

# **A House Divided**

**A report on issues considered by the government's  
Constitutional Advisory Panel**

**prepared by the**

**Independent Constitutional  
Review Panel**

**and presented  
to the people of New Zealand  
in the hope that it may make a difference**

**December 2013**

***He iwi tahi tatou/Now we  
are one people***

(The words uttered by Captain Hobson at Waitangi after the  
signing of the Treaty, 6<sup>th</sup> February 1840)

## Contents

Executive Summary.....	4
1. Introduction .....	6
2. ICRP members.....	7
3. The methods and purpose of this report.....	9
4. The nature and purpose of a constitution .....	11
5. The nature of New Zealand’s constitution .....	15
6. Treaty of Waitangi meaning and ‘principles’ .....	21
7. Official Constitutional Advisory Panel defects.....	25
8. Crucial constitutional issues facing ~ and not facing! ~ NZ .....	29
9. Consequences of constitutional ‘recognition’ of the Treaty .....	33
10. Views of the public.....	43
11. Our recommendations.....	69

## Executive Summary

As a result of their coalition deal with the Maori Party in 2008 and 2011, the National-led government agreed to undertake a review of New Zealand's constitutional arrangements. From the outset, this politically-driven review was fundamentally flawed - the terms of reference, personnel and procedures of the official Constitutional Advisory Panel predetermined the results and avoided any genuine public awareness or input.

Mounting concern over where the government review could lead the country resulted in the establishment in 2012 of the *Independent Constitutional Review Panel* - a group of New Zealanders of various races, sexes and politics, who joined together to undertake their own independent review of the constitution. Chaired by David Round, a law lecturer at Canterbury University, Panel members are Auckland University Associate Professor Elizabeth Rata, Massey University Emeritus Professor Martin Devlin, Queensland University Garrick Professor of Law James Allan, New Zealand Centre for Political Research founder and director Dr Muriel Newman, and NZCPR researcher Mike Butler. *A House Divided* is their report.

Fundamentally, the Treaty of Waitangi promised the equality of Maori and Briton - no less, and no more. However, it is now routinely misrepresented as a vehicle for Maori special status and privilege – a view that was promulgated by the government-appointed panel.

It should go without saying that equal rights of citizenship are desirable; that legal discrimination on the basis of racial ancestry is undesirable; and that our constitution should be directed to the common good rather than being a vehicle for the enforcement of a destructive tribalism. Yet those seeking to give the Treaty of Waitangi constitutional status - an outcome which would irrevocably establish in law a racist state where one's legal rights depended on one particular racial strain in one's ancestry – appear unconcerned about the disastrous consequences of New Zealand's accelerating drift towards racial separatism.

New Zealand's present constitutional arrangements, gives this country one of the strongest parliamentary democracies in the world, with the ultimate law-making power held by elected Members of Parliament who can be sacked if they lose the confidence of voters. A "written" constitution would take power away from ordinary citizens and their elected representatives and deliver it to an un-elected, unaccountable and, (quite improperly but not infrequently) politically activist and politically-correct judiciary.

A nation's best hopes of happiness and prosperity lie in the unity and cohesion of its population, not in the pursuit of selfish narrower interests or the promotion of a sense of grievance. Genuine social problems must be tackled at their root; racial solutions to social problems simply do not work in the longer term.

The recommendation proposed by the government's review panel for a continuing 'national conversation' about the constitution should be strongly rejected, to avoid the opportunity for 'capture' by those wanting to progress a self-interested, race-based agenda at a cost to the common good of all New Zealand citizens.

*A House Divided* is based on the widespread research and consultation of the Panel's members. This included 1222 written submissions received as a result of advertising and publicity. Responses were sought on specific questions including those matters identified in the Terms of Reference of the government's review.

The biggest response - 97 percent - came from submitters calling for the abolition of local government Maori seats. Opposition to the Maori electoral option (separate Maori roll), the parliamentary Maori seats, and to whether the Treaty of Waitangi should be included in our constitutional arrangements came in a close second at 96 percent.

Ninety five percent thought that any change to our constitution is only legitimate if approved by voters through a public referendum. Eighty six percent wanted to retain our present flexible constitutional arrangements, where the ultimate law-making power is held by elected MPs.

Eighty three percent thought the "Declaration of Equality" (which promotes equal rights and calls for the removal of all laws establishing or promoting racial distinction or division - including the Maori seats and the Waitangi Tribunal) should be enacted by Parliament. Eighty percent wanted fewer MPs, 70 percent thought the protection of property rights should be included in the Bill of Rights, 67 percent wanted electoral integrity legislation to be re-introduced, and 50 percent wanted the parliamentary term to stay at three years.

Forty seven percent wanted the election date to stay flexible, 45 percent thought the Bill of Rights should be entrenched, 41 percent thought the method of calculating the size of electorates should be changed, and 40 percent wanted the number of electorates to stay the same.

*A House Divided* has been referred to the government for consideration.

## 1. Introduction

This report has been written by a group of New Zealanders, of a variety of races, sexes and politics, who have for some years been watching with growing concern New Zealand's accelerating slide towards racial separatism. Most recently, they have been particularly alarmed by the National-led government's decision, as part of the National Party's coalition deal with the Maori Party after the 2008 election, to establish 'a wide-ranging review of New Zealand's constitutional arrangements'<sup>1</sup>, and to that end to establish an official 'Constitutional Advisory Panel' (CAP) to conduct the review and make recommendations to the government.

Constitutional law establishes the very basic framework of how our society is run, and short and simple changes there can have immense and irrevocable effects. As will be explained, it seemed to the authors of this report that that official process was fundamentally flawed, being designed in its terms of reference, personnel and procedures to operate and produce predetermined results without any actual genuine public awareness or input. They had little confidence that the official CAP would reflect the widespread and absolutely mainstream public unease and discontent with the ongoing progression of the Treaty industry. Worst of all, it seemed to them that the CAP, and the intellectual and political interests it was designed to serve, were unaware, or at least not concerned about, the immense dangers into which that continued progression is leading our country.

In the absence of any other obvious persons willing to take the job on, therefore, the authors of this report joined together and formed themselves into the Independent Constitutional Review Panel (ICRP), in order to raise public awareness and lead public debate. The ICRP modestly suspects that its own public meetings, advertisements and general agitation have done at least as much as the official Panel's activities to bring the issues to public attention. Needless to say, we receive no government recognition or support; our work is funded by the donations of ordinary New Zealanders who share our fears.

---

<sup>1</sup> New Zealand Government 'Government begins cross-party constitutional review' (Media release, 8 December 2010)

## 2. ICRP members

**David Round**, the chairman, a sixth-generation South Islander, born in Christchurch, teaches environmental law, land law and legal history and philosophy at the University of Canterbury. His first book on the Treaty industry, *Truth or Treaty? Commonsense Questions about the Treaty of Waitangi*, was published by Canterbury University Press in 1998, and he is a contributor to *Twisting the Treaty, A Tribal Grab for Wealth and Power*, published by Tross Publishing. A keen tramper, former national president of Federated Mountain Clubs (FMC) and former long-time chair of the North Canterbury branch of the Royal Forest and Bird Protection Society, he lives at Port Levy, where he bred Highland Cattle for many years, and was also for several years a popular columnist in the Christchurch Press.

**Associate Professor Elizabeth Rata** of Auckland University is a sociologist of education specialising in the relationship between education and society. She is Editor of *Pacific-Asian Education*, Leader of the Knowledge and Education Research Group, a member of a European Union International Research Staff Exchange Scheme, and a former Fulbright Senior Scholar to Georgetown University, Washington D.C. She is the author of numerous books.

**Professor Martin Devlin** (ONZM), Professor Emeritus, Massey University, has a distinguished career in the fields of education – in business, management, entrepreneurship, and corporate governance – in the private business sector, and in the NZ Army. He was appointed an Officer in the NZ Order of Merit, ONZM, in the Queen’s Birthday honours in 2011 for services to education. He is a fifth generation New Zealander.

**Professor James Allan**, the Garrick Professor of Law at the University of Queensland, is a member of the Mont Pelerin Society, an author and commentator. Canadian born, he practised law in Canada and at the Bar in London before teaching law in Hong Kong, New Zealand and Australia. He has worked at the Cornell Law School in the US and at the Dalhousie Law School in Canada where he was the 2004 Bertha Wilson Visiting Professor in Human Rights. He spent 11 wonderful years in Dunedin.

**Mike Butler** is an NZCPR Research Associate, property investor and manager. He is the author of *The First Colonist — The life and times of Samuel Deighton 1821-1900* about his great-grandfather, who arrived in Petone on January 22, 1840. He contributed to *Twisting the Treaty, A Tribal Grab for Wealth and Power*, by Tross Publishing. A former contract writer for the New World Encyclopedia, Mike was the chief sub-editor of the Hawke's Bay Herald-Tribune between 1986 and 1999.

**Dr Muriel Newman**, the Convenor of the Independent Constitutional Review is the Founder and Director of the New Zealand Centre for Political Research, a public policy think tank she established in 2005 after nine years as a Member of Parliament. Her background is in business and education. She currently serves as a director of a children's trust.



### **The place of the Treaty of Waitangi in a new constitution**

*By David Round*

*Chairman Independent Constitutional Review Panel*

*“A constitution is an agreement which a people has about some fundamental things ~ about how they are to be governed, and the principles on which they base their government and society. There has to be agreement ~ and the very fact that we are holding this debate is proof that the Treaty and its so-called principles should not be in our constitution, because on that matter there is no agreement.”*

Guest Commentary featured by the New Zealand Centre for Political Research  
- 4 May 2013. Read the full commentary [HERE](#)

### 3. The methods and purpose of this report

This report hopes to provide a neutral, reasonable and objective view of the desires of most New Zealanders and of the constitutional needs of our country. If it begins from any predetermined point of view, it is only from the starting-point that

- (a) Equal rights of citizenship for all citizens are desirable
- (b) Discrimination on the ground of racial ancestry is undesirable
- (c) Our constitution should be directed to the common welfare rather than to serving the interests of any particular group or groups.
- (d) It is not in the common interest that the identification and first loyalties of any New Zealanders be, not with their wider community and country, but with some narrower interest group. We all have valid particular interests which should be respected, but they must always be subservient to the greater good. A divisive tribalism which puts the interests of ones own race, class, religion or caste before that greater good is to be discouraged, not encouraged. Such divisions should most certainly not be promoted by, let alone entrenched in, law.

We would have considered such starting points to be obviously reasonable and indisputable, and not needing to be defended. But the official CAP's terms of reference, by contrast, were slanted towards a particular political outcome. They require the official panel to seek the views of New Zealanders 'in ways that reflect the Treaty partnership' and in ways 'that reflect the partnership model'. The terms of reference require that consultation with Maori, in particular, 'must be reflective of the Treaty relationship'. This begins, then, by assuming that a special 'Treaty relationship' exists which recognises some special position for Maori ~ a position which should then presumably be recognised in our constitutional arrangements.

If either body is to be accused of a predetermined and politically controversial starting-point, then, it must be the official CAP, and not the ICRP.

Our report, however, is based not just on our own study, thought and experience, but also on 1222 submissions made to us in response to our own advertising and publicity. Advertisements appeared on the NZCPR.com website, in a weekly email newsletter from that site, and via 11 newspapers from June 8, 2013, to June 18.

Adverts ran in the Sunday Star Times, Herald on Sunday, New Zealand Herald, Dominion Post, Christchurch Press, Otago Daily Times, Hawke's Bay Today, Nelson Leader, Tauranga Sun, North Shore Times, and the National Business Review.

We had hoped, also, to include in this report an examination of the submissions made by the public to the CAP. Incredibly, however, as explained in Part 7, *Official Constitutional Panel defects*, these public submissions, made as part of an alleged 'constitutional conversation' on a matter of the utmost public importance, have not, at the time of writing, been made available for public examination and discussion.



