!!

Before MMP was pushed through NZers were promised a reduction in members elected to Parliament, it was agreeable to all. MMP & all the list members are a joke.

Four years also seems a better time frame for Governments in power to implement their schemes. Members know what their role in Parliament is, behaviour required & necessity to work & kept their electorates up to date to best of their ability. It is a serious career & if elected lucky to join & give back to N.Z. a good name & country managed in a business-like fashion.

N.Z. is a wonderful place but still can be encouraged to do better in the future.

We can be one people working towards one balanced & envied Nation for our children & future generations. God bless.

Jacqueline Knight  
Tauranga

14<sup>th</sup> JUNE 2013.

4857

**From:** Lisa Knight  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 4:57 p.m.  
**Subject:** CAP submission  
**Attachments:** submission-30072013.pdf

Please find my submission.

Regards.





## Constitution Conversation Submission (4 pages)

Submitters name: Lisa Knight

Date of submission: 30 July 2013.

### Bill of rights

Does the Bill of Rights Act protect your rights enough?

No. Because Judges in New Zealand do not have the power to strike down legislation, or to say any law is unconstitutional and consequently invalid.

The rushing through of the GCSB Bill and the extended powers it confers is a concern to many people. The NZ Law Society<sup>1</sup> considers The Government Communications Security Bureau and Related Legislation Amendment Bill to be intrusive. They claim there is no clear justification for the powers of the GCSB to be extended to include surveillance on New Zealand citizens and residents.

They further state that the extension of the GCSB powers are "inconsistent with the rights to freedom of expression and freedom from unreasonable search and seizure under the New Zealand Bill of Rights Act 1990 and with privacy interests recognised by New Zealand law."

New Zealanders should have the right to proper consultation about laws introduced by Parliament. In the case of the GCSB Bill we should be given more information about the operation of the law, how it will affect us, and the safeguards in place to ensure the powers of the GCSB are exercised properly so that our rights are not impinged upon.

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

No – because we should have a Constitution as the supreme law which has the Treaty of Waitangi as its founding principles.

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

The Courts should have the power to decide whether legislation is consistent with the Act for the following reasons:

- Judges are independent. The government cannot influence their decisions or easily remove them from office.
- Parliament has too much power because they can make laws about anything and everything, so long as a majority of members of Parliament support the proposal. The rushing through of

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<sup>1</sup> Source: [http://www.lawsociety.org.nz/law\\_talk/issue-823/expansion-of-gcsb-intelligence-gathering-is-intrusive](http://www.lawsociety.org.nz/law_talk/issue-823/expansion-of-gcsb-intelligence-gathering-is-intrusive)

the GCSB Bill is an example of how our fundamental rights can be undermined by "parliamentary supremacy".

## Treaty of Waitangi

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

The Treaty of Waitangi is widely recognised as the founding document for New Zealand.

The Treaty records an agreement that enabled the British to establish a government in New Zealand and confirmed to Māori the right to continue to exercise rangatiratanga.<sup>2</sup>

Sadly rangatiratanga is a highly contentious and misunderstood term – more work is needed so that wider NZ is able to understand its meaning in more modern and practical terms.

However as Justice Chilwell said in the High Court case of *Huakina Development Trust v Waikato Valley Authority* (1987) – "There can be no doubt that the Treaty is part of the fabric of New Zealand society".

I agree with Constitutional law expert Mai Chen that "it will be difficult to reconcile the interests of Maori with the rest of New Zealand in a written constitution".<sup>3</sup>

Whether NZ has one constitutional document or not, it is important that the fundamental essence of the Treaty is honoured.

It seems unfair to celebrate or promote select parts of Maori culture without recognising and giving full effect to the essence of the Treaty of Waitangi.

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

I think more discussion and consultation on this is required and this should happen once the Treaty settlement process is completed.

What does it mean at a practical level?

I agree with Constitutional law expert Mai Chen that "it will be difficult to reconcile the interests of Maori with the rest of New Zealand in a written constitution".

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<sup>22</sup> "The Treaty confirms rangatiratanga ... different hapū and iwi independently have and exercise rangatiratanga. Article II guarantees tino rangatiratanga, which is absolute authority for chiefs (or rangatira) to be chiefs and hold sway in their territories." Waitangi Tribunal *The Tāmaki Makaurau Settlement Process Report* (2007) p6.

<sup>3</sup> <http://www3.new.sco.nz/Treaty-of-Waitangi-a-brick-wall-Mai-Chen/tabid/1607/articleID/285788/Default.aspx>

Whether NZ has one constitutional document or not, it is important that the fundamental essence of the Treaty is retained and honoured.

It seems unfair to celebrate or promote select parts of Maori culture without recognising and giving full effect to the essence of the Treaty of Waitangi.

## New Zealand's Constitution

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

Why?

No.

While the sentiment is sound, it is not practical (and perhaps not affordable?). How will the essence of the Treaty of Waitangi be honoured and included? How will all the various legislation be reconciled?

The Treaty settlements process should be completed and the claims settled first – let us complete this process before we begin to consider a constitutional document (which may or may not include the Treaty).

Furthermore the discussion and consultation about a constitution for NZ should be separate to the wider issues being considered in the Constitution Conversation. Of course the Bill of Rights and the Treaty of Waitangi should be included in any constitutional debate. But we should have an opportunity to debate only the constitution and what it means for all New Zealanders.

It is a very complex issue – and there are several related matters that require more discussion. e.g. who should be head of state?

As a general matter, while the content on the Constitutional website pages is written in plain language (a good thing), I feel the on-page issues related to the constitution debate are both understated and oversimplified.

The detail is provided in the resources section – document titled "The Conversation so far" – this outlines the issues in greater depth and is also written in plain language.

However this content should be highly visible i.e. on page – and not hidden away in a (large) file for download (and printing?). Who is your target market?

I think significantly more work is needed to profile the constitutional issues raised in this document so that people are better informed on the breadth of the issues involved – before they make a submission on such a significant matter.

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

Only if the essence of the Treaty of Waitangi is retained and honoured within the constitution.

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

The Courts should have the power to decide whether legislation is consistent with any constitution for the following reasons:

- Judges are independent. The government cannot influence their decisions or easily remove them from office.
- Parliament has too much power because they can make laws about anything and everything, so long as a majority of members of Parliament support the proposal. The rushing through of the GCSB Bill is an example of how our fundamental rights can be undermined by "parliamentary supremacy".

END OF SUBMISSION

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## 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.

Paul Knight  
Levin  
New Zealand

261

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 12/04/2013 10:22 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Patricia Jacqueline Knight Organisation Name: Emai  
Phone Postal AddressA: Postal AddressB:  
Postal City: Auckland Postal Region: Auckland Postal Post Code: Postal Country:  
New Zealand Submission: Do you think our constitution should be written in a single document?

Yes - so that we all know what "the rules" are.

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

Yes - more permanent.

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

The Courts - more trustworthy than our MPs.

