

2037

From: "Eugene mabille" <
To: <constitutionalreview@justice.govt.nz>
Date: 2/07/2013 6:21 p.m.
Subject: CAP Submission

Hi

I think it is high time that the Maori seats be abolished, its a great cost to the country and after all its more than 170 years ago since we made the deal. Nobody holds to a contract that long. I mean it is 5 generations later !!!! Let them work for a change like we all have to do

Eugene Mabille

Silverdale

4869

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 31/07/2013 5:00 p.m.
Attachments: Submission to ConstitutionConversation.docx

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

Full Names: Nic MacArthur Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB:
Postal City: Dunedin Postal Region: Postal Post Code: Postal Country: New
Zealand Submission: Submission Upload: Submission to Constitution Conversation.docx

Submitted on the 31 July 2013 at 16:59

SUBMISSION FOR THE CONSTITUTIONAL CONVERSATION

Nic MacArthur

31 July 2013

Summary

1. My particular concern is with majoritarian law making in Parliament but I also present some views on the Treaty and other matters. I support an entrenched and superior Bill of Rights. I do not see the Treaty as a suitable instrument for a future constitution.

Bill of Rights

2. Increasingly, in spite of MMP, the National government is passing legislation by such tactics as:

- Forcing controversial legislation through under urgency; and associated with that, by calling debates when the House has not had any opportunity to read the given Bill and or when reports required to support a Bill and stated to be available are not available
- Subverting select committee reviews by restricting their time and access to documentation
- Not providing Regulatory Impact Statements or redacting to meaninglessness those that are provided
- Ignoring Bill of Rights Section 7 Reports
- Ignoring New Zealand's commitments to international agreements
- Other unconstitutional manoeuvres or apparent illegality – the “Family Carers” Bill and protests at sea
- The passing of Orders in Council that affect personal rights, without reference to Parliament: See Joe Bennett's complaint on red stickering his house.¹
- The National government's unilateral rejection of the recommendations from the enquiry into MMP: The voting system is one of the most fundamental aspects of the constitution. This was a long running and thorough enquiry that included a full referendum but the government summarily dismissed the recommendations on the specious basis of a lack of interest in consultation from other parties.
- Other examples of governmental mispractice involved the Mixed Ownership Model Bill, Partnership Schools, TICS Bill, the GCSB Bill, and the SkyCity Convention Centre. I apologise for not using the legal names of these bills.

¹ See “Limitations on Private Property Rights, *New Zealand's Constitution: The Bill of Rights Act 1990* (Constitutional Advisory Panel Booklet, 2012), 7.

3. The resulting subverted House readings were then passed with the one vote majority that arises from the Confidence and Supply Agreements of governmental coalitions. Apart from the “Gay Marriage” Bill there has been no application of the concept of cross-House consensus or conscience voting on any of the above controversial statutes passed under the present National government. (National MPs did not use the opportunity of a conscience vote on the SkyCity Convention Centre -Casino bill.)

4. Without an Upper House, one available sanction on this tendency to majoritarian or authoritarian government lies with a much strengthened Bill of Rights.

5. The scope of the upgraded Bill of Rights would include, but not necessarily be restricted to:

- the right to privacy of the person, and his or her metadata and any other hard copy documents or electronic files which that person wishes to sequester, if not already provided for
- freedom from arbitrary search, arrest, and detention, if not already provided for
- property, social, economic, and cultural rights.
- various rights under the Treaty of Waitangi as might be found to exist

6. The Bill of Rights would be entrenched and would have the status of superior law. In this way, it would serve as the strongest possible regulator of authoritarian and dysfunctional law making and consequent transgressions of human rights by a majoritarian government.

7. Under such a superior Bill of Rights, the judiciary would move to some extent into the legislative space. Parliamentarians and others have mostly abjured this up until now but my view is that a superior entrenched Bill of Rights is now necessary because the present governmental prevention or ignoring of fair democratic process on major issues is seriously undermining democracy in New Zealand, and degrading our human rights.

8. Remember, as Sir Geoffrey Palmer notes, “Courts are better at protecting minorities than majoritarian Parliaments are.”²

9. In any case, as other Commonwealth nations show, there are many formats by which the judiciary might, or might not, become involved. In Canada, which has a superior Bill of Rights, evidently no cases have ever got to court.³

10. The proposed expanded and elevated Bill of Rights would not deal with all the present abuses of governmental processes. Of those remaining, some might be removable by changes in parliamentary rules regarding urgency, including the timely delivery of all documentation required for debating any bill. However, these are outside the scope of an enquiry into a Constitution and are not dealt with here.

² Quoted in *New Zealand's Constitution: The Bill of Rights Act 1990* (Constitutional Advisory Panel Booklet, 2012), 8.

³ NZ Centre for Public Law Debate Series: Debate 4: *Human Rights in the Constitution*, Podcast on <http://www.victoria.ac.nz/law/about/events-old/nz-centre-for-public-law/nzcpl-debate-series-human-rights-in-the-constitution>, 30 July 2013.

11. The term of parliament should stay at three years at least until any constitutional changes arising from the Constitutional Conversation have been implemented. Manifestly, in my view, the present arrangements are being gamed into authoritarianism and a four year term would worsen this.

The Treaty

12. Even if it were decided to have a supreme constitutional document that formalised the various (contemporary?) meanings (positive and negative) of the Treaty as seen by the various Treaty “stakeholders” in New Zealand, the Treaty would not be a suitable vehicle. As Andrew Geddis points out: “... even though the Treaty is historically important and symbolically powerful, it has limitations as a legal document. It exists in two languages. It is vague in places. Not all Maori even signed it.”⁴

13. Human rights, but not the issues of co-governance under the Treaty, may be able to be incorporated in a superior Bill of Rights.

14. There is a lot of confusion in Treaty debates between the terms nationhood, sovereignty, nationality, and citizenship, and also between race, ethnicity, and culture. The Advisory Panel would do a great service if it could develop an agreed set of definitions for ongoing use.

Other Items

15. On the basis of Andrew Geddis’ exhaustive analysis, in which arguments for abolishment are outweighed by arguments for retention, the present arrangements for the Maori seats are satisfactory.⁵

16. Since the Maori seats arose in particular historical circumstances and continued in other particular historical circumstances, I do not think the same arguments that apply to them apply to Maori representation in local government.

17. Nor do I see any mandate in the Treaty for co-governance or partnership at any level. In my view, all models for rangatiratanga must honour Article One in which the signatories ceded sovereignty. Sovereignty is indivisible. I apologise for not expanding these views in full but I provide them in case the Advisory Panel is carrying out a head count on these issues as part of its deeper analysis. .

18. The present size of Parliament is satisfactory as long as select committees are allowed to carry out their function as a parliamentary check on proposed legislation.

⁴ Andrew Geddis, quoted in Shane Gilchrist, “Putting it in Writing,” *Otago Daily Times Online News* <<http://www.odt.co.nz/print/146620>>, 23 June 2013.

⁵ Andrew Geddis, “A Dual Track Democracy? The Symbolic role of the Maori Seats in New Zealand’s Electoral System,” *Election Law Journal* 5 no. 4 (2006), 347-371.

3071

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

· I became a NZ citizen on 1 Jan. 1949 together with all who were living here through 1948. One of the reasons I brought my young family back here in 1980 (from Canada) was that I was certain our rights would be protected here - I trusted NZ governments "to see me right".

· However, I am now 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 or 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.

David MacClement
Auckland
New Zealand

Quick Submission

2679

Your name:

(Mr) PETER MAC CALLUM

Name of the organisation you represent (if applicable):

NA

Postal address or email address

HASTINGS 4130

PLEASE CUT ALONG LINE

Privacy and Confidentiality

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

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

**You can also make a submission online
at www.ourconstitution.org.nz**

Submissions to the Constitutional Advisory Panel

These submissions will to the extent reasonably possible follow in the same order as the comments contained in the Submissions Guide.

It is not apparent from the Submission Guide how and why it was decided that we need to have a conversation about constitutional questions under the supervision of a Constitutional Advisory Panel but I have read somewhere that it originated with the Maori Party. The proposal would have had the support of disinterested academics, constitutional legal persons and legislators who feel that the present situation is untidy and who all hold the sincere belief that in the absence of a written constitution our liberties and freedoms are always at risk.

That group would have the support of another self-interested group which sees the introduction of a formal written constitution as providing an opportunity to foster and promote the interests of a minority group or minority groups.

I respect the views of those who believe that we need a written constitution but I think they are mistaken. They are trying to fix something that is not broken. They believe that change must be beneficial. I can think of only one occasion in the past 160 years of responsible government in this country on which a written constitution might have provided an answer to what could be regarded as a constitutional question. (On the other hand the answer might well make confusion worse confounded).

It seems to me however that there is an elephant in the bedroom which is not often acknowledged in public but is frequently discussed privately. I can find no reference to it in the Submission Guide. As our citizens become increasingly conscious that it is present and ask themselves (and one another) why it exists, it has I believe a huge potential to cause division and discord between (a) Maori groups and tribes and sub-tribes and between (b) Maori and all our other ethnic groups.

That elephant is the reality of what with the passage of time has become the strange situation that to qualify as "Maori" a citizen need only have a single Maori ancestor among myriad ancestors of other racial groups and that his or her tribal affiliation is becoming similarly fragile. The longer we go on ignoring the elephant, the more trouble it is going to cause eventually.

My aspirations for New Zealand are that all races will think of themselves as New Zealanders first and foremost. We will not have members entering Parliament determined to do what they can to promote the interests of "their people". Race will play no part in determining who is to receive or not receive assistance or benefits. We shall in my ideal world all accept the law whether we agree with it or not. It is for Parliament to make laws (not the Courts) but it is nevertheless for the Courts to determine the legal question of whether legislation is unconstitutional.

I agree hesitantly and reluctantly that we need a Bill of Rights but the scope of the present Act needs if anything to be narrowed to prevent it being used as a last-resort—delaying-tactic by applicants whose cases have little merit or substance but who see the possibility of using the Act for purposes never intended. To add more rights or widen protection is inviting abuse of the Act's provisions. Accordingly, I would not

give it a status higher than other laws. The Courts should determine whether legislation is consistent with the Act.

As written in English in 1840, the Treaty of Waitangi is a simple document whose meaning is perfectly clear. It was signed because the Maori people wanted the protection and stability they could not provide for themselves and they wanted relief from the musket wars. Fortunately for them, do-gooders who believed that the white man had a burden were, in the second half of the 1830's, influential in English society.

Other factions were wary of the French. In other words a number of influences came together at the same time.

In the area of law and concepts to which the Treaty relates, the Maori language lacks the precision of English. The translators who were under pressure to produce a version to show Maoris at the meetings called for 6th February 1840 had a problem but they did their best. The imprecision has, however, allowed for what are (to put it mildly) some highly imaginative and flexible interpretations of the Treaty not justifiable in terms of the English original. More recently there has been a consideration of the "principles of the Treaty" mentioned in the Act and seized on by the Waitangi Tribunal which decided that what was envisaged 173 years ago was a partnership of the two peoples – a concept lacking support in the document and contrasting sharply with the view of the Queen's representatives at the meetings that the signing made Maori and the people of the United Kingdom and Ireland one people.

I conclude therefore that the Treaty of Waitangi should have no role in our constitution and should not be a formal part of it. There should however be an agreement as to the meaning in English of the agreed Maori version.

Although there are currently only seven Maori seats in Parliament the "elephant" ensures that there are at least three times that number of Maori members, all of them capable of presenting the Maori point of view – if there is such a thing and it is necessary to present it. We should encourage electoral participation by all citizens' not just Maori as such. Maori should not have separate local representation or power to act except that where they form a significant proportion of the population (when compared to others) and a significant proportion of them so desire, local authorities should provide for advisory groups and heed them.

The lack of enthusiasm by Maori to get on the Maori electoral roll is a clear indication that they are aware of the likely motivation of those prominent Maori who urge them to enrol and is an equally clear indication by our Maori citizens that they want to be New Zealanders in conjunction with all our other ethnic groups.

Electoral Questions

The number of members could be reduced to 100 of which 60 are elected. Under the present system we are continually learning of members who seem to have come out of hiding and who contribute and have been contributing, little.

The term of Parliament should remain at three years so that a party in power does not leave too many problems for its Successor(s).