### **How should we engage with our government?**

*By Prof Elizabeth Rata*

*Member Independent Constitutional Review Panel*

*"Tribalism/iwi and democracy are fundamentally incompatible."*

Guest Commentary featured by the New Zealand Centre for Political Research  
- 23 February 2013. Read the full commentary [HERE](#)

## 4. The nature and purpose of a constitution

A constitution is not like any other part of the law. It is a fundamental and far-reaching law, and one where just one word or phrase can have effects and repercussions in many and unexpected places. It is usually so arranged that it is more difficult to change than ordinary law, and it is often in some sense a higher law, so that ordinary laws which go against its provisions can be struck down by judges sitting in judgment on the laws made by a democratically elected parliament. The general expectation is that a constitution will last indefinitely, and to achieve this it is often 'entrenched' in some sense, so that it is more difficult to change than other, ordinary laws.

Even if these things are not specific features of a constitution when it is made, they often become so, whether because of the practical effects of public and political expectations or the legal effects of judicial interference.

There are other ways, too, in which a constitution is different from other laws. Constitutions deal with that most important thing, the distribution and exercise of power in a community. That affects everything. How are laws and decisions to be made? By the people themselves, or by representatives that they have elected, or by appointed and unreviewable officials called 'judges'? If by representatives, then how are they to be chosen? Is there to be anything in the constitution which will put some interest group or another in a privileged position? If by judges, then on what principles are they to decide? Will laws spell the rules out, or will the judges make them up as they go along?

Moreover, a constitution, as much as a flag or national song or anthem, somehow usually expresses our deepest aspirations about who we are and what we value. The constitution ~ the spirit of our country, our motherland, our home ~ this is something we may even be prepared to die for.

*"For how can man die better  
Than facing fearful odds  
For the ashes of his fathers  
And the temples of his gods?"<sup>2</sup>*

---

<sup>2</sup> Macaulay, *Horatius*

What were we fighting for at Gallipoli, at El Alamein, at a score of other battlefields, but for the things that we held to be more important than life itself? We were fighting, we believed, for our way of life, a treasure of great value; we were fighting for freedom, the freedom to live our own lives in decency, equality and fairness; ideas which we expressed in our laws and the institutions of our state. In short, we were fighting for what most New Zealanders recognise and believe to be democracy.

More than any other law, a constitution is that law which expresses our deep desires and understandings; and those fundamental understandings are not to be toyed with lightly. More than any other part of our legal system, our constitution should, in Montesquieu's phrase, be touched 'only with a trembling hand'. Change must be done with caution and care, for what is done may not easily be undone.

A constitution must unite us. It will fail disastrously if it is forced upon a nation by some vocal interest group, even if that interest group presents its claim for special treatment as some matter of right or entitlement. If it is perceived to be unfair, if it is resented by any substantial part of a nation, then it will be no healing and uniting balm but a poisoned wound in the body politic.

It is absolutely vital, therefore, that there be the widest possible popular acceptance of a constitution and of any changes or innovations to it. This is a matter of elementary human rights, for it cannot be proper to bind citizens for ever by fundamental laws, difficult if not impossible to change, without their full and informed consent. Moreover, no constitution, no law is going to work unless it is accepted by ordinary citizens.

Yet the CAP's review has been an almost furtive affair. Publicity among non-Maori about the Panel's existence and activity has been somewhere between low-key and completely invisible to ordinary citizens, two thirds of whom, according to a poll<sup>3</sup>, have never even heard of it. Its documents have been slanted, its personnel biased and with backgrounds of very limited usefulness. Public submissions to it have still not been published, despite the claim that the purpose of the process is to have a national 'conversation'. (We understand that they may be published soon, but the current delay is somewhat mysterious ~ See Part 7, Point 11, below.) Perhaps most worryingly, the government has declined to offer any 'firm assurance that [it] will not allow constitutional change to proceed without substantial popular support in a binding referendum'; the government merely describes referenda as one 'tool' among others by which New Zealanders may express their 'opinion'.

---

<sup>3</sup> Research NZ, Review of the New Zealand Constitution, 3 April 2013

The government is playing with fire. The current CAP is the tool of one particular racially-defined interest group by which it hopes to privilege and entrench its own selfish interests for ever in law. Our race relations have been worsening for a generation, thanks to the appeasement of ever-escalating Maori demands by governments of all colours. New Zealanders have shown themselves to be both generous and patient, but their pockets are not bottomless, nor their patience inexhaustible. The ICRP shrinks from the necessity, but we have to utter the careful and clear warning that we have reached a crossroads in our national life. To proceed further with the divisive policies of the last generation is to take possibly irrevocable steps towards irreparable and destructive division.

Some of this damage has been done already. As we have written to Mr English, 'we consider it most unfortunate that your government established [the CAP] in the first place, for ...whatever its recommendations they will only further inflame racial animosities. Radical race-based innovations would be an anathema to most New Zealanders; now the matter has been raised, nothing less than such innovations will satisfy radical Maoridom, who will consider any failure of this inquiry to deliver on their ambitions to be yet another injustice visited upon them by the wicked colonising oppressor. You have created a problem where one did not exist before.'

The most memorable and enduring of constitutional documents are generally made at times of crisis in a nation's history. Such was the setting of Magna Carta, of the great English constitutional documents of the seventeenth century and of the constitution of the United States of America. Many constitutions are established at the end of a war, or when a nation acquires independence. At such times a new constitution may be a practical necessity, but at such times, also, a nation is likelier to have a clearer understanding of what it is and what form its future should take.

By the same token, the worst time to embark on significant constitutional change is when a nation is divided, or when an otherwise unexcited nation is liable to have constitutional provisions which it will dislike imposed upon it by a determined and vocal minority. To begin a debate when circumstances virtually guarantee that no consensus will emerge ~ that in fact positions will be polarised, and different parts of the community will continue to grow in distrust and dislike towards each other, is not just a recipe for the failure of the constitutional project itself. It is a recipe for strife.

The CAP's first recommendations centre on a 'national strategy for civics and citizen education in schools and the community, including the unique role of the Treaty of Waitangi'. Such education would be necessary only if there were ignorance. The CAP must believe, then, that New Zealanders' current understanding of the 'unique role

of the Treaty' is, at the very least, inadequate. We do not share the CAP's belief in the ignorance and prejudice of our countrymen. We believe that most New Zealanders have a very fair general understanding of where the Treaty industry is leading our country. The CAP never considers the possibility that it might be the one out of step. Instead, it proposes what is essentially a sustained and compulsory programme of indoctrination for young and old in the service of vested racial interests.



### **What a bastard!**

*By Prof Jim Allan*

*Member Independent Constitutional Review Panel*

*“Let me lay my cards on the table straight up and say this: For a country in today’s democratic era to change its constitution without in any real way asking its own citizens would be a disgrace, the sort of thing one might expect after a military coup in Pakistan or as a consequence of a passing whim of Mr. Mugabe in Zimbabwe.”*

Guest Commentary featured by the New Zealand Centre for Political Research  
- 1 December 2012. Read the full commentary [HERE](#)

## 5. The nature of New Zealand's constitution

New Zealand's constitution is of the type usually described as 'the Westminster system' which we inherited from the British or 'Imperial' (as it is sometimes known) parliament which has sat for eight hundred years at Westminster. The New Zealand Parliament originally had two houses, just as Great Britain has a House of Lords as well as a House of Commons; but our Legislative Council was abolished in 1950, and since then we have been 'unicameral', possessing only one chamber, the House of Representatives. The chief characteristics of the Westminster system, however, are not related to the number of chambers. There are several characteristic features.

First, the members of the 'executive' ~ the government ~ the Prime Minister and other Cabinet Ministers ~ must be Members of Parliament, sitting in the House of Representatives and answerable at all times to the House. Government is still, in strict theory, the Queen's, and her representative the Governor-General appoints Ministers to carry that government on in her name. This arrangement blurs the distinction between the legislature (the law-makers) and the executive (strictly speaking, the government ~ those who, under the laws, exercise command). Elected parliaments make laws ~ the Queen and her Ministers govern. Those Ministers are appointed because they enjoy the support of a majority in the House, and if they lose that support then they are obliged to resign or advise the governor-general to call an election. A Prime Minister, therefore, can be replaced simply by the resolution of a Parliamentary majority ~ the MPs of his or her party ~ that they should have a new leader.

This is the complete opposite of the arrangement in, for example, the United States of America, where the constitution requires that the President and his Cabinet *not* be members of either House of Congress. The American president and his advisors are not answerable to Congress as our Prime Minister and Ministers are. There is no necessity for a president to enjoy the support of the legislature; presidents and legislatures, although all elected, can be and often are at loggerheads, with the unhappy consequences with which we are all becoming familiar.

New Zealand's constitution is 'unwritten'. We do of course have a constitution; no organised community can exist without one. But our constitution, unlike those of most states, is not to be found in just one or two formal documents. Our constitution, gloriously, has evolved over the centuries. Some of its rules are to be

found in various Acts of Parliament; others originate in judicial decisions, or are simply shared political understandings. The most basic principle, the supremacy of parliament, does not derive its authority from any Act of Parliament; it just *is*.

In the classic Westminster system Parliament is supreme. Parliament's power is unfettered; it can make whatever laws it pleases. A.V. Dicey, the eminent nineteenth century English constitutional writer who, among other things, recognised the 'rule of law' as a vital feature of English constitutional life, argued that "Parliament could, if it so pleased, order all blue-eyed babies to be killed at birth". But of course no parliament has ever done such a thing, and it is highly unlikely that one ever would, because of the good sense of the members and their answerability to the electorate.

Some academics and judges object to this hypothetical absolute power of parliament, which, they allege, creates the potential for abuse. A parliament *might* order all blue-eyed babies to be killed at birth. The remedy, these people say, is to make parliaments subject to an over-arching supreme law ~ a constitution which binds parliaments and which would forbid parliaments from making such laws. If a parliament did attempt to make a law which offended against some provision (often extremely generally expressed) of the over-arching supreme law, then the courts would be authorised by the constitution to declare such an Act of Parliament 'unconstitutional' and strike it down.

Such a remedy is worse than the disease it seeks to cure. Leave aside the fact that under such supreme law constitutions there is no legal remedy when the top judges (to stay with the implausible scenario situation) act immorally and say that the constitution means X when they know it means Y. Leave that aside and remember that Parliaments, despite their undoubted imperfections, are composed of normal human beings, and ones who are answerable to the people and have to face re-election. They will not do dreadful things; or at least, if they do, it will only happen in the most pressing emergencies when no other course of action is possible. In such extreme circumstances any superior binding law forbidding such actions would only be a hindrance to acting for the public good. Nor, in the last resort, are any such constitutional guarantees any protection against tyrants and the abuse of power. Laws can be perverted; the surest safeguard of our liberties lies in our own hearts. The price of liberty, Edmund Burke famously said, is eternal vigilance; he did not mention written constitutions. If we do not ourselves treasure our freedoms and be prepared to defend them, then no written constitution will serve instead; and if we are prepared, then no written constitution is necessary.

Supreme parliaments are nothing but the natural expression of the democratic principle. If we do actually believe in democracy and the good sense of the people as

the ultimate deciders and makers of law, after all the arguments and public discussion, then we simply cannot accept any 'higher law' which contradicts that. Moreover, even if a parliament does enact something foolish, it can later be repealed by a later sovereign parliament. But a higher law, as interpreted and imposed by judges, remains unalterable. And judges are no more perfect unprejudiced error-free people than are Members of Parliament.

Written constitutions and 'bills of rights', as they exist in many countries, are fundamentally antidemocratic. We see this very clearly in the best-known example, the constitution of the United States of America. The American Supreme Court, which has the power to declare Acts of Congress unconstitutional, has long operated more or less openly as a court of un-elected politicians. Laws are upheld or struck down as they are aligned with the political prejudices of the judges. That is why the appointment of Supreme Court judges is a matter of such great moment; because those nine un-elected men and women, there for life, have the final say on what the laws may be. It matters not that there is some pressing public need or demand for some law; if the judges do not like it, then there is an end of it. In many European countries the principal supporters of this political interference by un-elected judges are the members of the liberal intellectual class who are dismayed to discover that a majority of electors do not necessarily care for their preferred political programme. The intellectual class therefore hopes to use the constitution in order to frustrate the perfectly respectable will of the majority of the people whose opinions are not to the elite's taste.