Sent on the 12 April 2013 at 22:22



2161

**From:** "Rodney Knight"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 10:51 a.m.  
**Subject:** CAP Submission

---

Abolish Maori seats- we are one people

---

Kind Regards,

Rodney Knight

4420"

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 11:50 a.m.  
**Attachments:** Jonny Knox\_ConstitutionalReview Submission\_30 Jul 2013.pdf

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

Full Names: Jonathan Birkett Knox Organisation Name: Email:  
Phone: Postal AddressA:  
Street Postal AddressB: Postal City: Auckland Postal Region: North Island Postal Post  
Code: Postal Country: New Zealand Submission: Submission Upload: Jonny  
Knox\_Constitutional Review Submission\_30 Jul 2013.pdf

Submitted on the 31 July 2013 at 11:49



July 2013

**Submitted by Jonny Knox**

*For consideration by the Constitutional Advisory Panel*

## The Importance of Individual Private Property Rights for New Zealand Citizens and Society

*"Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place". (Frederic Bastiat)*

### **1 Introduction**

The purpose of this short submission is to underscore the importance of private property rights as the cornerstone of what we commonly understand as „Western Civilisation“, in addition to furthering the protection of those selfsame rights under any potential change to the current constitutional arrangements of New Zealand.

The holding of private property by right has been a key factor in the development of free classical liberal societies and has been proven objectively superior to collective or communitarian ownership time and time again.

## 2 Why are private property rights so important?

Only the doctrinaire enemies of individual freedom and democracy at Nation State level dare doubt the efficacy of this concept, whilst simultaneously blinding themselves to the numerous disasters manifested by the often blood soaked experiments in collective ownership within the former Soviet Union, North Korea, South America and some of the world's less developed nations.

Today we again find ourselves walking, as F. A. Hayek might have said; towards the road to serfdom. My friends, this is not a road for free New Zealanders.

So what is the core reason or distinguishin g factor differentiating the absolute success or failure of these two opposing economic world views in this age old battle of rival *weltanschauung* ? The answer is as simple as it is human and can be found in the principle of personal incentive. It has been said that under the former Soviet system that "they would pretend to pay us and we would pretend to work"<sup>1</sup>, which whilst humorous also illustrates that those living under a collectivist ownership structure were themselves acutely aware that as a consequence of a poor state view of private property rights that they had no "skin in the game" and that their masters knew it – the triumph of dogma over reality.

When we turn again to our own Western tradition of robust protection and respect for private property rights we can see that without them free exchange between individual, group and state actors becomes impossible and that without them inextricably tied into our constitutional arrangements and enforced, that advanced economic development becomes unsustainable. New Zealanders need to know that they have "skin in the game", that their calculated risks and effort will be rewarded, that the fruits of their diligence will be protected by strong law and that they will have the freedom and incentive to cascade these fruits down through the generations of their people without fear.

*"It is of the essence of the demand for equality before the law that people should be treated alike in spite of the fact that they are different".*  
(Friedrich von Hayek, *The Constitution of Liberty*)

With these certainties guaranteed for all New Zealanders, ***irrespective of race, class or gender***, the benefits to our nation promise to underwrite a society of prosperous people with respect for the law of the land and for each other. It would be manifestly unjust to allow any radical departure from our long held cultural understanding of contractarian governance and deny New Zealanders the benefits of these rights, and consequently deny New Zealand society of subsequent economic development opportunities.

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<sup>1</sup> [http://en.wikipedia.org/wiki/Russian\\_political\\_jokes](http://en.wikipedia.org/wiki/Russian_political_jokes)

**3 How will the enforcement of strong constitutionally enshrined individual private property rights promote economic development for New Zealand?**

With robust individual private property rights enshrined in New Zealand law at the highest level:

- New Zealanders and overseas investors will have the confidence to invest their precious resources in New Zealand without any threat of confiscation by private or local/central state actors
- Resources will be used efficiently as it becomes possible/preferable to make long run decisions as opposed to inefficient short run decisions not designed to conserve future micro and macroeconomic resources
- The basis of exchange between individuals is iterative moving from the micro to the macroeconomic level as individuals choose to invest in capital goods (power, infrastructure, agriculture, commodities) and in so doing create the basis for the markets and stock exchanges critical for long term economic development
- New Zealand businesses and their investors will never fear either forced nationalisation or the arbitrary confiscation of their investments, which in turn will allow all parties the freedom to rationally gauge the current worth of their respective investment decisions and therefore determine whether it is the right decision

#### **4 Private Property Rights and New Zealand Law**

There are myriad examples of the failure to adequately endorse the notion of private property rights within New Zealand law. When one considers the Resource Management Act (RMA) is concerned primarily with people's private property and their use and enjoyment of same, some would find **it quite startling that in almost five hundred pages there is not one reference to property rights.**

The omission of robust protection for the very basis of a free society from such an important piece of legislation and for all subsequent abuses attributed to that omission, can only be remedied by the permanent establishment of the right of all New Zealanders to own private property and not be arbitrarily deprived of that property or any enjoyment derived from its use without full and fair compensation.

In conclusion, it has been said that without property rights no other rights are possible. Since we must sustain our lives by our own effort, the man or woman who has no right to the product of his or her efforts has no means to sustain themselves. The person who produces while others dispose of what they have produced is a serf.

Private property rights are not a guarantee to property ownership in and of itself, but they are a right to the action and the consequences of producing or earning that property and the right to gain, to keep, to use and to sell it.

Generations of New Zealanders have long held the dream of home ownership, a place to raise families and create a legacy that grows with each subsequent generation. From humble beginnings and countless hours of hard work they have added to the store of their substance and learned the lessons that life has taught them. Armed with these lessons they have embarked on the journey of small to medium enterprise, again adding to their store of knowledge and resources – creating employment and taxable income all the while. Taking these lessons further yet they reach higher and higher still to create larger and larger enterprises that benefit the nation whilst providing the employment that allows others to take their first steps as did their predecessors. These most natural of journeys should be applauded, protected and enshrined in any new constitutional arrangement.

4420a

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 11:54 a.m.  
**Attachments:** Jonny Knox\_ConstitutionalReview Submission\_30 Jul 2013.pdf

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

Full Names: Jonathan Knox Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: 41 Shortland Street Postal  
City: Auckland Postal Region: Auckland Postal Post Code: Postal Country: New  
Zealand Submission: Submission Upload: Jonny Knox\_Constitutional Review Submission\_30  
Jul 2013.pdf

Submitted on the 31 July 2013 at 11:53





July 2013

**Submitted by Jonny Knox**

*For consideration by the Constitutional Advisory Panel*

## The Importance of Individual Private Property Rights for New Zealand Citizens and Society

*"Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place". (Frederic Bastiat)*

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*"It is of the essence of the demand for equality before the law that people should be treated alike in spite of the fact that they are different".*  
(Friedrich von Hayek, *The Constitution of Liberty*)

With these certainties guaranteed for all New Zealanders, **irrespective of race, class or gender**, the benefits to our nation promise to underwrite a society of prosperous people with respect for the law of the land and for each other. It would be manifestly unjust to allow any radical departure from our long held cultural understanding of contractarian governance and deny New Zealanders the benefits of these rights, and consequently deny New Zealand society of subsequent economic development opportunities.