The present method of determining the electoral date works satisfactorily.

Every vote should be of equal value in determining the size and number of electorates but I would have no objection to the return of something akin to the "country quota" for a small number of very big electorates.

One great weakness of MMP is the direct power it gives to (in effect) the party bosses. So if a member leaves a party from which they were elected, they should become independent MP's. To hold otherwise is to add to the power of the party hierarchy.

4875

From: "A. MacDonald"
To: <constitutionalreview@justice.govt.nz>
Date: 31/07/2013 5:01 p.m.
Subject: CAP Submission

Dear sir, Re submission for "Constitutional Review"

Thank you for an opportunity to present my stance upon this topic.

(1) Let me begin by saying that this attempt to overthrow the Judeo-Christian attitude to justice has been incubated by a party that views white people and "white man" law as their enemy and must be fought against until subjugated and Maori become the supreme rulers and possess the ultimate power over all other citizens and business in New Zealand. A "constitutional review" was a bargaining point of the so called "Maori Party" with National before this dreaded coalition was formed. The "Maori Party" was formed out of agitation and animosity against all New Zealanders of British descent. Their goal in the first place was to "own" the seabed and foreshore and make "white people" who are their unspoken enemy nowadays, pay rent and pay homage for property and jetties and wharves. So the Maori Party and its quest to change the constitution has been born out of a desire to have a legitimate coup and to relegate all white people, to a lower class position, with themselves to be the new upper class. Hatred, contempt and lust for money and wealth preside as the highest factors of motivation for the Maori Party, and their allies, including Rahui Katene in pursuing a takeover of New Zealand. I anticipate it will be like Robert Mugabe's regime! They have a militant and warring attitude against white people. This is wrong and ought to be put to rest. They have an attitude of unrelenting hatred, resentment, and contempt.

(2) It is wrong to make the basis for altering our excellent and most satisfactory constitution from the make-shift document called the Treaty of Waitangi. The Maori sovereignty movement is behind the agitation for a new constitution which "enshrines the treaty of Waitangi". There could not be a worse document to integrate into our constitution. There is not one letter of legality about it. Not one lawyer was invited to help to form it. It is on the basis of the loose wording found in article referring to "possession of lands" that the seemingly wealth hungry Maori Party derives its fervour from to alter our sound constitution to one to benefit themselves and to severely hinder and deprecate those of us of British descent.

(3) Extortion: The secret intent of the "entrenching the constitution" is for the purposes of extorting land, wealth, assets and cash from white New Zealand under false and accusing pretences.

Article 2 states; "Her majesty the Queen confirms and guarantees to the chiefs and tribes of New Zealand and to the respective families and

individuals thereof the full and undisturbed possession of their Lands and estate forests, fisheries and other properties which they may collectively or individually possess....."

It is plain and it was plain to the Maori chief signatories that the word "possesses" and "possession" did not on any account mean title to nor ownership.. At the time Maori had no concept of private ownership or title. They were nomadic people. What the unlearned men who penned this cobbled together and ambiguous document for those times only, was that Maori were to be assured that the British unlike any conquering Maori tribe, would allow unconditional habitation of those lands with a continuation of the way of life of hunting and gathering that Maori had carried on since they arrived in the 1400's.

(4) The treaty "possess" is going to be twisted into meanings that suit the selfish intentions of the Maori sovereignty movement. By inserting references to the treaty or making the treaty "entrenched" it would be mean more damage to New Zealand than a nuclear explosion and an invasion from Mugabe: if this awful and most oppressive proposal were to be carried on.

G.S, Parsonson in his review of Claudia Oranges book, The Treaty of Waitangi" described the treaty as "an hastily cobbled together by a group of rank amateurs."

Ruth Ross, in a learned paper "Te Tiriti O Waitangi" concluded" However good intentions may have been, a close study of events shows that the treaty of

Waitangi was hastily and inexpertly drawn up, ambiguous and contradictory in content , chaotic in it's execution." To persist in postulating that it was a "sacred compact" is sheer hypocrisy"

(5) Marginalise and Oppress: these are it seems are definite goals of the Maori sovereignty movement, in advancing this awful and self- centred proposal of which the Maori Party is a leading part of

Further , here is an extract from one of those advancing this change and my comments added:

It is unjust that Rahui Katene is the spokesperson for this subversive group called the "Review committee since she is not impartial. Katene has, with others, generated and formed fantasies and falsehoods over the merging of British and Maori that took place in New Zealand since 1840. It would appear that her goal is one smearing white New Zealander's history to the fullest exte of total subjugation and oppression of white people. Here is an extract from a speech she delivered on 15 February 2011.

"We have to remember that at the time that Te Tiriti o Waitangi was signed, the British settlers 'discovered' a highly developed sustainable civilisation in which whanau and hapu operated well established systems of health, education, justice, social services, spirituality."

This statement is deliberately made to be sheer propoganda and falsehood

for the express purpose of inculcating contempt and hatred against the white people of New Zealand today. The settlers were enormously charitable to the inhabitants. Missionaries were appalled at the rotten teeth that caused the average age of Maori to die an agonising death. Arthritis and respiratory disease was rampant when the missionaries found Maori. The average life span was just 35 years.

Cannibalism and cruelty and butchery was rife amongst the Maori tribes. The main reason for forming a treaty was initiated not by white people but by Maori chiefs. They said that the carnage and poor health, and barbaric lifestyle must change. "We want your British legal system and your white man's gospel to be brought to Maori," they said. "We want to have a sense of honour and settle disputes with clubbing one another," they said. Maori embraced the gospel and British way of life wholeheartedly, to their benefit.

In order to project an perception of enormous cruelty, injustice and unchristian attitudes, Katene has delivered the opposite of what the true account is of the state of Maori in the mid 1840's. Maori who lived about the Port Chalmers coast at the time were observed by a missionary ("<http://www.justice.net.nz/justwiki/waitangi-rua-rautau-lecture-rahui-katene/>")

Professor David Round says what I want to say and it is here:

But the government, at the Maori Party's behest, established a 'Constitutional Advisory Panel' to consider (as well as a number of obvious political non-starters) 'the place of the Treaty of Waitangi in our constitution, and how our legal and political systems can reflect tikanga Maori'[1][1]. Rahui Katene, the Maori Party's constitutional spokesman, announced that 'the Treaty must be the backbone for constitutional change', that the Party's 'ultimate goal...is to ensure that the Treaty is given proper recognition', and that our constitutional arrangements must 'allow for full engagement and recognition by tangata whenua'[2][2]~ which, by implication, does not occur under current arrangements. (Professor David Round, professor of law, Canterbury University)

Judge Anthony Williams says this on behalf of all New Zealanders who desire justice and not oppression:

1. The creation of one privileged minority group with either powers of veto, or to extract rent from necessary economic developments will damage New Zealand international competitiveness, suppress wealth creation, and give rise to widespread social resentment.

2. In a constitutional context The Treaty has served its purpose by

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

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

Aw Macdonald

3695

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 19/07/2013 9:25 a.m.

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

Full Names: Colin MacDonald Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal City: Kantara Postal Region:
Postal Post Code: Postal Country: New Zealand Submission: I urge the panel to resist the
urge to base any proposed new constitution on the TOW, which in the 21st century seems irrelevant
to the multicultural society which now constitutes New Zealand.

The persistent and increasing efforts by the Maori Council to lay claim, in the name of Maori sovereignty, to NZ's resources from land to electromagnetic spectrum are nothing short of a distortion of the letter and the spirit of the original Treaty, which promised only equal treatment to all subjects under the Crown.

There is no mention of 'partnerships' in the TOW, and this is a figment of fantasy dreamed up in the 70's by increasingly ambitious Maori elders and iwi elite to further their agenda of Maori domination of NZ.

Its one and only remaining function should be the judicious and fair compensation of iwi for land illegally acquired from them in the past.

Any new constitution that discriminates between its citizens on basis of race, culture, religion, gender, age, etc, etc is no constitution that we NZers want.

Submitted on the 19 July 2013 at 09:24

4723

Law and Democratic Process Assignment

Author: Michelle Macdonald

Student Id:

Word Count: 2,482

28 March 2013

To the Constitutional Advisory Panel

SUBMISSION ON CROWN - MAORI RELATIONSHIP MATTERS

1. Thank you for the opportunity to make a submission as part of the Constitutional Review process.
2. I am making this submission in my capacity as a final year law student from the University of Otago. I am of New Zealand European descent.
3. I commend the government for initiating a Constitutional Review. I also applaud the approach of the Constitutional Advisory Panel for the way they are informing and encouraging conversation among New Zealanders. I appreciate my view will be fairly and accurately reflected.¹

Introduction

4. My submission is on Maori representation in Parliament as I believe this is a topic which sparks a different array of opinions, and is most easily misunderstood by those in society with little interest or understanding of New Zealand's Constitution.

Maori Seats in Parliament

5. After careful consideration I submit the Maori seats should be retained.
6. The driving force for creation of the seats has been somewhat remedied by electoral changes that have been significant in achieving better outcomes

¹ Constitutional Advisory Panel *"New Zealand's constitution, The conversation so far"* (2012).

for proportional Maori representation.² The most notable being the introduction of the mixed-member proportional (MMP) system.³ Despite this I do not believe there are sufficient reasons to abolish the Maori seats.

7. Professor Geddis argues the rationale for these seats has shifted over time.⁴ I agree this is a logical argument. Just as society and perspectives change over time I believe the reasons and needs for retaining the Maori seats have evolved into more than just ensuring proportional representation. I believe the seats have become a reflection of acceptance and value of Maori culture in our society, and an acknowledgment of the important role Maori play in establishing our identity as New Zealanders and in our constitutional framework.
8. Professor Geddis noted that Parliament institutionally recognising the claim Maori hold as a distinct people, holds a unique place within New Zealand's constitutional framework. These seats have become embedded with a strong symbolic meaning.⁵ To which I agree. I believe past breeches and atrocities showed a country in cultural turmoil and reflected a lack of acceptance and tolerance of one and other. Retaining the Maori seats in Parliament is reflective of a step forward in the direction of remedying the past, acknowledging and valuing the importance of Maori involvement in our constitution.
9. I do not believe the seats are undemocratic or a sign of a country divided and not operating as "one". Nor do I view them as a discriminatory privilege as suggested by some literature.⁶ I view them as a sign that a country accepts Maori as a distinct race with unique cultural beliefs. The seats display a willingness to ensure as a populace we are exposed to these beliefs by the best possible facilitators chosen by Maori themselves. They are the best people to identify who has the capabilities to truly portray and represent their cultural values.

² For a detailed account see John Wilson *The Origins of the Maori Seats* (Parliamentary Library, Wellington, 2003, 2009) at [2-29].

³ See The Electoral Act 1993, s3(1), s 45, s 76, s 77.

⁴ Andrew Geddis "A dual track Democracy? The Symbolic Role of the Maori Seats in New Zealand's Electoral System" (2006) 5 ELJ 347 at 347.

⁵ Ibid, at 348.

⁶ See Phillip A Joseph "The Maori Seats in Parliament" (Wellington, New Zealand: New Zealand Business Roundtable, 2008 at 14.

This view is supported by the general perception that the interest of voters on the Maori roll are best represented by candidates themselves who are Maori, as noted in a report of the Electoral Law Committee. They also identified despite non-Maori being eligible to be elected in the Maori Electorates there is importance of iwi and hapu connections for Maori.⁷

10. I believe other ethnic minorities and the rest of the population are not suffering any detriment; they still get one vote providing they meet the necessary criteria.⁸ The Maori and the General electorates are also subject to identical forms of legal regulation.⁹ Maori are able to choose how they wish to be represented. I do not believe that the Maori seats afford special privileges to Maori at the expense of everyone else. I perceive the Maori seats to be an acknowledgment within our culture that Maori are distinct people, our partners, and in good faith we as a country recognise they deserve to be represented by those who are best able to express Maori views.
11. Professor Joseph drew attention to the Royal Commission Report that noted Maori would achieve fair representation under MMP and believed there was no need for separate seats.¹⁰ However I believe retaining the seats shows unity and respect and is a reflection of more than just proportional representation. I truly believe the Maori seats are the best way to ensure Maori issues and ideas are appropriately considered. Even if Ministers of Parliament undertake to represent Maori interests, I do not believe true and full understanding of the unique culture and perspectives of Maori will be reflected unless the party involved has expert knowledge. Allowing this to occur, I believe puts Maori issues and perspectives at risk, which may lead to them being under represented and diluted.
12. To abolish the seats now after they have been a feature for so long would in my opinion be harsh and detrimental to the bridges that have been built. I believe this would instigate conflict and ill feeling amongst Maori prompting them to lose faith and trust. This position was acknowledged by The Royal Commission on the Electoral System, who stated that the Maori seats have

⁷ Wilson, above n 2, at 17.