One other aspect of our inherited British constitutional tradition must be mentioned ~ an aspect not necessarily restricted to the Westminster system, but which certainly did develop under it ~ and that is the principle of the *Rule of Law*. Most fundamentally, this means that we are ~ or should be ~ ruled by clear laws, and not by the whim of the powerful or the discretion of bureaucrats ~ or even of judges. We can only be deprived of our property or our freedom for breaches of clearly defined laws. We can say that we have freedoms only because certain procedures ~ involving trials (whether civil or criminal), evidence, and one degree or another of proof ~ must be followed before we can be deprived of them. The rule of law requires certainty, and only the barest minimum of discretion. This is surely desirable; but it would be completely frustrated if 'Treaty principles' were to be a ruling part of our law, for those 'principles', as explained below, are disputed matters of opinion, completely vague and uncertain, and clearly expected by judges themselves to 'develop' in future. That will certainly provide plenty of lucrative work for the legal profession, and opportunities for judges to demonstrate their own supposedly enlightened sentiments at the expense of the rest of the country; but it is a

guarantee of litigation, expense, vexation and eternal uncertainty; it is the supremacy of judicial discretion, and the end of the rule of law.

Since its beginning, our constitution has recognised only rights arising out of citizenship, not out of race or culture. Even the special Maori parliamentary seats only promise particular representation in the one national parliament. This is a wise and farsighted policy; but in fact it only reflects reality. A culture is how we actually live ~ the language we actually speak, the thoughts we actually think, the clothes we wear, the jobs we have, the games we play, the books we read and television we watch, the land and sea, plants and animals by which we actually live. 'Culture' is not just the fancy dress which we put on when we go to the marae or the opera; it is not just our remembered ancestral past, cherished though that may be. It is how we actually live; and by that measure the 'cultural diversity' of New Zealand is often vastly over-rated. Nearly all of us, of whatever particular racial ancestry, live more or less in the same way. For all that they may cherish pious memories of the lands of their birth, the desire of most recent immigrants is to fit in and make new lives for themselves in their new country; and that is what they inevitably must do. In particular, the suggestion that possessing a trace of Maori blood automatically makes one of a different culture from other New Zealanders is patent nonsense. If there are any real cultural differences in our country, they are between rich and poor, urban and rural, and north and south, rather than between those who do and do not have an often very small element of Maori ancestry.

New Zealand should count itself most fortunate that it has been able to avoid the worst aspects of 'multiculturalism'. No coherent society can long survive where there are irreconcilable differences over fundamental things. If some of us believe in racial equality, sexual equality, a fair day's pay for a fair day's work ~ and others believe that their own race or religion, with all that that entails, should hold a special privileged position ~ then we will not last very long. Europe is slowly coming to realise that its enormous multicultural experiment of the last generation has overshot the mark. Various European countries are now attempting to impose some requirement of 'cultural compatibility' on new citizens.

From what do the problems of Syria and Iraq, Egypt and the Lebanon arise, if not from a diversity of completely irreconcilable cultures? Closer to home, Fiji's problems arise out of the existence in the same land of two completely separate races and cultures. New Zealand would be well advised to prevent those tensions arising in the first place. Our aim should surely be to encourage a homogeneous and united nation, where people's cultural interests are respected but are nevertheless a matter for their own private pursuits in their own time. Instead, we have for a generation suffered from the almost criminally reckless policies of politically correct

and angry cultural separatists who have been increasingly successful in dividing a coherent nation of great promise into two irreconcilable and ever-disputing peoples. Future New Zealanders will find it hard to believe our stupidity; they may find it even harder to forgive us for the squandering of so much wonderful potential in the name of racial separatism. They will find it bizarre that the demand of these allegedly oppressed people is for separatism, when the cry of blacks in apartheid South Africa and in the southern states of the United States of America was for the very opposite, for integration into the wider society, and an end to policies of 'separate but equal' ~ which of course meant not equal at all.

Besides the Maori seats and increasing numbers of statutory references to Treaty principles, the most offensive intrusion upon racial equality and fairness to all citizens is the Waitangi Tribunal. This is a tribunal whose members are *ipso facto* sympathetic to the claimants appearing before them, for the law requires that the Minister appointing Tribunal members 'shall have regard to the partnership between the two parties to the Treaty'<sup>4</sup>. Only people of one particular racial ancestry may appear before the Tribunal. Its bias and gullibility are abundantly documented; its grasp of history can be shamefully partisan; it has reached 'conclusions' before hearing all the evidence, it has reprimanded witnesses for giving evidence unfavourable to a claimant, and it has made recommendations when even it has been unable to find any breach of 'Treaty principles'. It openly judges the past not by its own standards but by those of the present. It now ignores the restriction imposed upon it by parliament that it not consider any 'historical claim' arising before 1992, for it has just made recommendations about water, where the situation complained of had existed since the Water and Soil Conservation Act 1967, and very probably earlier. It is, in short, nothing but a grandly named Maori lobby group, which is very unlikely ever to add anything of value to any discussion. 'Findings' such as, for example, that Maori were entitled to radio waves because they navigated by the light of the stars, another part of the same electromagnetic spectrum, show the Tribunal in its true colours. It is difficult to imagine anything which the Tribunal would not, if requested, recommend be bestowed upon a claimant. True, it can in most circumstances make only recommendations, but those recommendations have a political force, and one generally not for the public good. It feeds a gravy train benefiting a very considerable number of researchers, lawyers and general lobbyists ~ who are therefore most ardent in its defence ~ as well as enriching a small powerful neo-tribal elite at the public expense. Whatever good it may have done in the past, it is now time to abolish the Waitangi Tribunal. Further historic claims are, for the present anyway, impossible; the Tribunal can therefore in future only listen to claims arising about now. For such grievances, claimants should rely on the law and the courts of justice, the good sense of parliament and people and the court of

---

<sup>4</sup> Section 4 (2A) (a) Treaty of Waitangi Act 1975

public opinion, just like everyone else. A special avenue of current complaint, dressed up as racial grievance, for only one racially-defined section of the population, has no place in an enlightened society.



**Constitutional Advisory Panel:  
Engagement Strategy for the Consideration of  
Constitutional Issues**

*By Prof Martin Devlin*

*Member Independent Constitutional Review Panel*

*“New Zealanders are now required by their own government to accept that the Treaty (of Waitangi) does not mean what it says, but what a (modern) post-1975 cabal of politicians, academics, jurists bureaucrats and activists say it means.”*

Guest Commentary featured by the New Zealand Centre for Political Research  
- 24 September 2012. Read the full commentary [HERE](#)

## 6. Treaty of Waitangi meaning and ‘principles’

Before proceeding further it is necessary to remind ourselves very briefly of the legal status and the meaning of the Treaty itself and its so-called ‘principles’. This is necessary because the Treaty and Treaty principles are constantly referred to in order to justify radical Maori separatist aspirations, and the real long-term aim of the just-concluded official review is to insert ‘Treaty principles’ into our fundamental law. This is not the place for a lengthy analysis. Given the constant misrepresentations made by interested parties, the following statements may even come as a surprise to some readers, but we assure them that what follows is, although brief, nevertheless an accurate statement of law and fact.

It will be seen that it follows from these statements that there is absolutely no reason of law or principle why there should be any reference to the Treaty, or any action to somehow ‘implement’ it, in any constitution. All the Treaty of Waitangi actually says is that Maori and Briton were henceforward to be equal subjects under the Queen’s law. That is, happily, the situation we still have, although only just; but the Treaty is now constantly misrepresented as a charter of Maori privilege, and any mention of it at all in a new constitution will have the effect of establishing those without any Maori descent as being second-class citizens in their own land forever.

Here is the actual situation:

1. The Treaty is not a valid treaty in international law. It is in fact, therefore, misleading to speak of it as a ‘treaty’ at all. It was in fact no more than the memorandum of the preliminary political understanding with the native Maori which Great Britain reached before it formally acquired sovereignty.
2. Neither does the Treaty have any independent legal standing as part of the law of New Zealand.
3. At present, the Treaty may be considered to be part of our law only in situations when Parliament has declared that in this or that particular statute ‘Treaty principles’ have to be considered in one way or another. Parliament can refer to the Treaty and incorporate it into a statute just as Parliament can refer to anything else it wants to. Parliament does this for political reasons, not because of any legal obligation. The number of such statutes is still very

small, although some of the statutes, such as the Resource Management Act, are quite significant.

4. Although Parliament does occasionally refer to the 'principles' of the Treaty, Parliament has never defined them. Anyone, therefore, is free to extract his or her own 'principles' from the Treaty. The courts have formed their own list, but other bodies and individuals also have their lists. Virtually all of these lists are associated with a radical racist political agenda.
5. None of these lists, not even the list decided on by the courts, accurately reflects what the Treaty actually *says*. Yet what it says ~ the Treaty's *terms* ~ must surely be the starting point of any discussion. But, so-called constitutional experts Geoffrey and Mathew Palmer declare that the terms of the Treaty are not important but the spirit.
6. What the Treaty actually says is that the Queen is to be sovereign (Article I); that Maori are to be her subjects, with the rights and privileges of subjects like everyone else ~ no less than that, and no more (Article III); and that those rights include the possession, use and enjoyment of their own property ~ their 'lands, forests and fisheries', as the word *taonga* was accurately translated and amplified (Article II).
7. It is absolutely clear that *taonga*, in 1840, meant physical property. The suggestion that it was understood at the time to mean language, culture, radio waves, or anything more than 'property held at the point of the spear', as one dictionary of the time<sup>5</sup> defined it, is nonsense.
8. The suggestion that Maori did not understand themselves to be yielding sovereignty by their agreement at Waitangi is another dishonest modern invention. In 1860, for example ~ by which time the practical effect of British sovereignty was quite clear ~ the Kohimarama Conference, attended by many of the chiefs who had signed the Treaty, very strongly affirmed its continued allegiance to the Queen. Even the Waitangi Tribunal has stated that it 'is satisfied that sovereignty was ceded'.<sup>6</sup> (That is not to say, of course, that the Tribunal might not say something completely different in future; it is, as has just been observed, little more than a grandly-named Maori lobby group, and its statements must always be read with that in mind.)

---

<sup>5</sup> Lee. S., (1820) Cambridge University

<sup>6</sup> Muriwhenua Fishing Report 1988, p.187

9. The whole purpose of the Treaty was of course to provide for the relinquishment by Maori of their independent status and to assure them of their rights under the Crown.
  
10. The opinions of the courts of justice as to Treaty principles have long gone well beyond what the Treaty actually says. In particular, the 1987 *New Zealand Maori Council v Attorney-General*<sup>7</sup> decision, the leading case, purported to discover that the Treaty created ‘an enduring relationship of a fiduciary nature akin to a partnership’<sup>8</sup>. It is certainly true that the court used the word ‘partners’ interchangeably with ‘parties’, and that radicals have hastened to read rather more into the word ‘parties’ than the judges may have intended; but judges are supposed to know better than to use words loosely, especially in highly contentious and politically charged cases. The Treaty did not establish anything like a partnership, nor did it entitle Maori to any more honourable dealing with the Crown than any other citizen is entitled to. As stated above ~ but the point is worth repeating ~ the Treaty granted Maori equal rights with Britons under the Queen’s law. No more, and no less. That was a great deal.
  
11. It is also extremely ominous that judges are expecting that Treaty ‘principles’ will ‘continue to develop’ in further cases over the years. Judges are announcing, in other words, that they intend to continue down the same politically activist path by which they have already brought so much division, bitterness and public impoverishment to our country.
  