---

<sup>1</sup> [http://en.wikipedia.org/wiki/Russian\\_political\\_jokes](http://en.wikipedia.org/wiki/Russian_political_jokes)

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- The basis of exchange between individuals is iterative moving from the micro to the macroeconomic level as individuals choose to invest in capital goods (power, infrastructure, agriculture, commodities) and in so doing create the basis for the markets and stock exchanges critical for long term economic development
- New Zealand businesses and their investors will never fear either forced nationalisation or the arbitrary confiscation of their investments, which in turn will allow all parties the freedom to rationally gauge the current worth of their respective investment decisions and therefore determine whether it is the right decision

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There are myriad examples of the failure to adequately endorse the notion of private property rights within New Zealand law. When one considers the Resource Management Act (RMA) is concerned primarily with people's private property and their use and enjoyment of same, some would find it **quite startling that in almost five hundred pages there is not one reference to property rights.**

The omission of robust protection for the very basis of a free society from such an important piece of legislation and for all subsequent abuses attributed to that omission, can only be remedied by the permanent establishment of the right of all New Zealanders to own private property and not be arbitrarily deprived of that property or any enjoyment derived from its use without full and fair compensation.

In conclusion, it has been said that without property rights no other rights are possible. Since we must sustain our lives by our own effort, the man or woman who has no right to the product of his or her efforts has no means to sustain themselves. The person who produces while others dispose of what they have produced is a serf.

Private property rights are not a guarantee to property ownership in and of itself, but they are a right to the action and the consequences of producing or earning that property and the right to gain, to keep, to use and to sell it.

Generations of New Zealanders have long held the dream of home ownership, a place to raise families and create a legacy that grows with each subsequent generation. From humble beginnings and countless hours of hard work they have added to the store of their substance and learned the lessons that life has taught them. Armed with these lessons they have embarked on the journey of small to medium enterprise, again adding to their store of knowledge and resources – creating employment and taxable income all the while. Taking these lessons further yet they reach higher and higher still to create larger and larger enterprises that benefit the nation whilst providing the employment that allows others to take their first steps as did their predecessors. These most natural of journeys should be applauded, protected and enshrined in any new constitutional arrangement.

4088

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 29/07/2013 6:37 p.m.

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

Full Names: Russell Knutson Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal  
City: Hamilton Postal Region: Waikato Postal Post Code: Postal Country: New  
Zealand Submission: Your online submission web site is complete shit - If you won't allow autofill  
then say so upfront without forcing me to retype my submission your IT people are clearly completely  
incompetent and you have now missed my input.

I can not now support a constitutional review.

regards

Russell Knutson

Hamilton

Submitted on the 29 July 2013 at 18:36



## 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.

Michael Koefman  
Christchurch  
New Zealand



3263a  
**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 7/08/2013 4:30 p.m.

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

---

Full Names: Michael Koefman Email: Phone: Postal  
AddressA: Postal City: Christchurch Postal Region: Canterbury Postal Post  
Code: Postal Country: New Zealand Submission: We need to ensure human rights are  
upheld by our constitution. Currently the government is able to pass law which breaches our human  
rights obligations without review by a committee overseeing the legality of legislation. This has to  
change.

Secondly, I would add that the absolute independence of the reserve bank from parliament is  
necessary. It is most troubling that some political parties wish to dictate to the reserve bank.

Many thanks,

Michael Koefman

Submitted on the 13 June 2013 at 01:02



604

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 22/04/2013 2:42 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Mark Derick Kohai Organisation Name: Email: Postal  
 Phone: Postal AddressA: Postal  
 AddressB: Postal City: Whakatane Postal Region: Bay of Plenty Postal Post Code:  
 Postal Country: New Zealand Submission: In order to find true harmony in Aotearoa, One has to  
 acknowledge the founding documents and its legal applications the 1835 Declaration of  
 Independence, 1840 Treaty of Waitangi, 1858 Native Regulation Act and 1993/95 version of Te Ture  
 Whenua Maori/Maori  
 Land Act sec 2,3,5,12,35 in addition to Part 13. Throughout the British Monarch have maintained  
 through treaties and legislative protection by "Royal Decree" under Fiduciary Title [The  
 term fiduciary refers to a relationship in which one person has a responsibility  
 of care for the assets or rights of another person]. People Maori have overtime formed Body  
 Corporate Entities that are self governing which form part of the Upper House of Parliament which the  
 current govt are subordinate to and ignore

Since inception the NSW Settlers Parliament based in Wellington have lacked prerogative, unable to  
 restore confidence to People Maori and the British Monarchy with regard to legislation, hence this  
 governments appointed Judges inability to wear the red robes  
 of Westminster's House of Lords in its pseudo Supreme/Courts. Evident in the grievances in ongoing  
 and post treaty settlement claims with the Crown.

The "Law" let it be clear in the event there is conflict between Maori and the English  
 version of the preamble, the Maori version "Shall Prevail".

Many people assume Uniform Commercial Code [UCC] has no bearing on the People Maori this is a  
 lie from the pit of hell, simply where is the Bill of Sale/Purchase of the proposed asset for sale by this  
 Govt.

This govt incites hatred and discriminates against People Maori, in order to create deception a  
 strategy used by CIA. The teaching of Sun Tzu; Deception is the first sign of War. I will debate any  
 person ability regarding assets sold involuntary call a spade  
 a spade.

May God Save Our Queen

Sent on the 22 April 2013 at 14:41

4138

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 30/07/2013 9:12 a.m.

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

Full Names: Robert Kohler Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Auckland Postal Region: Postal Post  
Code: Postal Country: New Zealand Submission: What we have currently is not broken,  
therefore do not fix it.

The status quo provides the flexibility to evolve and is controlled by an elected parliament, whereas a written constitution will require endless reinterpretation by an unelected judiciary. No thanks.

Submitted on the 30 July 2013 at 09:11

1723

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 29/06/2013 11:39 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission  
**Attachments:** Submission J Koia Constitution2013.pdf

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

Full Names: Jason Matthew Koia Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City:  
Gisborne Postal Region: Postal Post Code: Postal Country: New Zealand  
Submission: Kia ora could you confirm the attachment has been received?

Naku na Jason Submission Upload: Submission J Koia Constitution 2013.pdf

Sent on the 29 June 2013 at 11:38





To the Secretariat,  
 Constitutional Advisory Panel  
 C/o Ministry of Justice  
 DX SX10088  
 Wellington

**RE: GENERAL SUBMISSION**

Tena koutou katoa,

**INTRODUCTION**

1. My full name is Jason Matthew Koia. I am a direct descendant of two signatories that signed Te Tiriti o Waitangi (ki te Tairāwhiti) at Rangitukia (Waiapu), East Coast of Gisborne in 1840. My ancestors were the Rangatira David (Rawiri) Rangi Katia, and Koiauruterangi. This submission is for and on behalf of the descendants of Rawiri Rangi Katia and Matenga Koiauruterangi.

**TE TIRITI O WAITANGI KI TE TAIRAWHITI (TE TIRITI)**

2. Te Tiriti is a contract between two natural hereditary sovereign, the Monarch (represented by Queen Victoria of England) and hapu (represented by the individual Rangatira of Aotearoa/New Zealand). The hereditary successors today are represented by Queen Elizabeth II, and the descendants of the Rangatira/hapu.
3. In short, Article I secured to the Queen of England a limited right of governance (kawanatanga) as outlined in the preamble for the maintenance of peace and good order (not regulation over property or resources). In other words, it guaranteed protection of both Maori and Pakeha, in particular the peaceful settlement of English settlers in exchange for hapu protection. This kawanatanga right was further limited to small areas of settler populations (wahi wenua), in order to control a 'worthless class of British subjects.'

On my arrival there in that year, I found that the Natives denied the right of the Government to send a Magistrate amongst them, on the ground that, as they had not sold their land to the Queen, the Government had no authority over them...In fact, they regarded the Queen as the head of a people occupying isolated portions of territory in the Island; with whom they had occasional intercourse: but as possessing 7 as of right 7 no authority over them<sup>1</sup>.