⁸ Electoral Act 1993, s 60,72,74,75,80,82.

⁹ Geddis, above n 4, at 356.

¹⁰ Joseph, above n6 at 9.

come to be regarded by Maori as an important concession to, and the principle expression of their status as indigenous people of New Zealand. The Commission also noted that Treaty of Waitangi afforded a special constitutional status to Maori in that the Crown formally recognised their existing rights and undertook to protect them.¹¹

13. An inquiry into New Zealand's existing constitutional arrangements in 2005 identified New Zealand's Constitution is not in crisis. The report expressed that a number of submitters, including Lord Cooke of Thorndon, had put forward the view 'it isn't broke'. This view was not universally shared and some Maori submitters thought change was necessary, especially centred around a failure to fully recognise the fundamental significance of the Treaty of Waitangi.¹² To me this portrays that for the most part things are functioning well and if one were to abolish the seats this would be detrimental to Maori and their desire for adherence to the Treaty. If many submitters hold the view it isn't broken, in my opinion this illustrates there is no desperate need for change. If this is the case, and Maori have expressed a desire for more protection in order to honour the significance of the Treaty, then abolishing the seats is a definite step in the wrong direction.

14. In the case of *Taiaroa v Minister of Justice* Maori asserted that the seats have remained "a symbol of the authority promised by the Treaty".¹³ There is a clear wealth of evidence out there that portrays how Maori view the seats as significant; to abolish them would surely be a breach of good faith and partnership obligations. Justice Baragwanath once stated while our other categories of law for the most part do not distinguish between Maori and other New Zealanders and equality under the law is a basic constitutional precept. He went on to discuss how Maori are not only individual New Zealanders but, depending on perspective, either a "people" or "peoples" who may warrant separate legal treatment.¹⁴

¹¹ *Report by the Royal Commission on the Electoral System: Towards a Better Democracy*, 1986, p 81.

¹² *Report of the Constitutional Arrangements Committee: Inquiry to review New Zealand's existing constitutional arrangements*, 2005, p 7.

¹³ *Taiaroa v Minister of Justice* HC Wellington CP99/94, 4 October 1994 at 12.

¹⁴ Baragwanath J "What is distinctive about New Zealand Law and the New Zealand way of doing law? New Zealand Law and Maori" (Address to the Law Commission's 20th Anniversary Seminar, Wellington, August 2006).

15. Majority of New Zealander's on the general role consider themselves to exist as individuals. Maori often view themselves less as individuals but more as a collective group. These differences have already been ignored in some instances. An example being the laws past failure to recognise "Whangai" adoption in New Zealand. I believe the existence of the Maori seats fit better with the basic concept of Maori operating as a collective. Allowing Maori to enrol on the Maori Roll and vote for their own representatives helps facilitate this approach.

Treaty of Waitangi Considerations

16. It has been said that The Treaty of Waitangi (Treaty) and its place within New Zealand's contemporary constitutional framework has long been turbulent waters in which to try and navigate.¹⁵ A report by the Waitangi Tribunal held the Maori seats have become regarded by many Maori as the principle expression of their constitutional position in New Zealand. They have been seen as an exercise, be it a limited one of their tino rangatiratanga guaranteed to them under the Treaty.¹⁶

17. I believe retaining the Maori seats is a show of good faith and partnership as negotiated and guaranteed by the Treaty. To abolish the seats would be the ultimate display of a lack of respect for something Maori have come to hold such a significant feature of their constitutional expression. The alleged breach of the Crown's duty in 1994 for under publicising the Maori Electoral Option in my opinion shows the depth of the passion Maori have towards Maori representation. The finding by the Waitangi Tribunal that there had been a breach of obligation, I believe clearly portrays Maori believe the Treaty plays an important part in New Zealand's constitutional framework.

18. The Court litigation that followed, while demonstrating sympathy, took a more lukewarm approach. In the High Court case of *Taiaroa v The Minister of Justice* it was acknowledged in obiter there is a Treaty duty and there was a need which had not been completely fulfilled.¹⁷ The Court of Appeal did not go as far as basing the duty on the existence of Treaty obligations but

¹⁵ Geddis above n 4, at 348.

¹⁶ WAITANGI TRIBUNAL, MAORI ELECTORAL OPTION REPORT: WAI 413 35 (1994)

¹⁷ *Taiaroa v Minister of Justice*, above n 11, at 70.

acknowledged the actions of the government passed the test of reasonableness, however had been less than perfect.¹⁸ In the case of *AG v NZ Maori Council* the Court of Appeal held if the government, giving due weight to the Treaty principles, elects between the available options reasonably and in good faith, the Treaty is complied with.¹⁹

19. The Cabinet Manual 2008 when discussing the constitution stated it increasingly reflects the fact that the Treaty of Waitangi is regarded as the founding document of government in New Zealand. It was also noted the law may sometimes accord a special recognition to Maori rights and interests such as those covered in Article 2, and in many other cases the law and its processes should be determined by the general recognition in Article 3 - that Maori belong as citizens to the whole community.²⁰

20. Drawing inferences from the cases above I believe if one were to abolish the Maori seats that would fall far from acting reasonably and in good faith. It would also call into question if the principles of the Treaty had really been considered at all. If the Treaty is regarded as the founding document of the government in New Zealand it seems obvious to me that the principles agreed upon should be honoured within today's government. It may be argued the Maori seats have nothing to do with the Treaty and require no consideration of its principles, I believe this is incorrect. In my opinion, the Treaty should be the starting consideration for every decision regarding governance of this Country. It is the foundation of how this country developed to where we are today. Maori have made it known the significance they attach to the seats and in the true spirit of the Treaty, good faith and partnership should be honoured. The existence of the seats should be considered a successful example of the Treaty in action.

21. Baragwanath J identified that the social statistics show New Zealand law and institutions have failed to reciprocate and to deliver on the promise of the Treaty.²¹ Given this statement it is difficult to see how the Treaty could not be taken into consideration in the context of the Maori seats in Parliament

¹⁸ *Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA) at 13.

¹⁹ *Attorney General v New Zealand Maori Council* (No2) [1991] 2 NZLR 147 (CA) at 149.

²⁰ Cabinet Office *Cabinet Manual 2008* at [1].

²¹ Baragwanath J, above n 12.

and is further proof of the need to ensure we are fulfilling Treaty obligations. I also believe retaining the Seats acknowledges New Zealand's ethical obligations under the Declaration on the Rights of Indigenous Peoples.²²

Should the Maori Seats be entrenched?

22. There is clear disparity between the Maori and the general electoral system within the entrenchment provisions of the Electoral Act.²³ While I believe the Maori seats should be retained, I do not consider they need to be entrenched. The guiding factors why I believe retention of the seats are necessary is based on partnership and good faith obligations to Maori and achieving representation in the best possible way that reflects the ideologies of Maori culture. I believe the way the Maori seats are currently working is achieving that. The seats continued existence beyond this constitutional review would reflect there is a clear mandate and majority in support. In the event any simple majority should attempt to abolish the seats it would be surely be an illegitimate move with flow on consequences. I believe most MP's would be aware of this so the need for entrenchment is not one of urgency. If the rationale for the seats has moved from one of representation to recognition of the symbolism the seats hold to Maori, an overwhelming need to entrench the seats in my view would only undo the trust and partnership created by allowing their continued existence.

Maori Electoral Option

23. The Conversation so far highlighted that the majority of the MMP Review Committee 2001 that the Maori Electoral Option (MEO) is the best means of determining the Maori Seats.²⁴ I agree and believe the MEO is a successful, well functioning process. The earlier issues which ended in litigation appear to have been resolved and the advertising and funding appear to be achieving the goal of boosting awareness. I believe it is working well by

²² For an account See Mamari Stephens "Free and equal to all other peoples: some implications of New Zealand's support for the Declaration on the Rights of Indigenous Peoples" (2011) Post Treaty Settlements <<http://posttreatysettlements.org.nz>>

²³ Electoral Act 1993, s 268.

²⁴ Constitutional Advisory Panel *"New Zealand's constitution, The conversation so far"* (2012).

coinciding with the National Census where possible and the rise in number of the Maori seats reflects it is targeting Maori who wish to be enrolled on the Maori electoral roll. I do not believe the MEO reflects bias or affords special racial distinction toward Maori for reasons already discussed above. I believe the MEO is the most logical way of determining the number of Maori seats. I also believe the advertising is of great benefit to New Zealand population as a whole, the media is an effective way to draw people's attention to the electoral process and the MEO which otherwise may go unnoticed. The only change I would recommend would be to guide more attention of the general public towards understanding the reasons behind the MEO. Perhaps advertising should not just target Maori but also target all New Zealanders and direct them to the great wealth of information available on websites. This may create a more genuine interest and awareness, not just for Maori but also for other ethnicities and lead to a greater understanding of the effect the electoral process has on Parliament.

Conclusion

24. I support the retention of the Maori seats in Parliament for the reasons outlined above. I also support continuation of the Mori electoral Option period. I believe the Maori seats in Parliament need not be entrenched for reasons expressed in this submission.

Yours faithfully

Michelle Macdonald

3026

newzealand.govt.nz

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



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

*I wish to make it known
that our NZ Bill of Rights
should include "social,
cultural and economic rights."
Please ensure this happens.*

You can find out more about the Constitution Conversation and make a fuller submission online at www.ourconstitution.org.nz

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

Name(s):

Susan Macdonald

Email or postal Address:

Kapiti

☐ Tick box to receive regular updates by email

6088.1

387

From: -
To: <constitutionalreview@justice.govt.nz>
Date: 15/04/2013 8:13 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Travis Macdonald Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB:
Postal City: Christchurch Postal Region: Canterbury Postal Post Code: Postal Country:
New Zealand Submission: One of the greatest advantages to living in such a small country, and a Unitary State, is the fact that there is a much smaller deviation of views regarding many of the issues that New Zealand faces as a country. When you look at countries like the United States (especially today) their Government is unable to solve almost any of the issues that they face. Examples include gun control, gay marriage, immigration and the list goes on. Since NZ has a population of only 5 million our Government should be able to very easily assess and adjust our laws to fit with the ever evolving views of our very liberal population. Although not all the issues facing the country can be easily solved, in some cases they can be. What I propose is a series of binding referendums to assess and change our country's laws to reflect the opinions of all New Zealanders. We consider our country a democracy and yet despite an overwhelming majority support for certain issues they remain unchanged. The two cases in particular are Marijuana Legalization and Gay Marriage. Both are widely supported in NZ and yet our constitutional processes keep us trapped with laws that the majority don't support. In summary: A nationwide binding plebiscite to assess the level of support for legalizing marijuana and gay marriage. We live in a democracy. Lets start acting like it.

Sent on the 15 April 2013 at 20:12

3823

From: "Euan Macduff"
To: <constitutionalreview@justice.govt.nz>
Date: 24/07/2013 2:49 p.m.
Subject: CAP Submission -- the role of the Treaty of Waitangi in Consitutional arrangements

The Treaty of Waitangi, surely , gives Maori the same rights as everyone else in a country that Maori agreed would be governed by the Crown.

I see no reference to "partnership" in the Treaty. As Winston Peters points out, the Crown does not enter into partnership.

There is no need to embody the Treaty in a constitution. A constitution should say that everyone has the same rights. Neither is there any need to have any reference to "Tangata Whenua ."

NZ citizens of all origins should have equal rights.

Anything else is divisive, and not equal.

E.Macduff.

5097

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 7/08/2013 3:37 p.m.