12. In this area of the law judges have displayed an alarming and disgraceful inclination towards political activism, which is no part at all of a judge’s role and which can only serve to bring the judiciary into a deserved disrepute. In the 1987 case, for example, Sir Robin Cooke, the President of the Court of Appeal, actually accepted that the statute under consideration, the State-Owned Enterprises Act, could be interpreted as the Crown contended, and that that interpretation was what Parliament had actually intended. He and his fellow-judges nevertheless proceeded to interpret the Act quite differently. In other words, the judges refused to acknowledge the supremacy of Parliament and the people, and chose instead to impose their own political agenda on our country. In the 2003 *Ngati Apa* case ~ the ‘foreshore and seabed’ case ~ the Court of Appeal, presided over by Dame Sian Elias, the current Chief Justice, overruled the 1963 Court of Appeal

---

<sup>7</sup> [1987] 1 NZLR 641

<sup>8</sup> Sir Robin Cooke’s own summary in the later case of *Te Runanga and Wharekaui Rekohu v Attorney-General* [1993] 2 NZLR 301

*Ninety Mile Beach* decision despite a very clear and well-established rule that a Court of Appeal should be very reluctant to overrule its earlier decisions, and might do so only after careful consideration of a number of factors, nearly all of which in this case strongly pointed towards the 1963 decision being affirmed. In particular, the Court of Appeal should not overrule an earlier decision on a politically controversial matter. Yet the 2003 Court of Appeal hastened to make its highly controversial political decision without spending a single sentence considering its obligations to respect established legal precedent. Indeed, the present Chief Justice has, on more than one occasion, declared that she considers herself entitled, even now, to overrule and strike down Acts of Parliament, our supreme law, if they go against her own radical understanding of 'Treaty principles'. That would be grossly unconstitutional: it would be as much a *coup d'état* as if armed men entered Parliament and drove the Members out at gunpoint. It would be the end of democracy. Yet this 'right' is claimed by the present Chief Justice. We are forced to the regrettable but unavoidable conclusion that political activism in the higher ranks of the judiciary means that to establish a written constitution, over which they would have the power to make binding and unappealable interpretations, could only have disastrous consequences.



### **Seven reasons why the Waitangi Tribunal must go**

*By Mike Butler*

*Member Independent Constitutional Review Panel*

*"The Waitangi Tribunal must go because it creates a race fault line, rewrites history, is biased, undermines private property rights, fails to meet public expectations, has created a 'gravy train', and is used to extract benefits for tribal interests."*

Guest Commentary featured by the New Zealand Centre for Political Research  
- 2 June 2013. Read the full commentary [HERE](#)

## 7. Official Constitutional Advisory Panel defects

A little more description is necessary of the defects of the terms of reference, personnel and procedures of the official Panel.

1. Its terms of reference, as mentioned above, predetermine the result by taking an entirely unfounded radical assumption about what the Treaty means as a given and as the starting point of any discussion.
2. Its carefully balanced racial composition ~ five Maori, five European New Zealanders, one of Pasifika descent and one of Chinese ~ again presupposes what the Panel is supposed to be asking about ~ a 50:50 'partnership' of two races with equal power, and thereby an end to equality of citizenship. It suggests that such a division into racial castes may be considered a desirable future for our country, and would certainly seem to predispose the panel in that direction.
3. Many of the Panel's members clearly already hold strongly decided opinions from which they are unlikely ever to resile. Professor Ranginui Walker, most obviously, has long been prominent as an extreme advocate of some sort of Maori sovereignty, and despising European New Zealanders as 'refugees from the slums of Britain'. Professor Linda Tuhiwai Smith specialises in 'decolonising methodologies', 'challenges Western ways of knowing and researching', and believes that it is necessary to 'privilege Maori values and attitudes in order to develop a research framework that is culturally safe'. She believes that being Maori is an essential criterion for carrying out 'Kaupapa Maori research'. Dr Leonie Pihama believes that the British colonisation of New Zealand was an act of genocide, a deliberate and planned extermination of Maori. Sir Tipene O'Regan is a moderate voice only when contrasted with much more radical ones. It is impossible to imagine any of these people having an open-minded approach to the subject. At the very least, the appointment of such Maori supremacists should have been balanced by other appointees capable of expressing contrary opinions.
4. Indeed, Sir Tipene has in a recent public speech lumped together 'extremist groups ...including Nazi sympathisers and some who wish to reverse Maori influence in this country and seemingly wanted to remove every trace of

Maoridom.’ We do not know of any New Zealanders who wish to ‘remove every trace of Maoridom’, and we will be interested to see ~ when the CAP eventually gets around to publishing the public submissions it has received ~ how many of those are from ‘Nazi sympathisers’. We suspect that these are largely invented bogeymen. But in any case, if some New Zealanders do make such submissions, they have as much right as anyone else to do so and to be listened to; and, more to the point, for Sir Tipene to lump together in one sentence ‘extremists’, ‘Nazi sympathisers’ and citizens who merely want to ‘reverse Maori influence in this country’ reveals his own political agenda very clearly. Sir Tipene was also reported as saying that ‘[r]emoving that Maori flavour would leave New Zealanders as ‘just another little Anglo leftover’ stuck at the bottom of the Pacific’, suggesting a contempt for our British constitutional inheritance which sits very ill on the shoulders of the co-chair of a constitutional advisory panel.

5. The Maori Party, a government party at whose behest the Panel was established, has as its ultimate goal ‘to ensure that the Treaty of Waitangi is given proper recognition and that constitutional arrangements ...allow for full engagement and recognition by tangata whenua’. There is a clear implication that this is not the case now; and it would be surprising if the appointment of the CAP, at the Maori Party’s behest, were not intended to further this purpose.
6. Of the European members, Sir Michael Cullen’s long career as Minister of Treaty Negotiations and his current position as principal Treaty claims negotiator for Tuwharetoa must inevitably undermine public perception of him as someone who could be expected to argue as vigorously for the interests of his race as the part-Maori appointees will be arguing for the interests of theirs. Sir Michael has already described David Round, our chair, as ‘extremist’, ‘paranoid’ and a ‘conspiracy theorist’ merely because of the views he expressed in an article in the New Zealand Herald (Jan 18, 2013), an article which seemed to the editor and to many readers as putting forward a perfectly reasonable case. It is impossible to consider Sir Michael Cullen as open-minded. Deborah Coddington has already publicly accepted the Treaty as New Zealand’s ‘founding document’ which should be guiding discussions. None of the other European members strike us as being obviously qualified to argue for racial equality. Even John Burrows has no expertise in constitutional law, political science or history.

7. The CAP's discussion document, *New Zealand's Constitution, The Conversation So Far*, published in September last year, is grossly slanted towards radical Treaty interpretations.
8. The amount of money allocated to CAP was never enough to make genuine and widespread consultation possible. The CAP therefore had an excellent excuse to prefer to 'consult' with interest groups likely to be sympathetic to its agenda. Consultation with Maori certainly appears to have been extensive, but a recent poll showed that only one third of New Zealanders had even heard of the CAP's existence; and the only thing that has happened since then to make them more aware has been the advertisements inserted in newspapers by the ICRP.
9. The CAP has on at least two occasions met with members of the Iwi Leaders Constitutional Working Group, a self-appointed group like our own, and with no more status than our own. Yet although two members of the ICRP (Elizabeth Rata and David Round) have been able to have some very perfunctory input into the CAP's resource base, there has been nothing more, and certainly no attempt by the CAP to engage with the ICRP.
10. Perhaps even more egregious than all of this has been the secrecy surrounding the CAP's report. Our country's constitution is of its very nature a matter of the highest public importance. It is the foundation of the state itself ~ of what the Romans called the *res publica*, the 'public matter' ~ that matter or thing which, above all others, is the property and concern of the public. Any discussion of the constitution must be done with the highest degree of publicity and public input. The CAP, indeed, paid a brief lip-service to this principle when it earlier claimed that it wanted to promote a 'conversation' among New Zealanders about the constitution and the Treaty. Yet not only has that conversation been conducted under the radar, so to speak, but despite repeated requests, and an appeal to the Ombudsman (who is still considering the matter) the submissions made by the public to the CAP have not yet been publicly released. We would have thought that public access to those submissions would have been an obvious and necessary part of any such 'conversation'. Publication would promote a conversation and debate, by encouraging thought about and sparking replies to submissions already received. Publication is also surely an elementary obligation in any open society. It should surely be a very simple matter for any efficiently run organisation to do by electronic means. Yet our Panel's request under the Official Information Act to see those submissions has been declined; and in fact declined at different times on different grounds! The

original ground given for declining our request was that withholding the information was necessary, under section 9(2)(g)(ii) of the Official Information Act, 'in order to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers or officers or employees of any department or organisation in the course of their duty'. We found this remarkable, since no Ministers were involved, and the CAP members are hardly 'officials' and unlikely even to be 'employees'. (We note also that the members of the public who have made submissions to the CAP were told at the time that those submissions could be made publicly available; we note also that during the 2012 review of MMP, for example, the Electoral Commission published the submissions it received almost as soon as they arrived, and the public availability of those submissions did not compromise the Commission's final report to the government.) Then, after we had objected to this decision, the ground for refusal was changed to that described in section 18(f), that 'the information cannot be made available without substantial collation or research'! This is incredible. In this day and age every submission received should almost automatically be recorded electronically ~ even if only for the convenience and use of the CAP itself. But the CAP, charged with receiving public submissions ~ having had since the end of July to organise and collate them, and (one would have fondly imagined) using those public submissions in the preparation of its report ~claims that it has not collated them, and simply can not make them publicly available. If this is true, then the CAP is a body of a truly remarkable inefficiency; and its report, clearly, cannot be based on the still uncollated public submissions made to it, but must instead be based on the prejudices of its members.

On the 24<sup>th</sup> of June the ICRP wrote to Mr English, one of the Ministers responsible for the Consideration of Constitutional Issues, expressing many of these concerns, and some others, and asking if he found the CAP's approach satisfactory<sup>9</sup>. Mr English replied on the 30<sup>th</sup> of July that he and Dr Peter Sharples 'had full confidence in the panel and its open-minded approach'.

We do not believe that any honest and fair-minded person could have that confidence.

---

<sup>9</sup> David Round, [Letter to Bill English](#)

## 8. Crucial constitutional issues facing ~ and not facing! ~ NZ

In 2005, the Labour Government established a special Select Committee of Parliament to undertake a sweeping review of “New Zealand’s constitutional arrangements”. The Select Committee, which received 66 submissions and reported back in August 2005, spent nine months undertaking the review. It concluded, “There are no urgent problems with New Zealand’s constitutional arrangements”.

The present constitutional review has not been established because of any obvious defect in our present constitutional arrangements. Although the CAP’s terms of reference list a number of matters for consideration, many of those matters are either not of great controversy or have already been the subject of recent debate. The CAP’s report recommends, for several of these issues, that a ‘process’ be established, ‘with public consultation and participation’, to explore the issues further, but goes no further than that. Indeed, on the subject of the size of parliament the report makes no recommendation at all. The number of Members of Parliament has been considered by Select Committees in 2001 and 2006; the latter committee recommended that a member’s bill to reduce the number of seats not be passed, for sensible and practical reasons. It is absurd to think that this question needs another airing. It is also absurd to think that any parliament would actually enact such a measure; for politicians even to raise the matter as a possibility is cynical in the extreme.

The question of the term of parliaments (three or four years) is also one where there can be not the slightest doubt of public feeling. In referenda in both 1967 and 1990 just under 70% of the population voted firmly for three years. It may be that some politicians would prefer a four year term; it may be that there are some good arguments for it; but in the current state of things it is never going to happen. Its presence on the list of items for discussion is, again, a cynical diversion.

‘Electoral integrity legislation’ ~ laws, in other words, concerning the consequences of ‘waka-jumping’ by MPs ~ also seemed to us to be a diversion. After an initial period of instability after the appearance of MMP, political parties are settling down. Indeed, it may well not be too long before several of the smaller parties currently in Parliament are no longer there. The issue has been thoroughly canvassed in the past; earlier legislation on the matter expired under a sunset clause; there are arguments

both for and against specific legislation, and, although the subject is of minor interest, it is of no more than that.

The terms of reference refer to only one other matter before going on to list specifically racial concerns, and that is the matter of 'the number and size of electorates'. This would seem, one would have thought, to have been a simple reflection of the size of parliament. Whatever this issue actually is, it certainly is not an issue of burning public concern. But we note that the CAP's discussion document raises several alarming possibilities ~ that the current guarantee in the Electoral Act that the South Island have sixteen physical constituencies might be abolished; that the present rule, that the population of different electorates must not vary by more than 5%, be relaxed to allow a variation of up to 10%; and that certain physically large electorates ~ Maori electorates are specifically mentioned ~ might also be able to be reduced in population size because of the inconvenience to the elected Member of having to service the larger electorate. We can see absolutely no reason why the number of South Island electorates should be reduced; if we accept the principle of equality of citizenship and all votes being of equal value, then all electorates should, as much as possible, be of the same size; and in an age of telephones and aeroplanes, e-mail, skypeing and generous financial support for Members' electorate activities, we can see no reason for relaxing the principle that all votes be of equal worth merely because of a tiny handful of very large electorates. If Maori and rural electorates are to have smaller numbers of voters, then all other electorates must also.