4. Article II, of Te Tiriti secured to the chiefs and their respective hapu their full pre7common law rights (tino rangatiratanga). This is defined as 'full rights, powers and privileges' prior to Te Tiriti. A pre7emptive clause to sell land exclusively to the Queen was also included.

<sup>1</sup> 12 Wardell to Native Secretary, 20 September 1861, *AJHR*, 1862, E77, p.31, see O'Malley. V. "Begging with a Bludgeon" 1996, page 5

5. Article III, secured to the hapu, royal protection and the rights to British courts and judges (after 6 February 1840). It did not make the hapu English subjects, but gave the same rights and privileges as English citizens.
6. The indigenous text (Te Tiriti) which did not cede sovereignty to England cannot be reconciled with the English text (in which Maori ceded without reservation all the rights and powers of sovereignty to the Queen under Article 1). The reason the indigenous text is different is because the English text if translated correctly would not have been signed.
7. Cox views that no 'formal proclamation of sovereignty over the northern districts was ever issued, as Hobson had to leave for the south in order to control the New Zealand Company settlers in Wellington.' Hobson on 21 May 1840 issued two proclamations of full sovereignty over all of New Zealand, which was published in the London Gazette on 2 October 1840.<sup>2</sup>
8. However, only the indigenous text (Te Tiriti) was solicited on the East Coast. The English text (the Treaty of Waitangi 1840) was not brought to the Tairāwhiti,<sup>3</sup> and therefore, logically not a valid treaty bound to the Tairāwhiti natives. In other words, the London Gazette 1840, was invalid, furthermore, my ancestors signed Te Tiriti in June 1840 (after Hobson's proclamation s).
9. The significance of my ancestors signing Te Tiriti was that their sovereignty at the time was full and undisturbed, with only a handful of settlers living under sufferance and under the law of our people, where the queen's writ or authority did not apply. Therefore, it is absurd to think that sovereignty (and any constitutional rights of present day) was ceded by my ancestors.
10. So what does this mean? This means, that as sovereignty was not ceded by my ancestors, I am a natural hereditary sovereign today. The evidence is in my whakapapa (native title) and Te Tiriti
11. This is to clarify that tangata whenua (the inherent sovereign) are not New Zealand citizens. They are a natural sovereign who have been occupying their natural lands prior to the word New Zealand being invented, or the treaty being promulgated.
12. This is also to clarify that tangata whenua are not the first sovereign peoples of New Zealand (although the Maori language is recognised as New Zealand's first official language), tangata whenua, at present are the only sovereign people of Aotearoa New Zealand. At no point and time has the New Zealand public or

<sup>2</sup> Submission on *New Zealand's Constitutional Arrangements*; Associate Professor Noel Cox, Discipline Chairman of Law, Auckland University of Technology, para's 194-195 (2005)

<sup>3</sup> Wai 900, # A11; Derby M. "Undisturbed Possession – Te Tiriti o Waitangi and East Coast Maori 1840-1865", July 2007, page 33

people of New Zealand in general proclaimed their sovereignty. Parliament may assert its sovereignty but sovereignty can only be held by the people.

#### THE CONSTITUTIONAL HISTORY OF NEW ZEALAND GOVT 1840-1865

13. Constitutional conspiracy began in 1840 with England wrongfully believing Maori had ceded sovereignty under the Treaty of Waitangi (English text). This is the fundamental error in which the Crown NZ today assumes its legitimacy.
14. As a result of the treaty the New Zealand settler government operated under Australian legislation.<sup>4</sup> In 1841 and 1844 a series of wasteland ordinances (that were not applicable to New Zealand) were also implemented.<sup>5</sup>
15. As a result of national tensions (settlers wanting prime lands classed as wastelands), the House of Commons debate in 1845 led to the 1846 "New Zealand" Charter (UK) and accompanying Royal Instructions (Imperial), which England granted self governance to the settlers of New Zealand.

"two London legal advisors commissioned by the Aborigines Protectorate Society, Shirley F. Woolmer's "opinion was that the Crown rights in the matter of land title had to be upheld, but both of the Crown of England, and of the Natives of New Zealand must ascertain. Moreover, the Maori people 'being the ceding party...their sense ought to govern the interpretation'. Joseph Phillimore was even more explicit. He stated; that the Treaty of Waitangi is of binding obligation on the two contracting parties, and that it is to be considered as the cornerstone, on which all of our relations, with the Islands of New Zealand, must be founded."<sup>6</sup>

16. The government knowing of a native violent backlash, and the controversial land acquisition sections of the Charter, printed repeated promises of "good faith". Governor Grey feared the attempt of the Charter would result in War, whilst settlers in Auckland petitioned not to introduce the Charter.

In terms of the larger issue of representative self-government provided for in the Constitution Act 1846, he [Grey] successfully argued that the colony was not ready for change, primarily on the grounds that Maori would not submit to the political dominance of a handful of Pakeha (p32).<sup>7</sup>

17. Over the next 6 years, the settler government continued to build its administration by profiteering off Maori taxes, tariffs, trade and unscrupulous land deals. In 1852 New Zealand colony adopted the Constitution Act (UK), which set up a provincial colonial government. Parliament's powers were limited by section 53 of the New Zealand Constitution Act 1852 to the "peace, order and good government". Although the 1852 Act had no valid application over the sovereign

<sup>4</sup> 1840 New South Wales New Zealand Act (adopted NSW law)

<sup>5</sup> 1841 Land Claims Ordinance, 1842 Australian Wastelands Act (to apply to the land of New Zealand), and 1844 Ordinance No 3

<sup>6</sup> Orange C. *Treaty of Waitangi*, page 130

<sup>7</sup> Luiten J. "Local Government on the East Coast", Wai 900, # A69, August 2009

territory of the East Coast district, for the next 13 years tensions grew as Maori held control of economics and refused to sell land.

#### THE CONSTITUTIONAL HISTORY OF NEW ZEALAND POST 1865

18. It was at this period of time when England reneged on Te Tiriti and devolved its Native Affairs protectorate duty to the settler government knowing full well of land confiscating intentions.<sup>8</sup> This opened up the door for domestic colonisation. The government did so by using the death of Volkner as an excuse to launch its suppression rebellion campaign<sup>9</sup> against all of those faiths (Maori) that opposed Queen authority.<sup>10</sup> With intentions to establish British rule and confiscate land, this led to the atrocities caused upon East Coast Maori (Pai marire faith) in 1865.

The outcome of the conflict [1865 suppression rebellion] brought a sea7change to the coast, which was not lost on Donald McLean, the government's agent provocateur on the scene: "The several successful engagement's...will I feel assured be the means of enabling the Govt in conjunction with our Native allies to establish British authority along the whole line of coast from Hicks Bay on the East to Uawa or Tolaga Bay on the South (Luiten, p52)."<sup>11</sup> [My insert]

19. What we can ascertain, is that British rule (in a limited form) was established on the East Coast after and as a result of the 1865 suppression rebellion, when the settler Parliament hungry for land and power colluded with loyal allies such as Ngati Porou, and supplied them with Crown militia and weapons to eliminate their own race that would not come under the authority of the Queen and Church.
20. In other words, British rule was not acquired under the treaty of 1840, but eventually established as a result of tyranny in 1865 (in breach of Te Tiriti). But sovereignty cannot be ceded under tyranny.
21. At present there is no indemnifying Act for the government endorsed raids. Nevertheless, the settler government and settlers who at this time had established themselves would no longer need their empowering Monarch to create their constitutional affairs.
22. Constitutionally speaking, there is no point in time that the Crown can define by providing legitimate evidence when it acquired sovereignty unbroken to this present day. This includes New Zealanders in general.
23. There has been an argument of acquiescence, (a slow session of sovereignty over time by Maori). Ngati Porou is one example of yielding to the Queens authority.