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

Postal Post Code: Postal Country: New Zealand Submission: I wish to see a
partnership between Maori and all others enshrined in a Constitution along the lines of the Treaty of
Waitangi, with shared governance. Full Names: Virginia MacEwan Organisation Name: private
Email: Phone: Postal AddressA: Postal
AddressB: Postal City: Napier Postal Region: Hawke's Bay

Submitted on the 17 June 2013 at 09:54

3011

Auckland
3 July, 2013

Constitutional Review

(This submission is a personal one. It is not being made on behalf of any organisation.)

Aspirations for Aotearoa New Zealand A happy, well-educated, healthy, confident and prosperous population in a well-governed country which can function well as part of the international community.

To be run in a manner that will give all its residents the opportunity and encouragement to participate in society equally while retaining desirable aspects of their individual character, traditions and beliefs in a manner which ensures that other New Zealanders may similarly live according to their own customs and without impinging on the normal and smooth conduct of a progressive and well-organised society.

New Zealand's current Constitution.

I am opposed to the country's constitution being written in a single document. We possess an eminently sensible, workable constitution at present. It is not a single set of rules that could be trapped in a time-warp but can evolve with changing circumstances if necessary.

I do not think any constitution should have a higher legal status than other laws. It could have the capacity to interfere with the sensible day-to-day running of the country, holding up important and perhaps urgent legislation because of being misused by some group of individuals with unreasonable personal convictions which were at odds with accepted norms of society.

Parliament should be the only entity to make decisions regarding whether legislation is consistent with our constitution. This is government by the people, for the people. It is total anathema to me to envisage a small group of individuals who cannot be dismissed from office, making decisions that affect the lives and well-being of many other people with whom they may have little in common.

Bill of Rights Act.

I do not consider that my, or anyone else's rights are currently infringed in any way. I do notice that people who make wild accusations about their rights not being observed are usually those who have scant regard for the rights of others.

For the good of society there must be limits to any individual's rights in any community. Other people's reasonable rights have also to be taken into account.

I do not believe that the laws which make up our constitution, while they need to be taken into account, should automatically have higher legal status than other laws. They are, after all simply a mechanism for the smooth and fair running of society as a whole and were they to be supreme, could cause undesirable distortions between sections of the community.

Decisions about whether any law is consistent with an Act of Parliament is the responsibility of Parliament itself because this is the people speaking for current circumstances.

No additional rights need to be added to our Constitution. It would be nonsense to be over-prescriptive and treating the adult population like children in determining how we get along with each other.

Treaty of Waitangi.

I do not believe the Treaty of Waitangi should become a formal part, or have any role whatsoever in our Constitution. The treaty's purpose was that all citizens of this country should possess identical rights in their relationship with the Crown and this is as it should be.

It is right and proper that former breaches of this arrangement should be put right as promptly as possible so that they will not need to be revisited in the future and in order that our whole society with all its component groups can move on and continue to evolve with changing times.

The treaty has played its part in making this evolution possible but has no further relevance today. In fact, harking back continually to a historical treaty creates the danger that those who do so could trap themselves in an alienated, underprivileged, and self-destructive situation. The past is gone. We all need to look forwards and move on together.

Maori representation.

Care in taking into account commonality of interest in the setting up of electorates should ensure that Maori views and those of other groups are given representation. Maori electoral participation could be improved by doing away with the paternalistic and demeaning colonial "sop to the natives" of Maori seats.

So far as local government is concerned, Maori representation can be achieved, and in fact is being achieved, in the same way as all other groups in the community, namely by individuals putting themselves forward and keeping in mind the good of the whole of the community they are seeking to represent.

Activists bent on achieving extra and unique locked-in representation are likely to be harming the future electoral chances of these public spirited individuals who offer themselves for office as well as causing annoyance about the selfishness of their own motives and thus alienation from the community at large.

Electoral matters.

We need about 100 members of Parliament. We need quality, not unwieldy quantity while still retaining wide representation and a measure of flexibility.

The parliamentary term could well be extended to four years immediately with the possibility of a future extension to five years if the extra time proves to be acceptable to voters.

There are various reasons why this seems to me to be desirable. Three years is not long enough to get policies in place and prove whether they are having a beneficial effect and it is doubtful whether even four years is really long enough either.

Over a longer period less frequent disruption and expense of an election to both the individual parties and the country would result. If elections are less frequent they would assume greater importance and the public could very well take a greater interest than at present and this would be a very desirable outcome.

The size and number of electorates should strike a balance between the numbers of residents in each electorate and the commonality of interests within the various electorates. Fair representation for various groups within the country is probably more important than the actual number of people within each electorate.

A member of Parliament who parts from the party they were elected to represent should automatically resign from Parliament. Everyone would know where they stood and it should cut back on recriminations and time-wasting arguments about who was representing whom.

That person was elected at least in part, and perhaps mainly, because of their party affiliation. A by-election should be promptly held in which the member who resigned would be entitled to stand as an independent member or representing some other party.

Other issues.

Our constitution as it stands, works well, so why have change for the sake of it? We don't have to slavishly copy others. Think of the number of countries with an admirable-sounding constitution where the rights of individuals are routinely trampled on.

A written constitution does not automatically offer superior benefits. In fact it can lock in unfair discrimination which can eventually lead to civil unrest and bloodshed.

We can tell ourselves that wouldn't happen here. The Sri Lankans probably thought that when they introduced discrimination against the Tamils in the 1960s.

One of the beauties of our present arrangements is that should circumstances arise where a change becomes vital, it can be achieved through parliamentary processes whereas with a written constitution it would be the academic and not necessarily practical interpretation of a few individuals.

AD 2 1 1
V

1630

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 26/06/2013 4:23 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Marv Jane Macfarlane Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal
City: Rotorua Postal Region: Bay of Plenty Postal Post Code: Postal Country: New
Zealand Submission: I see no need to have a written constitution as a single document so long as
we have strong and reasonable law, under whichever Act, and it is not too complicated to interpret.

If current Acts protect all our fundament rights, responsibilities and freedoms then let them stand.

To safeguard our rights, could changes being made to Acts effecting these rights be voted on by
Parliamentarians reaching a higher percentage vote rather than just by majority vote?

It is important that no New Zealand citizen have a stronger 'right' to anything at all over and above
anyone else (unless perhaps, they are imprisoned). "All men should be equal under the
law" (or words to that effect)! For example, it is a basic fundamental
right that one race or ethnic group do not have different degrees of 'rights' over another. I feel that as
a country we are in danger of going down this path.

I am concerned that some NZ citizens are not allowed to be "New Zealanders" in that they
have to be New Zealand Europeans or New Zealand Pakeha, or be of Maori or other ethnicity first
and often assumed to be a New Zealander second. I would like this aspect
to be a fundamental right. After all these years and generations, we still cannot be known as New
Zealanders albeit with varying ethnic backgrounds.

I am concerned that someone with Maori heritage is automatically assumed by the Statistics
Department to be "Maori" even if they first and foremost see themselves, and sign
themselves, as a New Zealander. This creates inaccuracies and surely is unconstitutional.

It would be preferable if personal responsibilities could be more strongly recognised and encouraged.

If it is actually feasible to categorically legislate our rights, responsibilities and freedoms, then these
should be supreme and all legislations should have regard to them.

I am not sure that the Treaty of Waitangi needs to be seen as our prime document as it causes a lot
of dissention when it is perhaps read with today's meanings rather than the meanings of the times in
which it was written. If all New Zealand citizens, however
'new', have equal rights and responsibilities, the documents could be respected as a document of its
time.

I think it is safest that the Courts should ultimately have the power to decide or interpret legislation. Whereas Governments are elected and can swing the country's morals, principles and rights to left or right, the court judges are appointed and so long as the judges are not all appointed by either a left or right government, there is likely to be some sort of balance.

Sent on the 26 June 2013 at 16:23

2953

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 9/07/2013 8:48 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission
Attachments: Olivia Macfarlane Laws 110Constitution Submission Rich Text Format.rtf

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

Full Names: Olivia Macfarlane Organisation Name: N/A Email: okm1
Phone: Postal AddressA: Postal AddressB: Postal
City: Christchurch Postal Region: Canterbury Postal Post Code: Postal Country: New
Zealand Submission: Submission Upload: Olivia Macfarlane Laws 110 Constitution Submission
Rich Text Format.rtf

Sent on the 9 July 2013 at 20:46

While New Zealand's constitution provides a strong foundation for the country, there is significant room for improvement. For example, the current constitution does not address several very important issues. Some key areas that this submission will consider are: Whether to codify and entrench the New Zealand Constitution, the status of the New Zealand Bill of Rights Act 1990, whether the judiciary should be able to "strike down" legislation that is unconstitutional, and whether there needs to be a change in the structure of the legislative branch of the New Zealand Government. In order for the country to continue to move forward, these issues need to be taken into account in a new form of constitution.

Currently the New Zealand constitution is not codified, which makes it unwieldy and outdated in comparison to the constitutions of many other states. By having a codified constitution, all the legislation that makes up the New Zealand constitution would exist in a single document, which would make it more accessible for use by the general public and the government. Because it is much more "user-friendly" to have a single document to refer to than a great number, it is possible that having a codified constitution would lead the public to be more aware of their rights and of the role of the government. Moreover, codifying the constitution would help to make it the "highest law of the land"¹, and therefore give it more legal power than it currently has. Codifying the constitution, would also give it a similar status to HLA Hart's "rule of recognition"². The rule of recognitions is defined by Scott Shapiro to be a "rule about the validity of other rules"³, and one that "sets out the test for the validity for that system"⁴. If the constitution was made to be the highest law of the land, it would clearly be able to prove whether legislation is valid or not, and to lay out the validity test for New Zealand's legal system. Another issue to consider is that most liberal democratic states in the world now have codified constitutions, with the exception of the United Kingdom, and Israel. Therefore New Zealand needs to step up and create a codified constitution, or risk being seen as antiquated or backward by its international peers.

It can be argued that entrenchment can make it more difficult to change areas of concern in a constitution; however it is better to have a more rigid constitution than one that is frequently and easily changed, as a rigid constitution would ensure greater long-term stability for rights and norms. "Entrenchment" is where a law may only be changed if certain conditions are met (often by a vote with a specified majority needed in order to change the law). "Double entrenchment" is where the rule of entrenchment itself is also entrenched. If a constitution is not entrenched, it can be changed very easily according to whim, and effectively parliament can alter its duties and structure, and tamper with the rights of the individual. While parliament has not yet taken considerable advantage of New Zealand's unentrenched constitution, there will always be the temptation for parliament to change the constitution to suit themselves and not the rights of the public. In order to make it more difficult for parliament to do this, the constitution will need to be entrenched. The ideal method of entrenchment would be to require a referendum on each proposed constitutional change; however this is not pragmatic, as referendums are very costly to the government, and it is likely that citizens will tire of participating in referendums if they are required to do so frequently. Instead, it should be doubly entrenched where a two-thirds majority vote from parliament would be needed for change (and the law of entrenchment itself was entrenched by a two-thirds majority). This would ensure better protection of the constitution over time, and consequently better protection for the citizens of New Zealand. Some may worry that if there is "bad law" in the constitution, it will be very difficult to change, and therefore all constitutional provisions should be considered carefully before it is entrenched. By doing this, the possibility of "bad law" being in the constitution would lessen

Laws 110 Constitution Submission

greatly, and the benefits of an entrenched constitution would clearly outweigh those of an unentrenched one.

The New Zealand Bill Of Rights Act 1990 is currently a very ineffective piece of legislation, and this should be modified in order to protect rights for the citizens of New Zealand. According to section four, governments cannot (where an enactment does not follow the Bill of Rights Act):

- a) Hold any provision of the enactment to be impliedly repealed or revoked or to be in any way invalid or ineffective; or b) Decline to apply any provision of the enactment- by reason only that the provision is inconsistent with any provision of this Bill of Rights.⁵

This effectively means that parliament can still create legislation that ignores fundamental human rights, as the Bill of Rights Act is subordinate to other legislation. In most cases this is unlikely to happen, as the Attorney General would bring such legislation to parliament's attention under section seven of the act, and there would also be an uproar from the public if there was a blatant disregard for human rights in a piece of legislation. In order to ensure that human rights are not abused, the Bill of Rights Act must become supreme law, and other legislation should be subordinate to it.