None of these issues, then, is of sufficient public, political, constitutional or legal concern to justify any further inquiry. They were nothing but a smokescreen, an unconvincing fig-leaf to disguise this review's one-sided political origins. The review was established, as explained above, as part of the price paid by the National Party for the parliamentary support of the Maori Party. The Maori Party considers that the Treaty of Waitangi must 'be the backbone for constitutional change'; its 'ultimate goal is to ensure that the Treaty...is given proper recognition and that constitutional arrangements in New Zealand allow for full engagement and recognition by tangata whenua'. More generally, radical Treatyist activism and agitation have been increasingly prominent features of our national life for several decades. In the minds of some government ministers, then, and in the minds of some of the CAP's members, this review's purpose has nothing to do with the size and length of parliaments or anything else to improve the functioning of democracy, equality of citizenship or the general public welfare. These should surely be the primary considerations underlying any constitutional review. Yet they are nowhere in sight.

The official review, then, is not open-minded. It began from a predetermined political position, and completely fails to ask any questions that are worth asking. It should surely have begun by asking such questions as ‘What is wrong with the functioning of our democracy?’ or ‘How could our democracy be improved?’ or ‘What challenges and dangers ~ and opportunities, even ~ will our country be facing in the future, and what arrangements will best enable us to meet them?’ Those would be interesting inquiries, and most valuable ones. The world will continue to change, as it always has. What might those changes be? How should we prepare for them as a nation? Such questions are obviously far wider than mere constitutional ones; but a constitution, a country’s fundamental blueprint for how it lives, must, like everything else, accommodate itself to facts, and face reality. It has to be based on, and to reflect, the reality of its country.

Again, although Bernice Mene and Peter Chin may be CAP members, the CAP’s terms of reference and discussion documents ignore completely the fact that New Zealand is now home to a very wide diversity of peoples from all over the globe. Almost exactly one fifth of our permanent resident population was not even born here ~ one of the highest proportions in the world. Should these people’s national and cultural origins entitle them to any special regard here? The ICRP has its answer to that question; we will give it below; but the CAP does not even ask the question, despite its desire to establish alleged Maori racial and cultural distinctions in law.

There are some more specific and distinctively constitutional questions which New Zealand might benefit from considering. We do not presume to provide answers to them; it could well be argued that the best policy would be to let sleeping dogs lie, and not attempt to mend something that does not appear to be broken; but if we were to have a genuine constitutional review, then the following are some matters which might actually have been worth thinking about.

The immense size of the city of Auckland, for example, and the overwhelming influence which that city has in any elected assembly, inevitably raises the danger that the country will be increasingly run for the benefit of the population of this enormous city and to the detriment of other parts of the country which are actually the source of what remains of our prosperity. Could or should anything be done to ensure a fairer representation of the interests of the rest of the country in the making of policies and decisions? The United States of America, for example, has an upper house, the Senate, in which all fifty states have equal representation, regardless of population size. (Population remains the basis of representation in the lower House of Representatives.) Would an upper house be desirable for any other reasons; most notably, to serve as a forum where legislation, perhaps made in haste

or for short-sighted political advantage, might be considered more carefully and thoughtfully?

Again, might it be appropriate, in a country where units of local government continue to grow larger through amalgamation, to establish formally some more decentralised system of government; even, perhaps, to grant some degree of autonomy to provinces?

Or perhaps something might be done to reinvigorate our democracy, as popular participation in voting continues to decline at both national and local levels. How can democracy and public participation in our civic institutions be restored? There is, rightly or wrongly, a very widespread feeling that politicians and bureaucrats alike are increasingly unanswerable and unaccountable to the people. Would greater use of referenda be part of the solution? The readiness of governments now to ignore the results of Citizens Initiated Referenda must contribute to that popular attitude. What else could be done?

These are mere examples; but questions such as these would be worth asking. A constitutional review panel that thought and talked about such things would be useful and valuable. But sadly, the present CAP appears to have been established solely to pursue a race-based political agenda, rather than contribute to improving New Zealand's democracy.



### **Constitutional Rights and Tribal Ambition**

*By Dr Muriel Newman*

*Convenor Independent Constitutional Review Panel*

*“There is no reason to believe that if the present push for a Treaty-based constitution fails, that the well-resourced corporate elite, who are driving this agenda, won't be back in a few years time with another attempt, and then another, until finally the politicians cave in and give them a carte-blanche right to co-govern New Zealand.”*

Guest Commentary featured by the New Zealand Centre for Political Research - 17 November 2013. Read the full commentary [HERE](#)

## 9. Consequences of constitutional ‘recognition’ of the Treaty

The clear direction of the CAP’s report is the promotion and entrenchment of Maori interests at the public expense. Notably, the report proposes:

- public ‘education’ ~ indoctrination ~ for children and all citizens about the ‘unique role’ of the Treaty of Waitangi
- ‘continued development of the role and status of the Treaty’ ~ an acknowledgment that its role and status have ‘developed’ in the past, and a desire that this development continue
- ‘a process to develop a range of options for the future role of the Treaty, including options within existing constitutional arrangements and arrangements in which the Treaty is the foundation’ . In other words, the CAP envisages an option whereby the Treaty itself ~as misinterpreted~ might completely replace our existing constitutional inheritance as the foundation of our state.
- adding ‘social and cultural rights’, inter alia ~ in which special Maori rights would undoubtedly feature prominently ~ to the Bill of Rights Act
- entrenching the Bill of Rights Act and giving judges ‘powers to assess legislation for consistency with the Act’.

Such recommendations, we believe, would be disastrous for our country.

Our constitution at present largely recognises the equality of all adult citizens. All citizens have the right to vote in national and local body elections. There is therefore an intimate connexion between the principles of democracy and equality. All may vote, and all votes are of equal worth; thus is our natural equality recognised.

Nationally, a certain inequality arises from the slightly different size of electorates, to reflect communities of interest, but that is unavoidable and, as long as it remains minimal, is acceptable. A somewhat greater inequality arises out of the ‘Maori seats’, the number of whose electors is calculated on a slightly different basis and with the

end result that the number of enrolled voters per seat is a little smaller. The Maori seats therefore slightly over-represent the voters in those seats. To be able to vote in a Maori seat a voter must be either 'a person of the Maori race of New Zealand' or 'a descendant of such a person'. No particular degree of Maori ancestry is necessary, and many of those on the Maori roll, and 'identifying' themselves as Maori, have only a small fraction of Maori blood. We understand, for example, that Sir Tipene O'Regan, the CAP's co-chair, is only one sixteenth Maori. Many of Maori descent choose instead to register on the general electoral roll.

Parliament's actual structure and processes, however, have no other racially-determined aspects. There are no separate assemblies for the representatives of various races, or any required quota for MPs of any particular race. Indeed, Parliament at present has about seventeen MPs in general electorates with some Maori ancestry, a proportion of MPs similar to the proportion of those of Maori descent in the whole population. Added to the seven MPs for the Maori seats, the sum total currently over-represents the proportion of those in the total population with some Maori ancestry. The CAP's recommendation that Maori representation in Parliament be 'improved' is therefore clearly a recommendation for Maori *over*-representation in Parliament.

Nor, at present, does any race-based principle govern the content of legislation. Parliament is still our supreme lawmaker, and it is the most fundamental principle of our constitution that Parliament may make such laws as it pleases. This is an expression of our democratic ideal; that in the last resort, after all discussion, argument, expert opinion and the rest, final decisions should rest with the representatives of the people. Parliaments, for all their imperfections, are usually tolerably responsible. We certainly oppose any suggestion that judges might be able to sit in judgment on Acts of Parliament, whatever the grounds might be. The United States Supreme Court, for example, which has the power to declare Acts of Congress 'unconstitutional', is openly regarded as a political institution following one ideology or another in its decisions. As explained above, it is already sadly clear that some of New Zealand's more senior judges are prepared to consider making what outside observers would characterise as political decisions. Written constitutions and bills of rights are inherently undemocratic, in that their bland general words will require application by the judges to particular cases. Written constitutions with bills of rights turn political issues, properly the province of politicians and people, into legal issues which only judges may decide. Rights to 'freedom of religion' or 'freedom of speech and expression', to take obvious examples, would also invite judges to make controversial political decisions. Such written constitutions serve to take decisions away from the people's representatives and hand them over to a handful of

members of the liberal class. That is why such constitutions are so popular with a certain sort of person.

At present, and despite worrying precedents such as the Waitangi Tribunal, our constitution's fundamentals are still egalitarian and democratic. It is difficult to see how any mention of the Treaty in any constitutional document, or any alleged 'implementation' of the Treaty, could do anything but move us away from that position. As explained in Part 5, the 'principles' of the Treaty, even the version currently developed by the judges (and that list, so judges inform us, will continue to 'develop') are actually, to one extent or another, in contradiction of what the Treaty actually says ~ which is no more (and no less!) than that the Queen is sovereign, and Maori are her subjects, with all the rights and privileges of subjects, including the ownership and enjoyment of their property. But the effect of every single statute, every single judicial decision, every single administrative practice which gives effect to 'Treaty principles' is to give Maori some special position of influence over and above that enjoyed by any other group within the population.

Leaving aside the exceptions above, the actual terms of the Treaty are reflected in our law right now. To give those of Maori descent some special improved rights of political representation ~ perhaps more seats than their numbers entitle them to, or perhaps some assembly of their own ~ would be a race-based denial of our common and equal citizenship. To enable judges to strike down or alter democratically-made laws on the basis of some supposed conflict with Treaty 'principles' or with 'cultural rights' under the Bill of Rights Act would substitute the rule of a small, un-appointed, politically and racially-aligned elite for the decisions of the people. All these course of action are completely contrary to our laws and our principles.

Suppose, for example, that a new constitution were to contain such a clause as that which Sir Geoffrey Palmer proposed in his 1997 *Bridled Power: New Zealand Government Under MMP*. It reads:

*~ 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.*

The effects of such a clause would echo throughout our entire legal system and society. Every law in the country would be liable to challenge as being in breach of 'the rights of the Maori people'. Even if judges ultimately upheld the law, the

challenge would introduce immense uncertainty, as well as great vexation and racial ill will. It would provide lawyers with an extremely lucrative new area of work. A Treaty clause is an invitation to endless litigation, and a guarantee of eternal uncertainty and racial bitterness.

Inevitably, any such clause would, like this one, make some highly debatable assumptions and assertions. It assumes that there is still a 'Maori race'. This could never be denied in future. It would then be left to 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, without saying what they are. So the judges will continue to define them, and, going by past decisions, the judges will continue to find them to be a lot more than just being a subject of the Queen like anyone else.

We list some possible effects, but stress that they are only examples. No list could be exhaustive.

1. Many Maori are openly saying that no settlement of historic Treaty claims can ever be full and final. These statements are usually said in such circumstances as to avoid widespread publicity, but they are made nevertheless. A recently published collection of essays, *Treaty of Waitangi Settlements*<sup>10</sup>, makes that assertion in every chapter. Binding future generations is not the Maori way, it seems ~ although if that were so then by the same token the Treaty of Waitangi would cease having the slightest moral standing after the death of all its signatories. Locking in later generations (which, recall, is precisely what Treaty proponents aim to do) is in this area shunned and purportedly *not* the Maori way. So if a court decided that the 'rights of the Maori people' included the right to make claims repeatedly for grievances already fully and finally settled, then New Zealanders would be putting their hands into their pockets forever.
2. 'Taonga', a word which in 1840 (as explained above) very clearly meant only physical property, is now interpreted to mean, essentially, anything that any Maori wants. Radio waves have been claimed as taonga, and oil deep underground. Water, which has been public property since at least the making of the Water and Soil Conservation Act 1967, and probably for long before, is claimed, in defiance of full and final settlements, and ignoring the law which now debars the Waitangi Tribunal from hearing historic claims from before 1992<sup>11</sup>. The Maori language and Maori 'culture', whatever precisely that is, are also said to be 'taonga', and it is not enough that we

<sup>10</sup> Ed. Nicola Wheen and Janine Hayward; Bridget Williams Books, 2012; 283 pp.