<sup>8</sup> Cardwell to Grey, 26 April 1866, AJHR, 1866, a71, pp52-55

<sup>9</sup> See Subasic. E. Wai 900 #, A 28, East Coast Wars and Aftermath Scoping Report, August 2007, page 72

<sup>10</sup> When promulgating the treaty Hobson gave a verbal promise that all faiths would be tolerated.

<sup>11</sup> Luiten J.- "Local Government on the East Coast" (see Subasic, Scoping Report - EAST COAST WARS and AFTERMATH p116)



But this argument fails if a treaty guarantee's protection from alien domination and forced assimilation.

24. The Colonial Laws Validity Act was adopted by the NZ colonial government in 1865. The Act conferred upon all self-governing colonies a clear power to alter their own constitutions. However, the imperial Parliament (UK) still retained its supreme legislative status over its settler colony.
25. In 1907<sup>12</sup> England granted NZ Dominion status (English colony taking steps to independence and still subject to English law). However, England did not have the legitimate constitutional power to usurp the sovereignty of my ancestors and replace it with a colonial dominion. A sovereign cannot pass law over another.
26. In 1931 British Parliament drafted the Statutes of Westminster for New Zealand. This was adopted by New Zealand in 1947 (The NZ Statutes of Westminster Adoption Act 1947<sup>13</sup>). After the adoption by New Zealand in 1947<sup>14</sup> of the Statute of Westminster, in order to access the "request and consent" procedures provided by section 4 of the Statute 1947, the UK Parliament, at the request of Parliament NZ<sup>15</sup>, passed a Constitution Amendment Act 1947(UK) authorizing the Parliament of New Zealand to amend any of the provisions of the 1852 Act.
27. However, in 1967 the sovereignty of the New Zealand Parliament was placed in doubt [*R v Fineberg*.<sup>16</sup>]. In 1973 due to doubts that NZ Parliament had the rights to make full laws and powers, the New Zealand Constitution Amendment Act 1973 was passed. Section 2 amended section 53 of the original 1852 Act granting "full power to make laws". Cox views the original section 53 that limited Parliament's powers, could not have grown into "full powers" without the intervention of foreign law (the United Kingdom).
28. The embarrassment of New Zealand trying to legitimize its constitutional status from erroneous processes continued in 1983 when the NZ Parliament adopted English Letters Patent 1917/1918 (UK) (constituting the Governor General), revoked the said Letters Patent 1917/1918 and gave NZ Parliament the power to create Letters Patent NZ 1983. Under the now Letters Patent 1983 (NZ), members of the Executive were to be members of NZ Parliament, who had placed themselves above the Governor General as advisors (adoption and usurpation).
29. In 1986 David Lange (via G Palmer) amended the newly invented Letters Patent 1983, by revoking clause VIII and substituting the Executive known as "the

<sup>12</sup> A Royal Proclamation granting New Zealand Dominion status was issued on 9 September 1907 (Letters Patent).

<sup>13</sup> The need to clarify limitations on the legal powers of Parliament to legislate, rather than a desire for greater political independence, was the principal motivation for the adoption of the Statute of Westminster 1931 [Cox]

<sup>14</sup> Note: NZ Acts after 1947 were still referring to NZ as a Dominion.

<sup>15</sup> The NZ Constitution Amendment (Request and Consent) Act 1947

<sup>16</sup> [1968] NZLR 119 per Moller J.

Crown” to be members pursuant to section 6 of the 1986 NZ Constitution Act<sup>17</sup>. According to section 6 of the 1986 Act only members of the NZ Parliament could be a member of the Executive or Minister for the Crown (NZ). This is how constitutionally the Parliament became the Crown, and pretends to be Queen Elizabeth II as sovereign in right of New Zealand.

30. The 1986 Act (NZ) self-proclaimed<sup>18</sup>, repealed the 1852 Constitution Act (UK), the Statutes of Westminster 1931 (UK), the Statutes of Westminster Adoption Act 1947 (including the NZ Constitution Amendment Act Request and Consent),<sup>19</sup> the NZ Constitution Amendment Act 1947, and the NZ Constitution Amendment Act 1973, effectively severing Parliament from its own origin and basis of sovereign authority.
31. As a result, the Queen purports to be a constitutional sovereign only for New Zealand.<sup>20</sup> The Queen is no longer a natural sovereign or bound to Te Tiriti. If this is the case, then when a contracting party to a treaty reneges on it, the treaty becomes null and void. Henceforth the present Crown NZ has no constitutional right to rule over Maori. Ultimately, Queen Elizabeth II of England, as a self imposed constitutional sovereign of New Zealand, is now liable for constitutional fraud, alien domination and the usurpation of a natural hereditary sovereign (tangata whenua).<sup>21</sup>
32. These constitutional processes adopted by the Crown NZ (not a natural hereditary sovereign either) are so absurd, what we have in reality is a colonial parliament impersonating the Queen, empowered by illegitimate processes.
33. The problem with this Crown Parliament NZ (executive branch), is that it has made itself a supreme sovereign by subjugating its judicial branch (the NZ courts) to protect and legitimize Crown assumptions of its supremacy. Section 3(2) of the Supreme Court Act 2003 adequately demonstrates this.<sup>22</sup>

<sup>17</sup> Created by G. Palmer 7 Deputy Prime minister NZ labour government.

<sup>18</sup> The NZ Constitution was established without consultation or referendum. Section 5(1) of the 1986 Act adopted English sovereignty succession in accordance with an enactment of the Parliament of England (the Act of Settlement – 12 & 13. Wil. 3, c. ). Legality based on s 15(2) of the 1986 Act could not be said to be based on an uninterrupted chain of legal processes (Noel Cox)

<sup>19</sup> Section 26(1) of the 1986 Act declared that the 1947 Act “shall cease to have effect as part of the law of New Zealand”, despite the fact that no power was conferred on the New Zealand legislature, either by the Act of 1947 or any Act of the United Kingdom Parliament, to repeal the Act of 1947 itself.

<sup>20</sup> Personal correspondence from Buckingham Palace 30 August 2006

<sup>21</sup> The Human Rights Act (UK) 1998 enables claims against the Queen, and is bound to the European Court of Human Rights. Although the Supreme Court Act (NZ) 2003 ended the rights of Maori to bring litigation proceedings before the Privy Council (UK) Article III of Te Tiriti cannot be repealed by NZ law, and therefore Maori should look at the possibility to take proceedings before the European League of Nations, if not the World Court of Human Rights.

<sup>22</sup> “Nothing in this Act affects New Zealand's continuing commitment to the rule of law and the sovereignty of Parliament.”