There are currently some "reasonable" exceptions to the rights listed in the Bill of Rights Act, such as the exception to the right to refuse medical treatment. Under section fifty eight of the Mental Health (Compulsory Assessment and Treatment) Act 1992, a person "shall be required to accept such treatment for mental disorder as the responsible clinician shall direct."⁶ if they are proven to be mentally unsound. Currently such exceptions are not written into the Bill of Rights itself, and this makes it very difficult to know what an individual's true rights are in practice. Therefore all reasonable exceptions or amendments should be written into the Bill of Rights itself in order to provide a clear guide for the public as well.

Even if the Bill of Rights Act becomes supreme law, there is still the possibility for legislation that goes against the Bill of Rights Act to be overlooked. Consequently, the judicial branch of government should have more power and be able to deem some legislation to be "unconstitutional" and overrule it. This would mean that if a piece of legislation went against the constitution, it would be declared to be invalid. This principle would also apply to legislation that has not been created through the process prescribed by the constitution. Currently the judiciary can declare legislation to be invalid if it was not created by following proper parliamentary procedure. A past example of this would be in *Fitzgerald v Muldoon and Others* [1976] 2 NZLR 615, when past Prime Minister Robert Muldoon did not follow normal parliamentary procedure, and issued a press statement in December 1975 that abolished the New Zealand superannuation scheme. Wild CJ declared Muldoon's actions to be unlawful, and "in breach of s1 of the Bill of Rights"⁷. Muldoon's declaration was not seen as "official" legislation because it did not follow parliamentary procedure, therefore the Bill of Rights Act was able to override it. However, according to the New Zealand Bill of Rights Act, courts are currently unable to strike down legislation because it is "inconsistent with that Act's principles"⁸, which means that if legislation and human rights laid out in the Bill of Rights Act are in conflict, the legislation will override the Bill of Rights Act, and the courts will be unable to give the Bill of Rights Act priority over legislation in their own judgements. While most legislation in New Zealand does not severely breach the Bill of Rights Act, there is always the chance that this may occur in the future. Therefore it will be better to err on the side of caution, and give the judiciary the power to deem legislature that is unconstitutional to be invalid in order to protect the basic rights of the public.

In order to keep parliament accountable, and to assist in avoiding political corruption, the creation of an upper house will be necessary. New Zealand currently has a unicameral system, meaning that parliament entirely makes up the legislative branch of government. Having an upper house would turn New Zealand into a bicameral system, where there are two sections of the legislative branch.

Laws 110 Constitution Submission

Many other states currently have bicameral systems, such as Australia, The United States, and The United Kingdom. One of the key benefits of having an upper house is that for laws to be passed, they must be approved both by the upper house, and also by parliament, meaning that proposed legislation and amendments to it come under scrutiny from two different bodies. By having this take place, it would make it more unlikely that “bad” laws are passed, and that all laws that are passed have been subject to a lot of thought and discourse. The upper house can also act as a conscience or restrain for parliamentary power, and if a proposed law is unjust, the upper house can veto it, and therefore it will not be able to be passed. Although the public and the media are currently able to be the conscience for parliament to some degree, they do not generally have any legal power to challenge corruption and poor legislation in parliament except through lobbying and protesting. Consequently this means that parliament is unlikely to listen to their complaints, unless there is a clear threat of public revolt on a grand scale. It is also better to have an upper house to act as a “whistle-blower” instead of the media, as the media will often have their own agendas and promote one view point over another with many issues, instead of presenting them objectively.

In conclusion, the New Zealand constitution is clearly in need of change across several different areas. As discussed above it will need to be codified, and doubly entrenched to make it concise and stable. The Bill of Rights Act will also need to become supreme law in order to ensure the protection of basic human rights, and the judiciary should also have the power to declare legislation to be “unconstitutional”, and to strike it down if it conflicts with the Bill of Rights Act as well. Finally, the creation of an upper house will be necessary in order to ensure that parliament has a “conscience”, and to reduce the probability of “bad” law being passed. If these changes are taken into account, the political landscape of New Zealand would be changed greatly, and the constitution would become a much more formidable political and legal force than what it is today.

Sources:

?*Fitzgerald v Muldoon and Others* [1976] 2 NZLR 615

???????*Human Rights Act* 1993 s21

???????*Mental Health (Compulsory Assessment and Treatment) Act* 1992

???????*New Zealand Bill Of Rights Act* 1990 s11

??????? Charters, Claire “Comparative Constitutional Law and Indigenous Peoples: Canada, New Zealand, and the USA” in Ginsburn, Tom and Dixon, Rosalind (eds) *Comparative Constitutional Law* (Edward Elgar, Cheltenham: UK; Northampton, MA, 2011) Ch. 10

??????? Hart, HLA *The Concept Of Law* (2nd ed, Clarendon Press, Oxford 1997)

??????? Heywood, Andrew *Politics* (3rd Ed, Palgrave Macmillan, Basingstoke, 2007)

??????? Leane, Geoff “Enacting Bills of Rights: Canada and the Curious Case of New Zealand’s ‘Thin’ Democracy” (2004) 26 *Human Rights Quarterly* (No.1) pp165-181

??????? Palmer, G and Palmer, M *Bridled Power: New Zealand’s Constitution and Government* (4th ed, Oxford University Press, Melbourne, Australia; Auckland, NZ, 2004)

??????? Webb, Saunders, Scott *The New Zealand Legal System* (5th ed, LexisNexis, Wellington, 2010) Ch.3-4

??????? Shapiro, Scott. J “What is the Rule of Recognition (and Does It Exist?)” in Adler, Matthew and Himma, Einar (eds) *The Rule of Recognition and the US Constitution* (Oxford University Press, 2009)

??????? Constitutional Advisory Panel “New Zealand’s Constitution: The Conversation So Far” (September 2012, Wellington) http://www.cap.govt.nz/store/doc/The_Conversation_So_Far.pdf

Laws 110 Constitution Submission

??????? Constitutional Arrangements Committee "Inquiry to Review New Zealand's Existing Constitutional Arrangements" (August 2005) <http://www.parliament.nz/en-NZ/PB/SC/Documents/Reports/e/9/b/e9b156d30c1840eb8ffa20c6b28277de.htm>

??????? The New Zealand Constitutional Review Webpage: <http://www.ourconstitution.org.nz>

¹ Andrew Heywood. *Politics*, Third Edition, Palgrave Macmillan, p 318

² Hl A Hart *The Concept Of Law* Second Edition Clarendon Press 1997

³ Scott J Shapiro *What is the Rule of Recognition (and Does It Exist)?* Oxford University Press 2009

⁴ Shapiro, above n3.

⁵ *The New Zealand Bill of Rights Act* 1990 s4

⁶ *Mental Health (Compulsory Assessment and Treatment) Act* 1992 s58

⁷ *Fitzgerald v Muldoon and Others* [1976] 2 NZLR 615

⁸ G.Palmer and M.Palmer. *Bridled Power: New Zealand's Constitution and Government*. 4th Edition, Oxford University Press.

3772

From: Macfarlane
To: <constitutionalreview@justice.govt.nz>
Date: 23/07/2013 5:40 p.m.
Subject: CAP submission
Attachments: SJM Submission.doc; SJM*Submission.doc

This is a resend of a submission I sent previously.

I've realised you need a name and address.

Stuart

Stuart Macfarlane

Auckland

Constitutional Review

Share your aspirations

1. What are your aspirations for Aotearoa New Zealand?

A. A society which is safe from both external and internal threats and is healthy and well educated and trained in fields where jobs are available.

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

A. As it is now

New Zealand's Constitution

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

A. No.

Why?

A. 1. The present set-up works perfectly well. As it isn't broken, don't experiment with fixing it and risking unforeseen consequences.

I agree with Lord Cooke of Thorndon, when he wrote (Inquiry to review New Zealand's existing constitutional arrangements, 2005):

7 The view that "it isn't broke" was put forward by a number of submitters, including Lord Cooke of Thorndon, who wrote:

In any democracy there will be from time to time some grey areas of overlapping or competing powers. And wherever rights or interests are not implemented, protected or furthered, some citizens or interest groups will feel frustrated, be they a majority or a minority. Frustration is part of the price to be paid for having democracy rather than totalitarianism. Given acknowledgement that checks and balances are always necessary to rule out absolute power, it would seem that by and large the present New Zealand constitutional arrangements work reasonably well. On a comparison with those of other countries for which I have served judicially ... I see nothing disadvantageous to New Zealand in these respects. (Submission from Lord Cooke of Thorndon, p. 6.)

A.2. For fuller details see:

Appendix A — James Allan: A written constitution for New Zealand

Appendix B — David Round: Government's constitutional review sham

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

A. No

Why?

A. Risks fossilising the law while circumstances may change in unforeseen ways.

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

A. Parliament,

Why?

A. Because it's democratic. I don't want a few judges to decide.

The Bill of Rights

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

A. Yes

Why?

A. See answer to 5 below.

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

Nothing needs doing.

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

A. No

Why?

A. I agree with the reasons in the following quotation from Mike Butler:

Bill of rights issues

The Bill of Rights Act 1990 claims to affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights. Section 7 requires the Attorney-General to bring to the attention of the House any provision in a bill that appears to be inconsistent with any of the rights and freedoms contained in the Act.

The Act stemmed from a White Paper entitled "A Bill of Rights for New Zealand", tabled in parliament in 1985 by Justice Minister Geoffrey Palmer, which proposed a number of controversial features which sparked widespread debate:

1. The Bill of Rights was to become entrenched law so that it could not be amended or repealed without a 75 percent majority vote in parliament or a simple majority in a public referendum;
2. The Bill of Rights was to be supreme law, thereby eroding the doctrine of parliamentary sovereignty;
3. The Treaty of Waitangi was to be wholly incorporated within the Bill of Rights thus elevating the treaty's status to that of supreme law.
4. The Judiciary would have the power to invalidate any Act of Parliament, common law rule or official action that was contrary to the Bill of Rights.

The Justice and Law Reform Select Committee recommended that New Zealand was "not yet ready" for a Bill of Rights in the form proposed, and recommended that the Bill of Rights be introduced as an ordinary statute, which would not have the status of superior or entrenched law.

Questions raised are whether the Act provide appropriate mechanisms to protect rights, and if not, what could be done, and whether the Act should include additional rights, and if so which rights?

Should this Act be entrenched to become supreme law? Support from three quarters of the members of Parliament or a referendum of voters would be required. The answer remains no. Should the Bill of Rights Act be broadened to include additional rights, such as social rights, cultural rights or environmental rights? Again, no, although there is a case to include property rights. Should the Bill of Rights Act be entrenched? No.

Should the Bill of Rights Act be superior law so other laws can not be inconsistent with it, unless parliament explicitly resolves otherwise? This is problematic because the Act affirms New Zealand's commitment to the International Covenant on Civil and Political Rights, which imports a whole host of international concerns that have been used to support separatism.

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

A. Parliament

Why?

A. Because it's democratic. I don't want a few judges to decide.

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

A. None

Why?

A. I agree with Mike Butler where he writes in another paper:

Should the Bill of Rights Act be broadened to include additional rights, such as social rights, cultural rights or environmental rights?

Again, no, although there is a case to include property rights.

Treaty of Waitangi

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

A. None

Why?

A. See Appendix C – David Round – A Treaty of Waitangi Constitution

12. Do you think that the treaty should be made a formal part of the constitution?

A. No

Why?



I agree with following article by Mike Butler:

Maori Representation

13. How should Maori views be represented in Parliament?

A. No differently from any other voter, that is democracy.

14. How could Maori electoral participation be improved?

A. It is open to any eligible citizen to decide whether or not to participate in voting

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

A. No differently from any other voter, that is democracy.

Electoral Matters

16. How many members of Parliament should we have?

A. The same as now

Why?

A. The system has been in force for some years and seems to work well enough

17. How long should the term of Parliament be?

A. Four years

Why?

A. Three years doesn't give a government time to carry out the policies it has been elected on. Mike Butler's view is:

Regarding the length of terms of parliament, one view is that we should stick to three-year terms to contain the damage done by a rogue government. Another view is that a four-year term would make it more difficult for a government to smile and wave for their entire first term, making their level of incompetence apparent sooner, thereby enabling voters to change the government at the end of the first term. The booklet noted a referendum in 1990 that had an 85.2 percent turnout showed that 69.3 percent favoured a three-year term.

18. How should the election date be decided?

Why?