<sup>11</sup> Section 6AA, Treaty of Waitangi Act 1975

leave Maori free to pursue them, but, so learned and very comfortably remunerated judges have told us, the ordinary taxpayers of New Zealand are obliged to put up a great deal of money, for television stations and the like, to encourage and 'enable' Maori to pursue these interests. With Treaty principles in a constitution, Maori will be legally entitled to pursue claims such as these for ever.

3. Under the Conservation Act, Maori already enjoy special rights over the public conservation estate. The primary purpose of the Act is conservation; if something were good for conservation, the Department of Conservation would presumably be doing it already. It follows, then, that any special 'Treaty right' claimed in relation to the conservation estate is virtually by definition something different to the Act's primary concern with conservation. The courts have already 'interpreted' Treaty principles as granting Maori special privileges in relation to the granting of commercial concessions and to take protected species. Recent Treaty settlements often list 'taonga species', and the Waitangi Tribunal has recently proposed what is essentially a co-management of the conservation estate. This is unlikely to benefit Nature; it would be the exploitation of the public conservation estate by one section of the population, and no-one else.
4. Private property, as well as public, is liable to have Treaty principles imposed upon it. Already, 'wahi tapu' ~ 'sacred sites' ~ can be established over private land by a district council or Historic Places Trust without the landowner's consent. There is no need for physical evidence; it is enough that the place is (allegedly) mentioned in song or story, for example. Thereafter, landowners may not do anything which would affect the wahi tapu values without special permission ~ which we suspect almost always involves the payment of money.
5. It would be surprising if the Resource Management Act were not found to be inadequate in its regard for Maori matters. Radical Maori have denounced the current foreshore and seabed legislation as still inadequate in recognising their special rights. With Treaty principles in a constitution the courts will be able to rewrite Acts of Parliament accordingly.
6. The Waitangi Tribunal, when originally established, was able to make recommendations that privately-owned land be 'returned' to Maori ownership. Parliament has since restricted the Tribunal's power to do so. But if Maori Treaty rights were part of our highest law, then such a restriction would surely be struck down by the courts.

7. The New Zealand Maori Council has already, in the case of Mr Rau Williams<sup>12</sup>, made the claim that old Maori people are a taonga whose protection was promised under the Treaty, and who are therefore entitled to a racial preference in the allocation of scarce health care. (Although never stated, it would be surprising if the Maori Council did not likewise believe that Maori people of all other age groups were not also taonga.) In other words, the Treaty requires that Maori have precedence over non-Maori in the distribution of health care; and very probably much else. The Maori Council has already said so. It would follow, therefore, that if there is not enough money to provide full health care for everyone, Treaty principles will require that non-Maori be the first to miss out.
  
8. The courts could well go further. They could overrule the allocations of money made by District Health Boards, so as to require more to be spent on those of part-Maori ancestry. Indeed, 'Treaty rights', if part of our constitution, would allow the courts to overrule allocations of money made by Parliament itself. If Maori Treaty rights were considered to require more money to be spent on Maori health, or Maori social welfare, or Maori education, or Maori anything, the courts will be able to find justification for their interference in the constitution. Already, judges have not hesitated to discover an obligation to fund support for the Maori language extremely generously. We may still have parliaments, but they may well not have the final say as to how taxpayers' money is to be spent. We will have abandoned that vital principle of freedom, for which our ancestors fought for centuries, that there should be *no taxation without representation*.
  
9. Certainly, Maori are over-represented in all our country's worst statistics; in poverty, crime and prison sentences, unemployment, illiteracy, domestic violence, child abuse, ill health and substance abuse. A compassionate state should, insofar as it can afford to do so, seek to remedy those ills. But the remedies, whatever they might be, must be applied to those in need; they must be applied on the basis of need, and not of race. These problems ~ not limited solely to Maori ~ are complex, and require carefully thought-out long-term political policies. They cannot be solved by judicial decree, or by lists of worthy aspirations declared to be 'rights'.

---

<sup>12</sup> An elderly Maori man who was refused kidney dialysis for purely clinical reasons; he had other medical conditions, and would not benefit as much from the treatment as others. Race was, most emphatically, *not* a ground for making the decision. He died in 1997.

10. Already, various institutions of higher learning 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.) Already, some tertiary courses are open only to those of Maori descent. Some institutions are considering compulsory universal courses in 'cultural competence' ~ echoing the Nursing Council's absurd requirement of 'cultural safety' in nursing, which only came to public attention because of the courage of one nursing student, Anna Penn, at Christchurch Polytechnic ~ so that no-one would be able to graduate without displaying politically-correct attitudes. Arguments are put forward that 'Maori science' deserves the same respect accorded to proper science. With Treaty principles in a constitution, plausible arguments for the legal enforcement of such policies are immediately available.
11. Even though the high Maori proportion of the prison population can be simply explained by the high Maori proportion of those who commit serious and violent crimes, we regularly hear claims of an anti-Maori racist bias in the administration of justice. An argument will inevitably be put forward, then, that constitutionally-based Treaty rights entitle criminals with Maori ancestry to preferential treatment; to gentler sentences, at least, if not perhaps actual acquittal on the ground that their violent actions were the expression of their culture or upbringing. This argument has indeed been recently put forward in a much reported manslaughter case. Already, some people argue that the effective and successful way to eliminate poverty is simply to give poor people more money. It is perfectly possible, then, to imagine a certain sort of human rights activist arguing that a dignified and healthy life is a taonga guaranteed by the Treaty and that a Treaty right consequently exists to an income sufficient to support that lifestyle. This is, when all is said and done, all that 'Treaty principles' now amount to ~ a straightforward demand to eternal privilege at others' expense. Metiria Turei summed it up when she said ~ without any trace of irony or awareness of the fundamental contradiction ~ that 'Maori want two things ~ they want independence ~ and they want more funding'. This is the Treaty industry in a nutshell, and the reason why none of the possibilities we have listed here is unrealistic.
12. Just about anything is possible. The ICRP cannot definitively say what precise effect the mention of Treaty principles in a constitution will turn out to have in the short or the long term. But it undoubtedly would have substantial effects, and what we have described are at least perfectly plausible possibilities. Prominent and influential forces are already arguing along these lines, and the whole point of mentioning the Treaty in our constitution is to

achieve precisely these results. Politically-active judges are already at work, and lawyers have always been skilled in pushing the language of laws to their furthest extent. At the best of times, the phrase 'Treaty principles' amounts to a very malleable, vague and amorphous concept full of platitudes that might well be used to allow the judge interpreting them to reach virtually any decision at all.

From time to time, however, another method has been proposed ~ allegedly justified by the Treaty ~ by which Maori might be able to secure privilege for ever. Instead of simply declaring the existence of Treaty rights in a constitution, and then leaving those rights to be invented and applied in future cases, the alleged Treaty 'principle of partnership' might be used to justify an entrenched Maori voice in parliaments and local government. The Treaty, of course, actually says that the Queen and her laws are to be sovereign over all of us, but by some strange alchemy this idea has been transmuted into its very opposite, the idea of 'partnership' ~ that Maori are not to be the subjects of the Crown, but somehow to be the Crown's partner in the government of the country. Already special reserved Maori seats on local bodies are claimed, regardless of the numbers of people who might be represented by those seats. Maori are now claiming, therefore, that Maori involvement in national and local decision-making should not be on the basis of one person one vote, but on something else ~ very often (as these 'partners' are allegedly equal) a 50:50 representation. This is, after all, the very model followed by the CAP itself; and the CAP appears to have been established according to the current official understanding of 'Treaty principles'. Such a 50:50 representation model has already been demanded under Maori proposals for 'co-governance' in the Hauraki Gulf Forum. Some radical Maori even allege that the Treaty and its principles entitle them to a separate Maori assembly, something like a separate Maori house of Parliament, whose consent would be required for any laws. The CAP itself suggests the possibility of an upper House which could 'help to ensure that legislation is consistent with the Treaty'.

All these ideas claim a Maori representation far in excess of what the proportion of those of Maori descent in the New Zealand population would entitle them to under any system of equal representation for all. Our view, indeed, is that any race-based representation, whether in Parliament itself or in local government, is now completely inappropriate and improper. Leaving the Maori seats completely to one side, the proportion of Members of Parliament of Maori descent is almost exactly the same as the proportion of those of Maori descent in the whole population. The Maori seats are absolutely unnecessary to ensure parliamentary representation for those of Maori descent, and to suggest that they are necessary is the most patronising condescension. The existence of the seats does not arise out of the

Treaty or any obligation expressed in 1840 ~ they were introduced a generation later, as an entirely temporary measure, because of the nature of Maori land ownership, the holding of landed property being at that time a necessary qualification for the franchise. The seats are clearly race-based and outdated; they are nonsensical in an age when most voters in those seats are, by genetic and cultural inheritance, more non-Maori than Maori; and they serve also to excite expectations among new New Zealanders of other races that they too should have race-based representation instead of participating in our active democracy on the same terms as everyone else. The abolition of the Maori seats was of course proposed by *Towards A Better Democracy*, the 1986 report of the Royal Commission on the Electoral System, whose recommendations led to the introduction of proportional representation.

The continued existence of the Maori parliamentary seats is unnecessary and anachronistic. The precedent should not be extended to local government. Any proposal to enlarge Maori representation so that representatives represent a disproportionately small number of voters is not only racist but profoundly undemocratic. Already the existence of race-based parties in the New Zealand Parliament has the most unfortunate effect of promoting divisive, expensive and often ineffectual race-based policies. Should a racial minority succeed in obtaining any guaranteed proportion, be it 50% or even less, of the membership of any assembly, that voting bloc would undoubtedly, at least from time to time, hold the country to ransom and excite the strongest racial ill-feeling.

Some radical Maori, including the foundation President of the Maori party, Whatarangi Winiata, publicly allege that there is a 'need' to put the Treaty of Waitangi and its alleged 'guarantees' into a constitution in order to 'protect' Maori. This is nonsense, for several reasons. For one thing, the Treaty itself promised Maori nothing but equality and the equal enjoyment and protection of the Queen's law. For another, after over a century and a half of intermarriage and friendship Maori and Briton have become one people; there is no longer a separate and distinct Maori race or indeed culture. But even if neither of those things were the case, there is another reason ~ that those of Maori descent are not stupid or weak, and that New Zealanders of non-Maori descent are not monsters intent on preying upon them. To suggest that one particular racial group needs special constitutional recognition in order to protect them from the depredations of their fellow-citizens is nothing but an absurd and grotesque insult. When things have reached that stage in New Zealand life there is no hope for us; or at least, if there should be any hope of healing, it will not arise out of the legal enforcement of racial distinction.

On many occasions since 1985, as New Zealand dealt with the latest round of historic claims (considerable numbers of which, as it happens, had already been the subject of previous ‘full and final’ settlements), the official rhetoric told us that after these settlements had been achieved it would finally be possible to put the past behind us and move forwards together as one nation. A former very eminent and most highly-regarded Minister of Treaty Settlements, the Honourable Sir Douglas Graham, was particularly notable for so reassuring his countrymen, but he was only one of many. Those assurances now appear to have been incorrect, for the current demands for special constitutional ‘recognition’ are completely new. The generosity with which we continue to indulge new and more extreme demands is evidence not so much of our innocence and good nature as of our gullibility, ignorance and national feebleness. Recognition of alleged Maori Treaty rights in a constitution would be disastrous for our country; but even if we were now to grant today’s Maori elite what they demanded, it would not be the end of the story. As we should surely have learnt already, ‘if once you have paid him the Dane-geld you never get rid of the Dane’<sup>13</sup>. It will not be the end of demands for yet more and more. Any mention of the Treaty in a constitution would inevitably be the pretext for establishing race as a fundamental part of our country’s law and life, and will continue to lead us further down an irrevocable slippery slope to the destruction of what remains of racial harmony and prosperity, and perhaps even to Balkanisation and the end of our very existence as a nation.