34. The reason for such tyranny is because the Crown NZ is afraid of legitimate challenges by tangata whenua under Te Tiriti. The evidence in the Crown failing to take on board several UN recommendations to grant the Treaty of Waitangi Tribunal with binding powers<sup>23</sup> adequately demonstrates the Crown has no intentions of recognizing or honouring Te Tiriti. Furthermore, the airy fairy “principles of the Treaty of Waitangi,” are only an appeasement to keep uninformed Maori complacent and avoid the real issue of *contra proferentum*, contract/treaty law and the letter applied therein.
35. Treaty settlements are also politically designed to extinguish treaty rights, not recognise them. When all claims are settled, Te Tiriti (indigenous text), effectively becomes annulled, in which the government for all “New Zealanders” intends to create its own legitimate independence. This however, can only be accomplished if the acts of cession from treaty settlements were legitimate to start with in the first place. There are various processes that make treaty settlements invalid, and it is also acknowledged by the judicial that settlements are more political in nature, but this subject is not for the purpose of this submission.

#### TE TIRITI O WAITANGI AND COMMON LAW RIGHTS

36. Take away the treaty, and you take away any right of government to operate. It's as simple as that. The constitutional status of New Zealand would go back to a republic of the confederation of chiefs and independent tribes of New Zealand. This is why the government and New Zealanders need the Treaty of Waitangi (English text), to validate themselves and to eliminate or cancel out indigenous rights under Te Tiriti (indigenous text).
37. What is significant about the East Coast is that it is still predominately a Native District, where descendants of customary land owning tribes (Ruawaipu, Uepohatu, and Hauiti) still occupy their traditional lands unbroken today. It is important to note, constitutionally speaking, that common law has no jurisdiction to define indigenous rights, or limit them under a colonial power regime. The jurisdiction of common law regarding pre7common law rights is one only of recognizing and protecting. Furthermore, New Zealand common law derives its jurisdiction from Te Tiriti, and therefore cannot supersede it.

That nothing in the said charter contained shall affect or be construed to affect the rights of any aboriginal natives of the said colony to the actual 7 occupation or enjoyment in their own persons, or in the persons of their descendants, of any lands in the said colony then actually occupied or enjoyed by such natives” –Queens Instructions s37, December 1840 [*My underlining*]

“The Privy Council held that Indigenous customary law to be enforceable legal rights in the ordinary Courts, irrespective of whether or not the Treaty of Waitangi or the Principles have been expressly incorporated into legislation”<sup>7</sup>[*Oyekan v Adel*].

<sup>23</sup> E/CN.4/2006/78/Add.3 7 March 2006, Para 89 & CERD/C/NZL/CO/17, 15 August 2007 para 18

38. New Zealand domestic statute of today recognises all legitimate rights (including international covenants agreed to by the government), in particular Te Tiriti whether or not such rights are explicitly incorporated into New Zealand statute.

28. Other rights and freedoms not affected

An existing right or freedom shall not be held to be abrogated or restricted by reason only that the right or freedom is not included in this Bill of Rights or is included only in part. [Clause 28 7 New Zealand Bill of Rights Act 1990]<sup>24</sup>

39. It is important to note, that although the New Zealand government does not recognise international law and covenants it has entered into as supreme (although it's founding powers and functions derive from Westminster statute and English Letters Patent), clause 4 of the NZBORA forces the courts of New Zealand to comply with any enactment passed by Parliament. This means the New Zealand government is exempt from complying with clause 28 of its own 1990 statute.

#### THE CRUX OF NEW ZEALAND'S CONSTITUTIONAL STATUS

40. The crux of NZ constitutional status all hinges on the status of the treaty. Debate in the 1840's in England on indigenous having the right of interpretation, and the international rule of *contra proferentum* in which the indigenous text prevails where there is ambiguity, all lead to the question as to why the differences and meaning of two Treaties of Waitangi has not been resolved. Although the Waitangi Tribunal has authority to determine issues raised between the two texts under section 5(2) of its governing statute (the Treaty of Waitangi Act 1975), the Tribunal again, has no binding powers on the Crown, and the judges are not competent to deal with the matter.
41. Section 2(3) of the Ture Whenua (Maori Land Act) 1993 does adopt the rule of *contra proferentum* when determining the meaning of its preamble, but section 3(2) of the Supreme Court Act effectively overrides any interpretational challenges of the 1993 Act.
42. The issue between the two treaties has been deliberately avoided by the NZ judicial and executive. This is because, if the rule of *contra proferentum* is applied, and the fact that the English text was not signed by a majority of Rangatira, which makes this version null and void, the New Zealand government would effectively have to recognise Te Tiriti as the prevailing treaty. The ramifications of acknowledging the status of Te Tiriti (indigenous text) as the prevailing treaty would mean England, and its Crown NZ would and have to re7 write its constitutional status to ensure its powers were limited and subject to Te Tiriti. This will never happen as it is the majority of Pakeha with business interests who influence Parliament that need Treaty rights for Maori eliminated. Thus, Te Tiriti rights and freedoms continue to be denied at present.

<sup>24</sup> Clause 28 of the NZBORA was originally intended to be a Treaty clause.

## UNITED NATIONS

43. The UN Economic and Social Council Report of the Special Rapporteur, Rodolfo Stavenhagen in March 2006, made some of the following recommendations;

- Building upon continuing debates concerning constitutional issues, a convention should be convened to design a constitutional reform in order to clearly regulate the relationship between the Government and the Maori people on the basis of the Treaty of Waitangi and the internationally recognized right of all peoples to self-determination.
- The Treaty of Waitangi should be entrenched constitutionally in a form that respects the pluralism of New Zealand society, creating positive recognition and meaningful provision for Maori as a distinct people, possessing an alternative system of knowledge, philosophy and law.
- The Waitangi Tribunal should be granted legally binding and enforceable powers to adjudicate Treaty matters with the force of law.
- The New Zealand Bill of Rights should be entrenched to better protect the human rights of all citizens regardless of ethnicity or race.

44. The UN Committee on the Elimination of Racial Discrimination (CERD) Report on 15 August 2007 outlined concerns and recommendations. Some are as follows;

The Committee, having taken into consideration the explanations provided by the State party, remains concerned that the New Zealand Bill of Rights Act (NZBORA) does not enjoy protected status and that enactment of legislation contrary to the provisions of that Act is therefore possible. The Committee considers that the requirement whereby the Attorney-General may bring to the attention of Parliament any provision of a Bill that appears to be inconsistent with the NZBORA is insufficient to guarantee full respect for human rights, in particular the right not to suffer from discrimination based on race, colour, descent or national or ethnic origin. The Committee recommends that the State party seek ways of ensuring that provisions of the Convention are fully respected in domestic law (para 12)

The Committee encourages the State party to continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm. The State party should ensure that such debate is conducted on the basis of a full presentation of all aspects of the matter, bearing in mind the importance of enhancing Crown/Maori relationship at all levels and the enjoyment by indigenous peoples of their rights (para 13). *[My emphasis added]*

The Committee recommends that the State party consider granting the Waitangi Tribunal legally binding powers to adjudicate Treaty matters. The State party should also provide the Tribunal with increased financial resources (para 18)

45. The UN Human Rights Council Report by James A'anaya 31 May 2011 also made recommendations, including the following;

73. ....The Government should take special measures to address the concerns of the Ruawaiapu, Ngati Uepohatu and Te Aitanga-a-Hauiti iwi, in relation to the East Coast District settlement case.