I support the view quoted below:

Should there be a fixed end date? Currently, the prime minister can announce an election date to his or her own advantage. A fixed date, or a semi-fixed date, such as the last Saturday in November, would level the playing field, although there would need to be some means of calling an election earlier if a parliamentary deadlock results in no working government.

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

Why?

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

Why?

I agree with the 'clear majority of public want a law stopping "waka jumpers"', which is reported on the 3 News website in the following poll:

Latest 3 News/Reid Research Poll

By Patrick Gower, Political Editor

Prime Minister John Key has admitted he would like the power to kick rogue MPs like Aaron Gilmore out of Parliament, and the latest 3 News/Reid Research Poll shows a clear majority of public want a law stopping "waka jumpers".

Mr Gilmore caused all sorts of problems for the Prime Minister for two weeks. That's because, despite Mr Key being the boss, he had no power to fire his 49th-ranked list MP.

Mr Gilmore had all the power to stay on as an independent MP, and Mr Key says that's wrong.

The concept of waka jumping is part of MMP. Think Brendan Horan, or back to Alamein Kopu. But a new poll has shown the public doesn't like it.

Asked if there should be a rule change so rogue list MPs can be thrown out of Parliament:

77 percent said yes;

17 percent said no;

The rest said they didn't know.

"I think there is potentially the need for legislation to support that view," says Mr Key.

And National's rank-and-file are calling for a law change too, clearly worried Mr Gilmore was going to do a Horan, and stick around on \$144,000 a year.

"The party's not spooked by what they've seen, but they've always been conscious," says Mr Key.

And the Opposition agrees the likes of Mr Gilmore and Mr Horan should not be able to stay.

"It wouldn't have helped good government, and actually overall it brings the Parliament into disrepute as well," say Labour leader David Shearer.

"People are voting for the party, not for someone who thinks they can behave any way they like," says New Zealand First leader Winston Peters.

But the Greens don't agree.

"Party leaders like me would basically get to say to individual MPs, 'If you don't do what I like then I'll expel you from caucus and you'll be kicked out of Parliament,'" says Green's co-leader Russel Norman.

So there's the Prime Minister's personal opinion, public opinion and a clear majority in Parliament.

But when asked why the Government hasn't done anything about the issue considering the problems it has caused, Mr Key says his party hasn't had time as they have "a very full agenda of economic issues, education, health and justice".

So, Mr Key's government is "too busy" to do the public justice on waka jumping. There are 51 list MPs and all are free to go rogue if they like.

The only chance of stopping them is a New Zealand First private member's bill, but that has to be drawn, which means stopping waka jumping is down to luck.

The record of who has actually switched (Source Wikipedia)

Jim Anderton, 1989, from Labour to NewLabour

Ross Meurant, 1994 - 1996 from National to Right of Centre

Peter Dunne, 1994-1995, from Labour to Future New Zealand

0. Graham Lee, 1995-1996, from National to Christian Democrat

0. Trevor Rogers, 1995-1996, from National to Right of Centre

- 0. Clive Matthewson, 1995–1996, from Labour to United New Zealand
- 0. Margaret Austin, 1995–1996, from Labour to United New Zealand
- 0. Bruce Cliffe, 1995–1996, from National to United New Zealand
- 0. Pauline Gardner, 1995–1996, from National to United New Zealand
- 0. Peter Hilt, 1995–1996, from National to United New Zealand
- 0. John Robertson, 1995–1996, from National to United New Zealand
- Michael Laws, 1996, from National to New Zealand First
- Alamein Kopu, 1997–1998, from Alliance to Mana Wahine
- 0. Frank Grover, 1998–1999, from Alliance to Christian Heritage Party of New Zealand
- 0. Tau Henare, 1998, from New Zealand First to Mauri Pacific
- 0. Jack Elder, 1998, from New Zealand First to Mauri Pacific
- 0. Peter McCardle, 1998, from New Zealand First to Mauri Pacific
- 0. Tuariki Delamere, 1998, from New Zealand First to Mauri Pacific
- 0. Deborah Morris, 1998, from New Zealand First to Independent
- 0. Rana Waitai, 1998, from New Zealand First to Independent
- 0. Tuku Morgan, 1998, from New Zealand First to Independent
- 0. Ann Batten, 1998, from New Zealand First to Independent
- 0. Donna Awatere Huata, 2003–2004, from ACT New Zealand to Independent
- 0. Gordon Copeland, 2007–2008, from United Future New Zealand to The Kiwi Party
- 0. Taito Phillip Field, 2007–2008, from New Zealand Labour Party to New Zealand Pacific Party

Appendix A – James Allan

A written constitution for NZ?

James Allan is the Garrick Professor of Law at the University of Queensland. He is a native born Canadian who practised law at a large firm in Toronto and then at the Bar in London before moving to teach law in Hong Kong, New Zealand and then Australia. He has had sabbaticals at the Cornell Law School in the US and at the Dalhousie Law School in Canada where he was the Bertha Wilson Visiting Professor in Human Rights for 2004.

Allan has published widely in the areas of constitutional law, legal philosophy and bill of rights scepticism. His latest book is *THE VANTAGE OF LAW* (Ashgate, UK, 2011). He also writes regularly for weeklies and monthlies including being a regular contributor to *The Australian*, *The Spectator Australia*, and *Quadrant*. He was elected to the Mont Pelerin Society in 2011.

I spent 11 wonderful years in Dunedin before moving over to Brisbane, Australia eight years ago. In both places I worked in a university law school, and one of the subjects I taught (and

teach) is public or constitutional law. Now New Zealand currently has an unwritten constitution, where Australia has a written constitution.

What does that mean? It means that in New Zealand there is no one, single, over-arching legal document that, say, allocates power between the branches of government or puts a limit on what the elected Parliament can do. Australia does have that.

Of course there are written legal texts that matter in New Zealand. But the key point is that all such laws are ultimately able to be changed or removed by the elected legislature. In lawyers' jargon, New Zealand has 'parliamentary sovereignty'. Australia does not, though of all the world's written constitutions Australia is the closest to parliamentary sovereignty of any other going. That's because the Australian written Constitution forswears an entrenched bill of rights and leaves almost everything to elected legislatures. (Go and have a read some time. You'll see repeated reference to 'until the Parliament otherwise provides'.)

Now I am a big time partisan of democratic decision-making. I think all the key social policy decisions, the line-drawing choices related to abortion, same-sex marriage, how to deal with those claiming to be refugees, where tobacco companies can advertise, and myriad other such debatable, highly disputed issues, ought to be made by the elected legislature, NOT by judges.

But the fact is that in most places with written constitutions, these calls (in whole or in part) are made by unelected judges. Even in Australia, where things are as democratically good as they get with a written constitution, judges have used the written constitution, decades after it was brought into being, to 'discover' that some of the words of that text mean something completely and totally different to what any of the drafters, framers or ratifiers intended or would have agreed to at the time it was adopted.

And therein lies the difficulty with written constitutions. People fight over every word, every comma, every phrase when one is being drafted. But once one is in place, what that document actually means will be authoritatively declared by the top judges, and no one else. And here's the thing. In Canada and in Europe it is virtually unanimous orthodoxy that the words of the Constitution will be interpreted as a 'living tree' - meaning that the words can stay the same but their meaning can change over time.

Heck, this 'living tree' interpretive approach is the position of about half the US Supreme Court and, these days, over half of the Justices of Australia's top court.

And what that means is that judges, and no one else but the judges, can update the written Constitution. Every single other person in the country is locked in, because that is what a written constitution does, it locks things in and takes them out of the hands of the elected parliament. So any move to a written constitution is overwhelmingly likely to enervate democratic decision-making. It will move some important decision-making out of the hands

of the elected legislature and into the hands of the judiciary as they read through the runes of the frozen-virtually-in-stone new written constitution's provisions.

Put a little more simply, written constitutions take away from democracy. That's why I'm against, strongly against, any move to written constitution for New Zealand. Don't forget, without a written constitution and relying solely on the elected legislature New Zealand was the first country on earth to grant women the vote; it gave Maori men the vote back in the 1860s; it brought in social welfare laws for workers before just about anywhere else; it completely overhauled its economy when it was breaking at the seams in the 1980s. New Zealand's record on just about any criterion going looks better than those of places with written constitutions.

But the problem with a written constitution doesn't stop there. It gets worse, and a little more complicated too, because the scope for those interpreting a written constitution at the point-of-application (meaning the judges) to impose results that they happen to like on the rest of us depends in part on how specific and detailed the legal text happens to be. So interpreting a Tax Act, say, involves giving meaning to something that is mightily detailed and though there will always be areas of doubt and uncertainty that the judge will have to resolve, they will be few and far between.

But written constitutions are not like Tax Acts. They do not deal in detail and specifics. They tend to be short. If they have an entrenched Bill of Rights they deal in moral abstractions that are vague, amorphous and begging to be filled with content NOT by you and me and the voters but by the judges of the Canadian Supreme Court or the US Supreme Court (who might say the words now, all of a sudden, demand same-sex marriage (as in Canada) or almost no limits on the funding of elections (as in the US) or just about anything else).

And here's the thing. The exact same thing can be said of the Maori Party's push to have a written constitution that incorporates the Treaty of Waitangi. The latter has little content in its few short paragraphs. Talk of its 'principles' inherently involves a lot of 'stuffing it full of latter day content that no one at the time imagined or intended'. And if, as is overwhelmingly likely, the top New Zealand judges adopt the same sort of 'living tree' interpretive approach that we see today in Canada, Europe, and amongst most or many of the top judges in the US and Australia, then there is absolutely no predicting in advance what may be imposed on Kiwis some time down the road. Remember, the words can stay exactly the same but their imputed meaning can change and alter as the top judges see fit.

And you know what? The elected parliament won't be able to do anything about it. That's the point of a written constitution. It trumps parliament. It overrides parliamentary sovereignty. It enervates democracy.

Now that may be a good thing if you reckon you can get a more favourable deal out of a committee of ex-lawyer judges in Wellington than you can out of the democratic process. But

for democrats like me it is an appalling prospect.

And don't forget. It's not as if New Zealanders will be offered an Australian-style written constitution that largely forswears amorphous, content-free abstractions. And it's not as if Kiwis can be guaranteed an approach to interpreting this document that will be guided by the intentions of those drafting it or the understandings of those who agreed to its adoption. Heck, even with New Zealand's statutory bill of rights the top Kiwi judges almost immediately proclaimed that its meaning would be independent of the understandings of those who drafted it and enacted it. And in Australia they purport to 'find' things in the text that have supposedly (and implausibly) lain dormant for 80 or 90 years.

Look, I think you can bet your very last dollar that should you go down the road of a written constitution its meaning will in fact be determined by a process that essentially involves the top judges consulting their own moral sensibilities, perhaps consulting what is going on overseas in other jurisdictions, and that involves a whole heap of so-called 'balancing' and deciding on what they, the judges, consider to be 'reasonable'.

Let's face it. Go down this road and you sell away some of New Zealand's wonderful democratic decision-making.

I think it would be a disaster for New Zealand to move to a written constitution of the sort almost certain to be offered. And I would run a mile from incorporating or entrenching the Treaty into any such instrument, not least because overwhelmingly no one knows what it means when applied to any specific issue. So all you will be buying is the views of the top judges, instead of your own, the voters. That's not a trade I would ever make.

And to finish with a last bit of bluntness, I'm not overly sure that Mr. Key is all that reliable on these sorts of issues. He seems to me, from over here across the Tasman, to be a man who courts popularity rather standing up for what will benefit New Zealand in the long term. One of the most important issues in my mind for New Zealand had always been to rid the country of one of the world's worst voting systems, MMP. Mr Key by and large stayed out of that debate making a few perfunctory anti comments but doing little else.

But if he thought MMP was holding back New Zealand's ability to prosper in the modern world, as I do, then he should have taken the risk of getting actively involved. The result might have been different. (And I do still worry about New Zealand's prospects under this lousy voting system that puts the major political parties at the mercy of small ones that garner barely 1 in 20 of the votes but who can use their 'kingmaker' status to demand all sort of things – even a proposal to look at moving to a written constitution that locks in the Treaty.)

So in my opinion, expressed from over here in Australia, this is a terrible idea. It needs to be knocked back. And I have my fingers crossed that you can all achieve that outcome.