## DECLARATION OF EQUALITY

### There shall be one law for all New Zealanders:

1. We refuse to accept any reference to the Treaty of Waitangi or its principles in any constitutional document.
2. We require that such references be removed from all existing legislation.
3. We require that race-based Parliamentary seats be abolished.
4. We require that race-based representation on local bodies be abolished
5. We require that the Waitangi Tribunal, which has outlived any usefulness it might have had, be abolished.

To sign the Declaration of Equality and send the government a message, please visit: [www.ConstitutionalReview.org](http://www.ConstitutionalReview.org)

For more information on the Declaration of Equality – click [HERE](#)

<sup>13</sup> Kipling, *Dane-Geld*

## 10. Views of the public

Anger and frustration over Treaty politics boiled over in the thousands of comments in response to a call by the Independent Constitutional Review Panel (ICRP) for online submissions at [www.ConstitutionalReview.org](http://www.ConstitutionalReview.org). Some were relieved that at last they were able to have a say.

As already mentioned, this call for submissions was advertised on the New Zealand Centre for Political Research ([www.nzcpr.com](http://www.nzcpr.com)) website, in a weekly email newsletter from that site, and through 11 major newspaper advertisements from June 8, 2013, to June 18.<sup>14</sup>

The first 12 of the 15 submission questions mirrored the issues identified in the terms of reference for the government-appointed Constitutional Advisory Panel. The last three questions are issues of concern to the ICRP. Each question was accompanied by brief information about the issues involved. Each response had a space for comments. A total of 1222 unique submissions from all over New Zealand were received from late February 2013 to early November 2013, and included thousands of comments ranging from visceral reactions to detailed analysis. Here are the questions and responses expressed as a percentage.

### SUBMISSION QUESTIONS AND RESPONSES

#### 1. Size of Parliament

##### 1(a) Should the number of MPs stay the same, increase or decrease?

Response: Increase – 1%, Same – 14%, Decrease – 80%, No comment – 5%

Note: With the advent of MMP in 1996, the number of MPs increased from 99 to 120. Currently, however, there are 121 MPs (122 in the 2008 Parliament) because of the overhang created when a party wins more electorate seats than their party vote entitles them to (in this case the Maori Party). The overhang distorts the proportionality of Parliament. Margaret Robinson's 1999 Citizens' Initiated Referendum showed that 81.5 percent of New Zealanders wanted the number of MPs reduced to 99.

---

<sup>14</sup> The advertisement is reproduced on page 42

The ICRP advertisement published in newspapers nation-wide in June 2013



## New Zealand, are we about to be crippled...permanently?

**If we're not careful, our nation could end up paying a very high price for National's coalition deal with the Maori Party.**

**New Zealand could end up forever divided along racial lines.**

**The deal that was done**  
In 2008, in return for the Maori Party's coalition support, the National Party agreed to a \$4 million 'review' of New Zealand's constitutional arrangements. An appointed Constitutional Advisory Panel is due to make recommendations to the government later this year. Any changes will be made either by a vote in Parliament or through a binding referendum of voters.

**The dangers that await**  
New Zealand's constitution consists of a collection of statutes, conventions, and common law rights that together set out the basic rules by which our country is governed. With supreme law-making power held by elected Members of Parliament who can be sacked if they lose the confidence of voters, New Zealand has one of the strongest parliamentary democracies in the world. Those calling for a Treaty-based constitution want to transfer that ultimate law-making power to unelected judges who are not accountable to the public.

**A Treaty-based constitution**  
The likely outcome of this review is a proposal to place the principles of the Treaty of Waitangi in a written constitution based on localism.

This would mean that all Acts of Parliament would be tested against these principles and the rights outlined in the Treaty would be enforced in a way that's not possible at present. In effect, much power would legally confer: Waitangi Tribunal decisions as well.

The governance of New Zealand would be radically changed. Under a Treaty-based constitution, the **classic process would never end** and could include private property and public resources, as well as giving those of Maori descent priority to public funding and rights to co-governance.

**Here is an Alternative**  
The Independent Constitutional Review (ICR) was established in response to the Maori Party's review. We believe democracy should be based on citizenship, not ethnicity – all citizens should be treated equally, with equal rights and equal opportunity. That's fair. If you agree, please sign our Declaration of Equality:

**We, New Zealanders of all backgrounds, having founded and developed our society in equality, fairness, and comradeship, oppose any laws which establish or promote racial distinction or division. There shall be one law for all.**

- We reject any reference to the Treaty of Waitangi or its principles in any constitutional document.
- We ask that such references be removed from all existing legislation.
- We ask that race-based Parliamentary seats be abolished.
- We ask that race-based representation on local bodies be abolished.
- We ask that the Waitangi Tribunal, which has outlived its usefulness, be abolished.

**5 things you can do right now**

- Sign the Declaration of Equality at [www.Constitutionalreview.org](http://www.Constitutionalreview.org).
- Make a submission on-line by visiting [www.Constitutionalreview.org](http://www.Constitutionalreview.org) so we can add your views to our ICR report.
- Tell the government what you think of a Treaty-based constitution – have your say at [www.ourconstitution.org.nz](http://www.ourconstitution.org.nz).
- Send a donation so we can publish this advert throughout the country – donate on-line at [www.Constitutionalreview.org](http://www.Constitutionalreview.org) or clip and post the coupon below.
- Tell your friends what's happening and show them this ad.

Yes, I would like to support this ad being published in newspapers around the country with a donation:

\$50    \$100    \$500  
 \$1000    Other.....

Name: .....

Address: .....

Email: .....

Please post to: ICR, PO Box 984, Whangarei

To read the advertisement, please click [HERE](#)

## **2. The length of the term of Parliament and whether or not the term should be fixed**

### **2(a) Should the parliamentary term stay at 3 years or increase to 4 years?**

Response: 3 years – 50%, 4 years – 47%, No comment – 3%

Note: Those MPs in power would want longer terms and those in opposition, shorter. With no Upper House, nor Citizens' Veto of unacceptable legislation, a shorter term and more frequent elections are seen as the only way in which citizens can hold the government to account.

### **2(b) Should the election date stay flexible or be fixed?**

Response: Flexible – 47%, Fixed – 46%, No comment – 7%

Note: Currently, the Prime Minister may set the election date for his or her party's advantage. A fixed date would increase the length of the term of electioneering and lobbying by vested interest groups, and give more power to the opposition.

## **3. Size and number of electorates, including changing the method for calculating the size**

### **3(a) Should the number of electorates stay the same?**

Response: Yes – 40%, No – 38%, No comment – 22%

Note: Currently there are 63 general electorate seats and 7 Maori seats, with 50 list seats, making up a Parliament of 120 MPs. As the population grows and the number of electorate seats increases, the number of list seats will be reduced.

### **3(b) Should the method of calculating the size of electorates be changed?**

Response: Yes – 41%, No – 23%, No comment – 36%

Note: The process for deciding the number and size of electorates is based on the South Island always having 16 electorates. After each five-yearly census, the Representation Commission divides the number of people living in the South Island by 16 to get the "population quota." The Commission then divides the Maori electoral population and North Island electoral population by the South Island population quota to determine the number of North Island and Maori electorates.

The Commission then uses the information to draw up boundary changes, and after a consultation period, makes final determinations ahead of the next election.

#### **4. Electoral integrity legislation**

##### **4(a) Should electoral integrity legislation be re-introduced?**

Response: Yes – 67%, No – 7%, No comment – 26%

Note: “Party hopping” laws prevent MPs leaving a party and distorting the proportionality of Parliament. Their seat is declared vacant and they are forced to quit. Such a law was enacted in New Zealand in 2001 but it had a sunset clause and expired in 2005. A select committee was not convinced that replacement legislation was necessary

#### **5. Maori representation, including Maori Electoral Option, Maori electoral participation, Maori seats in Parliament and local government:**

##### **5(a) Should the Maori electoral option (separate Maori roll) be retained or abolished?**

Response: Retained – 3%, Abolished – 96%, No comment – 1%

Note: The Maori electoral option gives New Zealanders of Maori descent the opportunity to choose whether they want to be on the Maori electoral roll or the general electoral roll when they vote in the next two general elections. The Maori Party wants every New Zealander classified by ethnicity, with all 18-year-olds of even remotely Maori descent placed automatically onto the Maori electoral roll.

##### **5(b) Should the parliamentary Maori seats be retained or abolished?**

Response: Retained – 3%, Abolished – 96%, No comment – 1%

Note: Four Maori seats were established as a temporary measure in 1867 to ensure Maori men who did not satisfy the property qualification because of the communal ownership of their land, could vote. They should have been abolished in 1893, when universal suffrage extended voting rights to all New Zealander, but were retained. The 1987 Royal Commission on the Electoral System recommended they be abolished if MMP was introduced, but through strong advocacy they were retained. There are now 7 Maori seats, and at present 23 of the current 121 MPs – or 19 percent – are of Maori descent, including 8 National MPs, 6 Labour, 3 Greens, 3 Maori Party, 1 NZ First, 1 Mana, and 1 Independent MP. The Maori seats have led to an overrepresentation of Maori MPs in Parliament.

### 5(c) Should local government Maori seats be retained or abolished?

Response: Retained – 2%, Abolished – 97%, No comment – 1%

Note: Separate Maori local body representation was established by legislation in 2001 at Environment Bay of Plenty. In 2009, central government imposed a Maori statutory board on the new Auckland City Council. In 2011, the Human Rights Commissioner Joris De Bres wrote to local government asking councils to consider setting up Maori seats. Nelson and Wairoa district councils polled ratepayers on the issue – the proposal was defeated. Last year the Waikato Regional Council voted to introduce Maori seats – it did not seek a mandate from ratepayers.

## 6. The role of the Treaty of Waitangi within our constitutional arrangements

### 6(a) Should the Treaty of Waitangi have a more central role in our constitutional arrangements?

Response: Yes – 3%, No – 96%, No comment – 1%

Note: If Treaty principles were enshrined in a new written constitution, Judges would have to assess whether laws satisfied Maori Treaty rights. Special privileges would then be granted to members of the 'Maori race. Even if Judges should decide against Maori privilege, the threat of challenge would always be there. It would create a two-tiered society – a Maori elite, and non-Maori New Zealanders as second-class citizens.

## 7. Bill of Rights issues (for example, property rights, entrenchment)

### 7(a) Should the protection of property rights be included in Bill of Rights?

Response: Yes – 70%, No – 11%, No comment – 19%

Note: The New Zealand Bill of Rights Act 1990 is a statute of the Parliament setting out the rights and fundamental freedoms of anyone subject to New Zealand law. Many people would like to see private property rights awarded the added protection of being included in the Bill of Rights.

### 7(b) Should the Bill of Rights be entrenched?

Response: Yes – 45%, No – 27%, No comment – 28%

Note: The Electoral Act is the only New Zealand statute containing entrenched provisions, which means that it can only be changed through a 75% vote in Parliament or a majority vote in a public referendum. The argument is that the Bill of Rights does not need to be entrenched since by convention no government would change such a law without wide parliamentary support.

## **8. Written constitution**

**8(a) Should New Zealand retain our present flexible constitutional arrangements with the ultimate law-making power held by elected Members of Parliament, or should a new written constitution, which gives the ultimate law-making power to Judges, be introduced?**

Response: Retained – 86%, Change – 11%, No comment – 3%

Note: New Zealand’s present constitutional arrangements consist of written statutes, conventions and common law rights, which give our elected Members of Parliament the ultimate law-making power. The main question is whether we want un-elected Judges or elected MPs having the last say on the laws of New Zealand – if we want to retain parliamentary sovereignty, a “written” constitution should be avoided.

## **9. Any other comments**

**9(a) Should the Declaration of Equality be enacted by Parliament?**

Response: Yes – 83%, No – 9%, No comment – 8%

Note: The Declaration of Equality states that:

“We New Zealanders of all backgrounds, having founded and developed our society in equality, fairness, and comradeship, oppose any laws which establish or promote racial distinction or division.

1. We reject references to the Treaty of Waitangi or its principles in any constitutional document.
2. We ask that such references be removed from all existing legislation.
3. We ask that race-based Parliamentary seats be abolished.
4. We ask that race-based representation on local bodies be abolished.
5. We ask that the Waitangi Tribunal be abolished.