77. The principles enshrined in the Treaty of Waitangi and related internationally protected human rights should be provided security within the domestic legal system of New Zealand so that these rights are not vulnerable to political discretion....The Special Rapporteur encourages the Government to open up discussions with Maori as soon as possible regarding the constitutional review process.

46. Since these UN concerns and recommendations,<sup>25</sup> the Crown refuses to grant the Waitangi Tribunal with binding powers, and the Crown's response to my Wai 1862 Ruawaipu claim on behalf of my ancestors Koiauruterangi and Rawiri Katia (a claim against treaty settlement policy), was to settle my claim without consent, and assimilate all Ruawaipu claims by force under its Ngati Porou ally, and pass a Ngati Porou Settlement Act in 2012. This 2012 Act blocks all courts and tribunals of New Zealand from inquiring into the validity of the settlement.
47. Regarding the Bill of Rights 1990, Ruawaipu members, in particular my brother Henry Koia made complaints that the Ngati Porou settlement process breached the Bill of Rights, and human and indigenous rights pursuant to international declarations. The Crown at its own discretion, viewed to the contrary.
48. Nevertheless, from my understanding there are two recommendations from the UN. (1) discussions on the status of the Treaty of Waitangi, and (2) the role of the Treaty of Waitangi within New Zealand's constitutional arrangements.

#### THE GOVERNMENTS CONSTITUTIONAL REVIEW PROCESS

49. The Constitutional Advisory Panel (CAP) was established from an agreement between the National Party and the Maori Party in November 2008. The Terms of Reference for this committee includes the role of the Treaty of Waitangi within New Zealand's constitutional arrangements. The Panel has no terms for determining the status of the Treaty of Waitangi.
50. The first stage of any New Zealand constitutional review process should first and foremost be a discussion on the status of the Treaty of Waitangi. It is only from that discussion, that the position of the Treaty of Waitangi can be identified, and how its role can be properly applied within New Zealand's proposed constitutional arrangements.
51. To deny this fundamental process, is to deny the truth in fear that the indigenous text will be given weight to as the prevailing and valid treaty.

<sup>25</sup> The Crown has however repealed the Foreshore and Seabed Act 2004 (a common concern throughout all three UN reports), and replaced it with the Takutai Moana Act 2011 which does not recognise tino rangatiratanga, and intends to process marine and customary title determinations without determining which is the prevailing treaty to make such determinations from in the first place.

52. However, there are two processes if the government intends to avoid determining the status of the treaty. The first is to obtain the free, prior and informed consent of the tangata whenua. As previously mentioned, the CERD was quiet clear in its approach. In particular that all relevant information is given on the matter. It is only by receiving all relevant and full information that the free, prior and informed consent can be obtained.

53. Normanby's 1839 instructions to Hobson set's a fiduc iary benchmark. There are three key points in regards to the tangata whenua; (1) our sovereignty is indisputable, (2) informed consent must be obtained, and (3) the natives cannot enter into any contract that undermines their own rights.

...in thinking that the increase in national wealth and power, promised by the acquisition of New Zealand, would be most inadequate compensation for the injury which must be inflicted on this kingdom itself by embarking on a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people whose title to the soil and to the sovereignty to New Zealand is indisputable and has been solemnly recognised by the British Government..... The Queen, in common with Her Majesty's predecessor, disclaims for herself and Her subjects every pretension to seize on the Islands of New Zealand, or to govern them as a part of the Dominions of Great Britain unless the free intelligent consent of the natives, expressed according to their established usages, shall first be obtained..... All dealings with all the Aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of her Majesty's sovereignty in the Islands. Nor is this all. They must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves.<sup>26</sup>  
[My underlining]

54. Free, prior and informed consent is also a process recognised by common law, and of course international law.

"Native customary rights continue unless and until they are extinguished explicitly by statute and the natives freely consent to such extinguishment" [The Queen v Symonds 1847]

55. Maori when agreeing to any constitutional arrangements that may limit, or undermine their Te Tiriti rights and freedoms must give informed consent in order for the constitution to have any valid application over them.

56. Consultation is not informed consent, therefore, this would mean that all Maori via due process must be fully informed about the status of the treaty, including the ramifications if Te Tiriti is or is not recognised as the prevailing treaty. This

<sup>26</sup> Instructions of Lord Normanby to establish a Treaty (of Waitangi) to Consul Hobson 14 August 1839

includes how Maori rights may be abrogated under a new proposed constitution for New Zealand, and a formal written process where informed consent by Maori (after a full presentation of all aspects of the matter) have been acknowledged.

57. The second process is of course for the Crown to ignore the first process, but runs the risk of enduring litigation, and having to compensate Maori for the loss of any rights and full entitlements secured under Te Tiriti.

"To the extent that those customary and aboriginal title rights still exist ... it may well be that it is not only unnecessary to extinguish them but vastly better to actually recognise them and put them into practice in today's world. That was the conclusion of the royal Canadian commission of inquiry on aboriginal rights in Canada... If we wish to extinguish those rights – if that were thought to be necessary – then not only would we have to settle historical claims where they have been breached and pay compensation appropriate to that, but we would also have to pay compensation for the taking away of the rights, which could be done only with the consent of Māori unless it were in the national interest and we would have to pay compensation after due consultation."<sup>27</sup>

58. The Crown may argue that such rights have been settled under the Treaty of Waitangi claims settlements. I would argue the iwi leaders who engaged in the process, apart from committing treason on their own tribes and acquiescing by a formal act of cession, did not have either the intelligence or integrity to realize that these partial settlements that only gave a limited and fractional amount of redress and compensation (in breach of international law), was not only injurious to Maori, but also invalid, as all treaty settlements to date are done so under the assumption that the Crown is sovereign in right under the English text. As previously explained, the treaty 'principles' are a guise to avoid the real issue of *contra proferentum*.
59. The Gisborne Waitangi Tribunal inquiry is a classic example, where the English text was not solicited, yet not one lawyer (for the Crown and claimants), or panel member of the Tribunal (including the Presiding Officer) queried the unique position of the Tairāwhiti treaty, or sought clarification on what is the actual status of the Tairāwhiti treaty (indigenous text), and if the Tairāwhiti treaty signed should prevail as the only version, to determine claims and settlement.
60. Furthermore, a treaty settlement can only be settled between the contracting parties. The Crown NZ is not a party. However, Queen Elizabeth II, as she has never formally renounced her obligations towards the treaty, had the responsibility to ensure her colonial administration did not induce Maori into injurious contracts, including acts of cession. As a result, it can hardly be said that treaty settlements in the past and present are legitimate.

<sup>27</sup> Diana Pickard, Human Rights Commission Submission on the Foreshore and Seabed Bill 2004

## CONCLUSION

61. The Crown NZ, albeit a legal fiction or fanatical doctrine based on the Christian faith, should not establish another regime, that again denies treaty rights (including pre-treaty). This would only continue the injustice that Maori have had to endure since the signing of the treaty. One injustice should not create another.
62. Any constitution of New Zealand, if it involves the treaty cannot proceed until the treaty and its status has been clarified.
63. The government could ignore determining the treaty and its status (and the issues between the two texts), as it has done so in the past. But any New Zealand constitution arrangement that assimilates tangata whenua into its regime without the free, prior and informed consent and adequate compensation awarded for any abrogation of rights, cannot have any legal or valid application. Having said that, all law in breach of the treaty can have no valid application.