Appendix B – David Round –

Government's constitutional review sham

David Round teaches law at the University of Canterbury and is author of *"Truth or Treaty? Commonsense Questions about the Treaty of Waitangi"*.

New Zealand's constitution is working perfectly adequately. Nothing is broken; nothing requires fixing.

But the government, at the Maori Party's behest, established a 'Constitutional Advisory Panel' to consider (as well as a number of obvious political non-starters) 'the place of the Treaty of Waitangi in our constitution, and how our legal and political systems can reflect tikanga Maori'[1]. Rahui Katene, the Maori Party's constitutional spokesman, announced that 'the Treaty must be the backbone for constitutional change', that the Party's 'ultimate goal ... is to ensure that the Treaty is given proper recognition', and that our constitutional arrangements must 'allow for full engagement and recognition by tangata whenua'[2]~ which, by implication, does not occur under current arrangements.

The Panel's whole inquiry must be conducted 'in ways that reflect the Treaty relationship' and 'in ways that reflect the partnership model'[3]. That alone will predetermine many of its findings.

The Panel's twelve members are racially selected; five European New Zealanders, five Maori, one Pacific Islander and one Asian. Several Maori members have long been vehement supporters of special Maori status; one European member has very recently announced her commitment to the Treaty as our 'founding document'. Another acts as a consultant for Tuwharetoa.

The material which the Panel has already produced to 'guide' public participation has a distinct pro-Treaty slant and contains many statements which could well be argued, at the very least, to be actively misleading[4].

All these things point in one particular direction; and politics is a dirty and treacherous business. Yet Sir Michael Cullen, one of this Panel's members, insists that the Panel has a completely open mind. Its sole concern is merely to 'stimulate debate' and report back to the government.

If you believe that, you will believe anything.

Sir Michael, a seasoned politician, is adept at making soothing noises. But we have often heard these reassurances before. 'This is only a proposal.' 'You'll have an opportunity to have your say.' And then, before we know where we are, it is too late. The last thirty years have been characterised by increasingly undemocratic arrogance by both National and Labour

governments. (Sadly, the official panel's terms of reference do not cover any inquiry into how *that* might be remedied.) There is a saying that if something looks like a duck, walks like a duck and sounds like a duck, then it probably is a duck. By the same token, this allegedly impartial inquiry looks, walks and sounds like a jack-up, laying the foundations for a disastrous and irrevocable betrayal of the interests of most New Zealanders.

The Independent Constitutional Review Panel, which I have the honour to chair, is deeply worried that no-one seems to be asking the really important questions. New Zealanders in the last thirty years have displayed exceptional generosity of spirit and patience in trying ~ once again ~ to lay racial issues to rest. Yet the net result has been the opposite. Demands continue and escalate for yet more resources, and now for entrenched political privilege and power as well. There is never the slightest expression of gratitude for what we have done already. Race relations deteriorate disastrously. Surely it is timely to ask whether the policies of the last generation have been leading us in the right direction. What policies and laws will best promote peaceful and harmonious race relations and national unity and prosperity? But instead, radical misinterpretations of the Treaty are regarded as a self-evident good.

Sir Michael should surely be thanking the Independent Panel for promoting the discussion he claims to desire. But instead, he accuses it of 'fevered imaginations' and 'conspiracy theories'. In other words, he and his official panel are not interested in hearing what many New Zealanders have to say.

<http://www.nzcpr.com/NZCPRdonationpage2012.htm> There is yet another panel, an 'iwi constitutional working group' commissioned by the Iwi Leaders Group. Margaret Mutu, that working group's chair, has just complained[5] that Maori 'have no constitutional rights' and 'are not going to get them until there is a written constitution'. Now that is extreme stuff; yet ominously, Sir Michael does not bother condemning it at all. That iwi group, too, is far better resourced, organised and influential than our humble Independent Panel. So why Sir Michael's silence? The not unreasonable explanation is that he does not think the iwi group is extreme at all.

Constitutions are fundamentally important documents. Their words are not just meaningless platitudes, but have profound effects. This current review is radical Maoridom's big chance ~ and our country's peril. If Maori can establish a guaranteed special constitutional position, they will have the whip hand for ever. That would be disastrous for our nation. Yet a leader of the review has just condemned those daring to raise these issues as extremists. We have every reason to be very worried.

[1] Dr Peter Sharples, when announcing the review; quoted in D.J. Round, *Two Futures: A Reverie on Constitutional Review* (2011) 12 Otago LR 525

[2] Ibid.

[3] Terms of Reference, *ibid*.

[4] See analysis by D.J.Round in the New Zealand Centre for Political Research electronic

newsletter, 4th November 2012

[5] Press, 5th February 2013, p. 4

Appendix C

David Round – A Treaty of Waitangi Constitution

David Round teaches law at the University of Canterbury and is author of "Truth or Treaty? Commonsense Questions about the Treaty of Waitangi".

Christmas and New Year! It is a time for relaxation and celebration; a time, too, to reflect on the past year, and wonder about and plan for the days to come. So let us gaze, if not into a crystal ball, at least into the clouds of the future. Perhaps through the clouds we may glimpse the land below occasionally, and sense, however haphazardly, the terrain that awaits us. When I last wrote I imagined the easy steps by which, if we did not rapidly acquire some gumption, we could have a written Treatyist constitution imposed on us without our consent. Let us go further today. Once we had been saddled with such a burden, what would that mean for New Zealand?

Here is a concrete example. In 1997 Geoffrey Palmer put forward a proposed model constitution, which can be found as an appendix in his book *Bridled Power: New Zealand Government Under MMP*. His constitution's Treaty section ran thus:

- ~ *The rights of the Maori people under the Treaty of Waitangi are hereby recognised and affirmed.*
- ~ *The Treaty of Waitangi shall be considered as always speaking and shall be applied to circumstances as they arise so that effect may be given to its spirit and intent.*
- ~ *The Treaty of Waitangi means the Treaty as set out in Maori and English in the Schedule to this Act.*

If we were to have the Treaty mentioned in a constitution, it might very well be in some such terms as this. So what would a clause such as this mean in practice?

1. The first thing to note is that such a clause would remove all Treaty arguments from politicians and hand them over to the courts. This would not be a good thing. Our politicians, heaven knows, are bad enough, but at least we can tell them what we think, and vote them out and replace them with another lot. But we cannot do anything like that with judges. Once the Treaty is in a written constitution, then the interpretation which judges put upon it will be binding on us and beyond argument forever. Given the clear pro-Maori political bent which some members of the judiciary already shamefully display, they should be the last people to be let loose on the Treaty. It is no use saying in reply to that that many judges do not have that political bent. For one thing, political issues, whatever they are ~ not just Treaty issues, but all sorts of things ~ should not be left to judges at all, whether we agree with their politics

or not. We ourselves should decide political issues, not highly-paid cloistered officials. For another thing, the politics of most judges are actually irrelevant. We have a hierarchy of courts, and appeals from one to another. The final rulings are made by the five judges of the Supreme Court. They can overrule anyone else. Once those five people declare that black is white, then every other judge in the country is obliged to agree. Under a written constitution, then, many political decisions on all sorts of matters of the highest importance will be handed over to this tiny handful of unelected and undismisable judges. They will be our rulers, and if we do not like it there is absolutely nothing we will be able to do about it.

2. Our present Chief Justice, who sits on the Supreme Court, has already made it clear that she considers herself entitled, right now, to strike down Acts of Parliament if they offend against her understanding of 'Treaty principles'. To do so now would be to deny the supremacy of Parliament; it would be a death-blow to democracy and equality before the law. It would be, in effect, treason; an illegal usurpation of power. Not that this seems to worry her. We can be quite certain, however, that once authorised by a written constitution which 'recognises the rights of the Maori people', she and her like-minded colleagues would need no second bidding to do what she so clearly longs to do, and establish herself and her colleagues as supreme over Parliament and people.
3. Once this principle is established, then it is inevitable that just about every law in the country will be liable to challenge as being in breach of the 'rights of the Maori people'. No law would be safe. Even if judges ultimately upheld a law, the challenge to it would introduce enormous uncertainty, as well as great vexation and racial ill will. These arguments will of course provide lawyers with an incredibly lucrative new area of work, and we are already noticing that rich Maori organisations are able to employ the best lawyers to argue their cases. It would also bring all judges and our judicial system into disrepute. Judges would be making political decisions. They would come to be perceived as a species of politician, and unelected politicians at that. This would not be good for our judicial system or for public respect for judges or the law.
4. Bear in mind, also, that the nature of the judiciary will change. The United States Supreme Court, which has the power to strike down laws as unconstitutional, is now openly political. Judges are appointed according to their political attitudes, and many decisions openly reflect their politics. This is in itself a bad thing. So here in New Zealand political influence will very probably mean the future appointment of more Treatyist judges.
5. Sir Geoffrey's Treaty clause makes some highly debatable assumptions and assertions ~ which any Treaty clause, however phrased, would inevitably make. It assumes that there is still a 'Maori race'. This could never be denied in future ~ after all, the constitution says that one exists. It would then, of course, be left to the judges to decide who could qualify as a member of that race, and who not. The clause speaks of the 'rights' of the Maori people under the

Treaty, without saying what they are. So the judges will continue to say what they are, and we can be sure that the judges will continue to find them to be a lot more than just to be subjects of the Queen like everyone else. If the Treaty is to be 'always speaking', indeed, then that is inevitable.

6. So what would this mean in practice? Here are some examples ~ but they are only examples. The Treaty could be used in every single situation we can think of as an argument as to why the law should grant special privileges to members of the 'Maori race', and why any law that does not do so is defective. Even if judges should dare to decide against Maori favouritism, the threat of challenge is always there. We can never be certain, with any legal or social arrangement, that at some time in the future someone will not pop up and say 'it's against the Treaty', and a judge might agree with them. A Treaty clause is an invitation to endless litigation, and a guarantee of eternal uncertainty and racial bitterness.
7. So, some examples. Already, some Maori are saying that there can be no such thing as a full and final settlement ~ that such a binding of future generations is 'not the Maori way'. (That being so, of course, the Treaty would cease to have any possible effect when its generation of signatories all died. Well...) Some Maori leaders are actually saying openly now that of course there will be another round of claims in the next generation ~ which is rapidly coming up. So ~ if that is a right of the 'Maori people', we will be putting our hands in our pockets for ever.
8. The word 'taonga', which in 1840 merely meant 'possessions' ~ of which land was the chief ~ is now interpreted to mean absolutely anything that Maori people 'treasure' or just want. Oil reserves deep underground ~ deep under the sea ~ are now claimed by Maori under the Treaty. By law, at present, they are the Crown's, the property of us all. But if a constitution requires that the Treaty be respected, and that it is 'always speaking'
9. Water ~ the new oil ~ is at present our common property. But as we know, the Waitangi Tribunal claims that by the Treaty Maori still own it...
10. Maori would clearly like the public conservation estate ~ an enormous area of land, full of useful timber, minerals, water, scenery for tourism ventures ... Already they enjoy special rights in various places to gather plants and timber. There have been extravagant claims about the Department of Conservation's duty under the Conservation Act's Treaty section. The courts have already recognised a certain duty to give racial preference to Maori in the granting of commercial concessions. There have been several attempts made to acquire rights to take protected species of fish and birds. The ill-conceived 'cultural harvest' proposal of the mid-1990s was one. Another was the Wai 262 claim, which claimed ownership of every single native plant and animal in New Zealand, and claimed, among other things, that any laws which protected them, by forbidding the killing of endangered species, were breaches of the Treaty. (The Tribunal did not go quite so far in its eventual ruling on this claim, but made

very far-reaching recommendations all the same.) The Ngai Tahu settlement recognised many 'taonga species', and the recent Urewera settlement has made fundamental changes to the underlying arrangements of the Urewera National Park. There will be a lot more of this. In a recent television programme on rivers the narrator, at the end of one down-river raft trip, paid a 'koha' to the tribe of the territory for 'using their river'. There will be a lot more of that. Conservationists are rightly concerned about the privatising of the conservation estate, but in their vigilance against white capitalists often seem to overlook the threat from the brown ones.

11. But why stop at public property? Already, 'wahi tapu' ~ 'sacred sites' ~ can be established over private property. The Historic Places Trust and District Councils can both declare them. The landowners' consent is not necessary. There need not even be any physical thing ~ a burial ground, a pa site ~ actually *there*. It might well be enough that this place is mentioned in a song or a story, for example. And we simply have to take the word of a self-appointed spokesman for that. Once the wahi tapu designation is there, a landowner may not disturb his land, subdivide ~ make any changes, really ~ without special permission. Essentially, the consent of the tribal spokesmen will be required. And inevitably, that will require the greasing of palms. Even as we speak, the Kapiti District Council is proposing the establishment of forty wahi tapu on private property in its district. There will be a lot more of this when respect for Maori treaty rights is part of our supreme law.
12. And I would not be surprised if the Resource Management Act were found inadequate in many other respects in its regard for Maori matters. Practically anything any landowner does with his land may affect Maori sensitivities. Watch for amendments here.
13. Needless to say, the latest compromise on the foreshore and seabed will be found to be unsatisfactory. Under the current law there is already the possibility that we may be excluded from parts of our coastline, or have to pay for the privilege. Many Maori, as we know, have denounced these current provisions as inadequate to satisfy their interests. So.....
14. When it was originally constituted, the Waitangi Tribunal was able to make recommendations that privately-owned land be 'returned' to Maori ownership. But it was objected that that caused considerable injustice to innocent landowners who suddenly found that their land was unsaleable, or at the very least considerably diminished in value. So Parliament restricted the Tribunal's powers so that it could no longer make such recommendations. But *how long would that restriction last, if Treaty rights were our supreme law, if there were further rounds of historic claims, and if less publicly-owned land were available to settle those new claims? If Maori Treaty rights were our highest law, surely Maori claims to land ownership should take priority over anyone else's?*
15. Some years ago, you may recall, an old Maori man in Northland was declined kidney dialysis treatment. He was declined, not on racial grounds, but on clinical ones. There simply was not

enough dialysis treatment available to treat everyone, and the merits of his own case ~ he was old and had several other serious medical conditions ~ simply meant that he had to yield to others who would benefit more from the treatment. Race, I stress again, just did not enter into the decision. The Maori Council, however, claimed that this decision was a breach of the Treaty. Old people, the Council claimed, were a taonga guaranteed under the Treaty. Therefore, the Treaty required that ~ simply because of their race ~ they be given preference in medical care. Doubtless young and middle-aged people are also taonga. All Maori people are taonga, and precious in the Treaty's eyes. The Maori Council, then, is already saying that the Treaty requires a racial preference in health care. So if Maori Treaty rights appear in any new constitution we might well expect the courts to issue a directive to that effect. And since there is already not enough money to provide full health care for everyone, who would be missing out?

16. The courts could well go further. They could overrule the allocations of money made by District Health Boards, and require more to be spent on Maori persons.
17. By the same token, there is no reason in principle why the courts could not overrule any allocations of money made by Parliament itself. If Maori Treaty rights required more money to be spent on Maori health, or Maori social welfare, or Maori education, or Maori anything, justification for the courts' interference is there in the constitution. We will still be paying the tax, but the courts, authorised by the constitution's Treaty clause, will be saying how the money must be spent. We may still have parliaments, but if they cannot make final decisions about how our taxes are spent then we will have taxation without representation. The bad old days will be back.
18. The judges have already discovered an obligation on taxpayers to fund the Maori language extremely generously. The money is not enough, though, actually to get Maori to speak it. It goes without saying, then, that more money will have to be spent on that precious taonga.
19. Many institutions of higher learning already reserve special places for Maori students who would not qualify to enter them on purely academic grounds. (Some Maori already dislike such quotas as patronising statements that Maori are inferior and need special treatment.) It would be very surprising if these quotas, and other forms of 'affirmative action', were not upheld and expanded. And as funding for education inevitably declines, these quotas will have the effect of allowing entry to more and more less-gifted Maori students at the expense of more gifted non-Maori, who will be excluded.
20. In theory, anyway, these Maori students, once they are admitted, usually have to fulfil the same standards as everyone else ~ although we have our doubts. But that may not last. Once 'Maori science' and other Maori 'disciplines' are given equal standing with proper science and other disciplines, all standards will fly out the window. Who are we, after all, to impose our narrow cultural prejudices on other cultures? Equal respect for Maori worldviews and

cultural perspectives ~ and qualifications in the same ~ will surely count as a Treaty right.

21. The Nurses' Council some years ago required all students to pass courses in 'cultural safety', which were nothing but racial indoctrination. Some tertiary institutions now are thinking about requiring all students to pass a course in 'cultural competence'. In other words, no-one will even be able to graduate from those institutions unless they have displayed politically-correct attitudes. We thought that sort of thing only prevailed behind the Iron Curtain, and in comical if appalling dictatorships such as North Korea's. But it is already happening here, and such respect for indigenous cultural views would surely be upheld, if not actually required, by a constitution which makes respect for Maori Treaty rights by everyone part of our supreme law.

22. So many Maori are in prison. Some people attempt to justify this by explaining that Maori commit a vastly disproportionate number of serious and violent crimes. Well, that might be so ~ but even so, prison is so unkind! It is not the Maori way. Although at other times we are told that theirs is a warrior culture... The Maori way is aroha ~ not that most of these villains seem to have received much of that as they were growing up. I'm sure that constitutionally-guaranteed Treaty rights will include marae-based justice, gentle care, and courses in weaving, gardening and stick games. Will this work? It doesn't matter. It's their Treaty right. End of story. Lock your doors and keep your powder dry.

23. Social welfare! So many Maori are poor! (Although at the same time more and more tribal and corporate Maori are rich! How is that, now? Maori poverty, be it added, can be explained simply as a function of age, education, class and the rest ~ one does not need race to explain it at all.) Whatever... There's poverty, and many supposedly intelligent people argue that the simple and effective way to eliminate poverty is simply to give all poor people more money. There you are. More of our money, of course. I'm afraid I can see some of our judges agreeing, and discovering that an adequate income, necessary for a dignified and healthy lifestyle, simply has to be provided by us as a taonga promised by the Treaty and now enshrined in the new constitution. It's the sort of new exciting extension of the boundaries of human rights jurisprudence which all progressive-minded people must applaud...

24. You are getting the idea, and this list is becoming repetitive. I shall mention only one more thing. The Treaty, our politically active judges already tell us, involves some idea of partnership. Never mind that the Treaty actually says that the Queen is to be sovereign over all ~ by some strange legal alchemy, clever judges have transmuted this into its very opposite. This is now regularly interpreted to mean a partnership of equals. Maori are not to be subject to the Crown, but are to be its partner. This partnership is a fundamental subversion of democracy. Special reserved Maori seats on local bodies, and even in parliament itself, are just the start. Maori are claiming now that their involvement in decision making should not be on the basis of one person one vote, but instead on 50:50

representation. Some are already clamouring for a separate Maori house of parliament whose consent would be required for any laws. Imagine dealing with that! But they all seem to be united in expecting representation well in excess of what their proportion of the population would entitle them to. That is what they have on the official Constitutional Advisory panel ~ five Maori and five European New Zealanders. That is what they are demanding in their new proposals for 'co-governance' in the Hauraki Gulf Forum ~ equal numbers to all other interests combined. That is what they will be seeking everywhere; and once they have got this 50:50 representation, then they will form an unassailable voting bloc. Then we will be forever at their mercy. And given what foolish judges have already said about partnership, it is entirely possible that Maori Treaty rights under a new constitution will be discovered to entitle them to this equal 50:50 representation.

Christmas, eh? I think of W.B Yeats' poem *The Second Coming*. Near the beginning he wrote:

Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere
The ceremony of innocence is drowned;
The best lack all conviction, while the worst
Are full of passionate intensity.

So true. And then he asks

...what rough beast, its hour come round at last,
Slouches towards Bethlehem to be born?

...

(3772)

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

- **Breaking views** – 12/5/13 '*Implications of Treaty in constitution*' by Mike Butler.
- **3 News** – 28/5/13 '*Public support end to 'waka jumping''*' by Patrick Gower.

ConstitutionalReview - Fw: Submission to constitution review

From: "Graham Macgregor"
To: <constitutionalreview@justice.govt.nz>
Date: 26/04/2013 11:57 a.m.
Subject: Fw: Submission to constitution review

I submit there should be no change to the current status.

The "principles" of the Treaty of Waitangi should not be part of a written constitution, as nowhere is there a formal or legal statement as to what this is or means.

With Treaty of Waitangi settlements being completed "soon", the Treaty of Waitangi needs to re-evaluated at that time, to define it's relevance in New Zealand today.

New Zealand is no longer Maori and Pakeha. It is a diverse population of many races and religions, all with equal legal status. Opportunity is there for those who work for it.

Maori electorates suggest that Maori are less (or less respected) than the rest of the population. Maybe this was true 100 years ago, but demeaning and patronising today. Maori electorates should be abolished and racial division no part of any constitution. We are all equal in law; no better and no worse than our neighbour.

I submit there should be no change in the meantime, except for abolishment of the Maori electoral seats.

Graham George Macgregor

Tauranga

16711

From: stuart MacGregor
To: "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.govt.nz>
Date: 27/06/2013 2:54 p.m.
Subject: NO vote for constitution.

New Zealand does not need a written constitution and I strongly oppose any legislation or reference to the Treaty of Waitangi in any constitutional document.

STUART MacGregor

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.

Hannah Mackintosh
Wellington
New Zealand

1384

From: "Jocelyn MacIntyre"
To: <constitutionalreview@justice.govt.nz>
Date: 17/06/2013 9:44 a.m.
Subject: Submission on Constitution

Constitutional Review:

I am not in favour of any change to New Zealand's unwritten constitution, or the 1852 NZ Constitutional Act, and especially do not agree with New Zealand having a race-based Constitution. All New Zealanders deserve to be equal under the law of the land and justice.

Sincerely,
Jocelyn MacIntyre

17 June 2013

Tauranga

SUBMISSION TO THE CONSTITUTIONAL
ADVISORY BOARD

[illegible]

My submission regarding the Constitutional Review is that I want no change to New Zealand's unwritten constitution which has served the country well since the passing of the 1852 New Zealand Constitutional Act which became our major founding document. This Act, along with other Acts of Parliament passed subsequently such as the Constitution Act 1986, Bill of Rights Act 1990, and the Treaty of Waitangi signed in 1840 collectively or separately have established satisfactory constitutional principles.

Some citizens of New Zealand are endeavouring to convince the government that a written constitution is needed and that this new piece of law should be based on the now archaic Treaty of Waitangi. To base a written constitution on the 1840 Treaty could allow the clamourists, mainly Iwi elite and Maori activists, to become co-governors over the country's natural resources thereby able to wield power over the country's economy. Their unsuccessful claim earlier this year for fresh water rights and the foreshore and seabed claim earlier, and many other claims such as the airwave bands, has shown that they desire control of natural resources.

The Treaty said Maori and settlers would be equals under the Queen's government. But over the years particularly since 1975 the Treaty's wording has been spun to mean anything that its supporters want it to mean. Treaty activists and Iwi notables have many times proposed decidedly undemocratic and politically motivated agendas which have frequently divided the general population. If the Treaty were enshrined in a written constitution the demands of unelected Iwi, cultural or political, would hold sway. A representative democracy as the present population know it, would no longer exist. Parliament would no longer be sovereign. Instead, the populace would have a race-based Constitution set in concrete.

In other words, the Treaty of Waitangi would become the "Doctrine of Waitangi". a dogma, and a dictatorship by the minority who claim special rights as "indigenous people". By their own knowledge of history, the Maori came to New Zealand in canoes from an island or islands in the Pacific about 500 years before the Dutch explorer, Abel Tasman, arrived in these waters. There were indisputably, other humans living in some parts of New Zealand, known as Moriori. Therefore the Maori are not a truly indigenous people (such as the Aborigine of Australia who have peopled that land for probably 40,000 years) and should not have a more powerful place or voice in setting the laws of our land than their per capita representation within the population would allow.

Let us not be persuaded by politicians with their own career motives, to become an apartheid nation; we as a nation dare not tread that path. Let us retain our present system of one vote, one person. I do not want to live under a doctrine. We do not need a written constitution.

marilyn m. macIver

Signed at Tauranga this 17th day of June 2013.

[illegible]