## RECOMMENDATIONS

64. That the status of the treaty must be determined before any constitutional arrangements are made. This includes a determination as to which text is the prevailing text (as both are irreconcilable).
65. Tangata whenua are a natural hereditary sovereign, and not New Zealanders. Therefore any New Zealand constitution should proceed with caution as to not override any inherent rights of tangata whenua, and ensure a veto mechanism is implemented for tangata whenua protection.
66. That full aspects on the matter of the treaty and constitutional arrangements are given and appropriate processes of informed consent are obtained from Maori.
67. That section 4 of the New Zealand Bill of Rights Act 1990 and section 3(2) of the Supreme Court Act 2003 be repealed and any other piece of legislation whether in whole or in any part that is injurious to tangata whenua or fails to ensure appropriate protection and compliance with Te Tiriti rights.

Noho ora mai

\_\_\_\_\_  
Dated this 29<sup>th</sup> day of June 2013

Jason Koia

Gisborne

Ph

Email





2481

**From:** "Kym Koloni"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 9:52 a.m.  
**Subject:** CAP Submission

Abolish the Maori Seats - they are Racist

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Kind Regards,

Kym Koloni

2239

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 2:51 p.m.  
**Subject:** CAP Submission

z>

Re CAP submission.

My views on this matter are pure and simple and based on my belief in the equality of all people, their democratic rights, their freedom and free enterprise.

I am attaching an essay a copy of a chapter of a book I am writing to show my thoughts and convictions on this matter.

Yours sincerely

John Konings

TOWARDS A NEW SOCIETY  
REQUIREMENTS TOWARDS A BETTER SOCIETY

FIRST AND FOREMOST - A NATION NEEDS TO BE A SOCIETY, I.E.

1. A COMMUNITY BASED ON DEMOCRATIC PRINCIPLES AND SYSTEMS.  
I.E ONE QUALIFIED CITIZEN, ONE VOTE FOR ONE QUALIFIED CANDIDATE, NOT TO  
BE APPORTIONED OR SPLIT OR MANAGED IN ANY WAY TO ADVANCE PARTY  
INFLUENCE.

The voter to select and assure the above and prevent the current practice in  
some countries of party leaders and controllers manipulating the system by appointing ministerial  
and government positions, but on free vote selection, which is the purpose of free elections.

2. FOUNDED ON: A WRITTEN CONSTITUTION ARRIVED AT AND ACCEPTED BY  
NATIONAL DEMOCRATIC AND BINDING REFERENDUM OR REFERENDA.
3. THIS CONSTITUTION MUST GUARANTEE THE FOLLOWING, REGARDLESS OF  
RACE, GENDER, CREED, EDUCATIONAL OR WEALTH LEVELS TO ALL IT'S  
CITIZENS.
  - a. EQUALITY BEFORE, AND ACCES TO, THE COUNTRY'S LEGAL SYSTEM
  - b. FREEDOM OF SPEECH AND EXPRESSION
  - c. FREEDOM OF ASSOCIATION
  - d. FREEDOM OF MOVEMENT
  - e. RIGHT TO OWNERSHIP OF GOODS AND PROPERTY, JUSTLY ACQUIRED
  - f. RIGHT TO EDUCATION FOR ALL CITIZENS
  - g. RIGHT TO MEDICAL AND SOCIAL CARE FOR ALL
  - h. RIGHT TO FREE ENTERPRISE
  - i. SEPARATION OF CHURCH AND STATE

1.The earth is the only source of any material used in the manufacture of anything and is finite, and, is  
in essence free of cost.

2. The only cost is that of the addition of labour in all its forms.
3. A legal system that guarantees and provides equality, availability, affordability, and accessibility to all by way of a written constitution which guarantees each citizen's rights and duties.
4. The absolute need for an electoral system that is democratic in the best sense of the meaning of the word.
5. The sole right to issue money and manage the operation of the financial structure in total by parliamentary regulated control.
6. This to be preceded by the total abolishment of the country's current currency and the abolition or nationalization of existing financial institutions.
7. This is to be immediately followed by the replacement and issue of two separate currencies, one to serve the nation's internal transaction system and the other to serve the nation's external transactions.
8. The setting-up of an overarching, i.e a controlling state banking system subject to parliamentary control which will operate a two tier system of functions i.e, one system to be an internal one and the other to be an external system to cover, as the word implies, the administration of all externally derived funds and external payment transactions.  
The establishment of a national retirement system that will give every qualifying citizen a guaranteed income regardless of income and savings up to a certain level. See supplementary suggestion in item 20

The establishment within the internal banking system of a savings bank into which any and every citizen can deposit their financial assets and from which they can operate as with any bank account, but all of which will exclude paying of, or the receipt of interest but where an absolute guarantee will safeguard their money.

Read supporting the article;

## 1.ABUSE, POWER, POLITICS, FINANCE. RELIGION. IGNORANCE

10. The value of current accounts, cash, shareholdings titles and other assets can be left or deposited in the internal bank system and a bank receipt issued to the owners so that a statement of assets can be made up in due course so that together with IRD records they will form the basis of financial history and the status of the holder as from that assessment and change-over date .

11. I would hope that in as reasonable time as is possible that citizens will accept the idea and practice of having a standardized cash card for all transaction, potentially even the smallest.

12. New Zealand has a bad record for saving which can be overcome by this formation of a centralized system which will advise the citizen of his or her financial position at every expenditure, it will produce a total financial record and thus provide a credit worthiness and financial ability to service a loan so that an incentive to save is created.

The removal of the concept of interest and substitution of service fees to cover costs only, will allow people to buy or built their own home in a short time, it will drastically lower the total cost and bring home-ownership within reach of every working family.

13. These measures will remove the distorting of investment and other speculative markets or ventures markets like a speculative property market and make for a socially better and happier and more stable and more self-reliant communities and drastically reduce the national debt in that the interest financing is avoided, particularly of overseas funds. It will encourage saving and self-worth. There will always be people who for various reasons are unable to make their own decisions and these would have to be educated or cared and possibly catered for.



14. The two tier financial system will have as it's immediate effect the closing of opportunities of crime related financially activities and transactions, especially the money laundering and illegal international transferring of funds as well as allow the control and removal of tax evasion, also elimination of illegal transactions particularly in criminal activities all of the foregoing will have wide ranging benefits for the whole country.

15. It will reduce the activities of large monopolies, conglomerates, cartels and the like which are responsible for the suppression of competition and loading of finance costs on products throughout commercial activity.

16. Overall, the proposed changes will produce fundamental changes in societies not the least which is the opportunity to simplify the entire country's administration, regulations, legal systems etc, etc.

17. Benefits are that people will have to take responsibility for their own actions, earnings and expenditures and develop self reliance and thereby gain self respect and appreciation of values and at the same time also reduce the effect of the sick credo that "greed is good" , and all of this can only lead to self respect and better societies.

18. It is absolutely essential that it is realized that we cannot consume with impunity, that you can only consume what you produce and that over-consumption is at the cost to future generations.

19. It is considered that the above will curtail rampant marketing, production and wastefulness and so curtail the excessive exploitation of natural and human resources.

Supplementary suggestion to item 8

The suggestion here is for a superannuation scheme is, that it be compulsory for every citizen regardless of income and that any private savings are for a citizens own disposal as they see fit.





## 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.

Ja Bin Koo  
North Shore  
New Zealand