Therefore in the interests of New Zealand we call on the members of the House of Representatives to implement the principles of this Declaration of Equality to ensure that there is one law for all.”

The on-line Declaration of Equality and more details can be found [HERE](#)

### 9(b) Do you support the principle that any change to our constitution is only legitimate if it is approved by voters through a public referendum process?

Response: Yes – 95%, No – 3%, No comment – 2%

Note: The only legitimate democratic way to enact major constitutional change is through a public referendum process. Any attempts by MPs to change the constitution by way of a parliamentary vote should be regarded as illegitimate – except if a political party campaigns specifically for constitutional change as a core component of its election campaign, then (maybe) it would be okay to drive the change through the legislature, if it won big. But that is not at all what happened in this case - it was one tiny party getting a handful of votes.

### 9(c) Other issues ...

## DISCUSSION

The 97 percent support for the abolition of local government Maori seats was the biggest response of feedback for any question. This result gave a more sharply defined version of responses to a Consumerlink poll in March 2012, when the private research department of Colmar Brunton, questioned 1031 people throughout New Zealand asking:

1. Do you believe that Maori seats and the Maori electoral roll should be abolished - as recommended by the 1986 Royal Commission on the Electoral System?
2. Do you believe that separate Maori representation on local bodies should be abolished?
3. Since historic Treaty of Waitangi claims can no longer be lodged, do you believe it is time to abolish the Waitangi Tribunal?

The responses showed that 70.5 percent (73.3 percent non-Maori) of those who responded yes or no believe that separate Maori representation on local bodies should be abolished, while 69.4 percent (72.4 percent non-Maori) thought that Maori seats and the Maori electoral roll should be abolished, and 67.8 percent (70.1 percent non-Maori) were in favour of abolishing the Waitangi Tribunal.

The submission comments presented in this report were selected from those received as representative of the views of submitters and have been edited for spelling and punctuation.

## 1. Number of Members of Parliament:

Eighty percent of respondents wanted fewer MPs. Most submitters objected to MMP, thought that list MPs reduced the amount of representational democracy in the electoral system, and believe we have too many politicians not contributing anything worthwhile. Several wanted to implement the results of Margaret Robinson's 1999 Citizens' Initiated Referendum that showed that 81.5 percent of New Zealanders wanted the number of MPs reduced to 99. Some wanted to reduce the number to 100, including 80 electorate MPs. One argued that it was not how many shepherds there were; it was how well they took care of the flock. Only 1 percent wanted more MPs.

Several submitters thought that New Zealand was over-governed and provided international comparisons as evidence. With 122 MPs for a population of 4.4 million, each New Zealand MP serves an average of 36,000 citizens. By comparison, in Australia, where there is a population of 22.8-million, and where there are 150 House of Representative seats plus 76 Senate seats, there is one representative for around 101,000 citizens. In the United Kingdom, with a population of 62.3-million, and where there are 650 MPs in the House of Commons, there would be one representative for around 96,000 citizens. But a straight comparison is difficult because Australia also has 598 representatives in state parliaments and the UK has a 788-member House of Lords.

Here are some of the comments received from submitters:

*"Switzerland can run the country with nine part time members of parliament. Why do we need the expensive collection of mostly very average people we have to attempt to do the same?"*

*"These people act like children - in any boardroom in the rest of the world their actions would not be tolerated. They are highly overpaid for the way they act, and to me, appears they have forgotten they are supposed to be concerned for the well being of ALL Kiwis."*

*"The effectiveness of Parliament has decreased when the numbers of MPs has increased."*

*"List members are not voted democratically. They are a party vote not an individual vote. Membership in the House is mixed between people voting and party hierarchy. Proportions bear no relationship to the people's voting empowerment nor are list members responsible to the people only to the party which is undemocratic"*

*demonstrating that NZ is governed by an undemocratic government to the rest of the world.”*

*“Over-governed and expensive having 120 MPs - many of questionable talent.”*

*“Too many list MPs.”*

## **2(a) Parliamentary term:**

Opinion was almost equally divided on whether the parliamentary term should stay at three years or increase to four years. Those who wanted the term to stay at three years thought that unless there was some further control on the legislature, such as binding referenda, it would not be wise to give any political party longer to wreak havoc. The four-year supporters appeared to have only one reason for a longer term and that was more time to get things done. A number of four-year advocates wanted more time linked with binding referenda, an upper house, or increased powers of the governor general to dissolve parliament.

Here are some of the comments:

### **Three years**

*“The people should have a say reasonably regularly. Four years is too long if Government is ineffective, inefficient or self-serving.”*

*“Since it has become customary for governments to ignore referenda, the shorter they are in power the better. Two thousand years ago Cicero had very firm ideas about governments having too much power!”*

*“Democracy isn't served by reducing the opportunity of the people to change the government.”*

*“The only effective way to show dissatisfaction with the Government, is to vote them out at an election.”*

*“Earlier governments have shown that if they want to do something the term is no barrier - Douglas, Richardson, Cullen. If they don't know what they want to do or how to do it, why prolong the agony for the country?”*

### **Four years**

*“The term should only be extended to four years in conjunction with the introduction of citizens binding referenda - otherwise, leave it as it is.”*

*“It makes good economic sense to have it every four years as elections are expensive. Also it takes about four years for a Government to follow through on its governance and planning.”*

*“Gives the party a chance to see how new developments work, or not and do something about it, instead of the opposition running off at the mouth, as usual.”*

*“With a three-year term, after only one year they are only interested in the next election and getting back in.”*

*“We need some constitutional safeguards (if we are to increase the term), such as the Governor General being prepared to dissolve parliament rather than just being a ceremonial lackey of the Executive. This might include recognition of any significant public petitioning. In the absence of such a safeguard we should stick to three years.”*

## **2(b) Flexible or fixed election date:**

Again, respondents were more or less equally divided on whether the date of the election should stay flexible or be fixed. There were fewer comments and some did not see any issue in the date being fixed or flexible. Those backing flexibility cited the ability to call a snap election if the government lost a confidence vote as important. Another noted that a flexible election date prevented the establishment of an entrenched professional election-year lobbying industry. One described the ability to bring a Government down and initiate a general election as the last great weapon of the backbench MP. Those wanting a fixed term said it provided certainty, increased economic stability, and removed an advantage held by the incumbent party. One opted for a fixed term with two exceptions – when there is a hung parliament or a people’s referendum for a new election.

Here are some of the comments:

### **Flexible**

*“If circumstances warrant a government calling a general election, then the PM should be able to do so.”*

*“The present arrangement is better, even though it is vulnerable to manipulation by governments choosing the time for an election most favorable to its electoral interest. A predetermined, fixed date in effect makes a government secure for that period, and therefore less accountable. The risk of a motion of no confidence should always be available.”*

*“We the public need safeguards in place to oust non-performing Governments in the quickest possible time, well before any damage done is irreversible.”*

*“It should stay flexible to safeguard New Zealanders and empower the public to demand a snap election etc if the public believe the PM to be substandard or at risk of jeopardising the economy - i.e. Muldoon and his "think big" campaign and the serious ramifications it created for NZ for years afterwards.”*

## **Fixed**

*“To stop political parties playing ducks and drakes with election dates the election day should be fixed unless there is very good reason to change it - it could be, say, the last Saturday in October. To change it would be covered by the binding referendum.”*

*“If it was fixed, there would be a definite period where we knew the financial market instability was going to be well in advance of the actual time, thus giving us time to make appropriate arrangements. An election date should not be at the political whim of whichever party holds the reins at present.”*

## **3(a) Number of electorates:**

Respondents were divided on whether the number of electorates should stay the same, although many of the comments could be seen as supporting both viewpoints.

Here are some comments:

### **Yes – stay same**

*“Fewer MPs and larger electorates - I have no problem with this.”*

*“This presumes the balance between members elected in electorates and by party vote remains the same. Again, seems OK - provided the race-based seats are replaced by general seats.”*

### **No - change**

*“Fewer electorates would mean fewer MPs, less governance, less expense for the taxpayer.”*

*“The main cities are the only areas that really need dividing up. In saying that, if there were a maximum of five for Auckland (Central, North, East, South and West), then it would stand that Wellington would probably get away with three or four,*

*Christchurch, Hamilton and Tauranga with two, Whangarei, Dunedin, New Plymouth, Invercargill with one and the rest centred around a geographical position central to the electorate and based on a minimum number of constituents being present within the district. A maximum of 32 electorates, but better if kept to 25 or less.”*

*“Make them bigger. It's not like they listen to us anyway.”*

*“With rapidly improved communication electorates could be 25 percent larger by population.”*

### **3(b) Method of calculating electorate size:**

More respondents (41 percent) thought the method of calculating the size of electorates should be changed, than those who thought it should stay the same (23 percent). However, the fact that 36 percent had no view is more likely to reflect the fact that the formula is complex and not widely known. Some submitters said they did not understand the question. There were significantly more comments from those supporting change than from those who wanted the system to remain the same.

Here are some of the comments:

#### **Yes – the method should be changed**

*“Should be based on population size in the area represented, for example set a parameter per electorate with a minimum and maximum number of constituents. If an electorate exceeds the maximum then it is time to create a new electorate.”*

*“Perhaps we need to concentrate on a fair division based on the top-heavy population in the North Island.”*

*“It should be calculated on size of population irrespective of race, culture or socio-economic factors.”*

*“Change it till we have the same number of politicians per capita as Australia.”*

#### **No – stay the same**

*“I have no objection to the present system although 16 for the SI is an arbitrary number.”*

*“Don’t change what has worked well in the past.”*

*“Again, do NOT implement gerrymandering.”*

*“Equal population for each electorate.”*

#### **4. Party hopping legislation:**

A sizeable majority of 67 percent thought electoral integrity legislation should be re-introduced, 7 percent were happy the way things are and 26 percent had no position on the matter.

Here are some comments:

##### **Yes – reintroduce the legislation**

*“Individuals are elected to Parliament to represent either their constituents or their party. If you are a list MP and you are fired or resign from your party you must leave and relinquish your position.”*

*“Party hoping makes a mockery of parliament.”*

*“Party politicians are supposed to toe the party line. If they can’t then they must quit and be replaced by the next on the list. Elected politicians can do what ever they wish as it is they who are elected not the party.”*

*“It is utterly unacceptable that an MP can thwart electors’ preferences in order to suit his or her own ends.”*

##### **No – legislation is not needed**

*“This is a second best solution to the problem of an electoral arrangement which focuses on representation to the exclusion of governance in voters direct influence over the democratic institutions i.e. voters have sacrificed our influence over the latter for the former. Restore voters’ control over those who are MPs and the governance process, and problem is solved.”*

*“So-called electoral integrity legislation merely serves the interests of parties and not of electorates. An MP is elected to serve and represent the people, not the party. We have already gone too far down the path of a ‘party oligarchy’ rather than a ‘people’s democracy’.”*

### 5(a) Separate Maori roll:

An overwhelming majority of submitters - 96 percent - wanted to abolish the Maori Electoral Option (separate Maori roll) and only three percent wanted it retained. Only six of those who wanted the separate roll retained entered comments, while there were over 600 comments from those in favour of abolition. Most believe that the separate Maori roll is an anachronism and is no longer needed in New Zealand. Numerous comments were adamant Maori have every opportunity to participate in Government through the general electoral roll and that the separate roll was racist. Some pointed out that most Maori in New Zealand today are only part Maori with many having more non-Maori ancestry than Maori. There were calls for one country, one people, one rule for all, as well as assertions that we don't want or need apartheid in this country.

Here are some comments:

#### **Abolished**

*"Maori have equal rights and opportunity to represent the country. They don't need special seats or representation."*

*"If we have a Maori roll why not Indian, Samoan or Chinese?"*

*"We are one country and one people as per the original Treaty of Waitangi - why should there be a separate roll?"*

*"All New Zealanders have mixed ancestry. Our system of Democracy is undermined if one group is given special rights."*

#### **Retained**

*"It is not for me to decide. It is up to Maori to decide if they still need the option."*

*"If it gives the opportunity to be treated primarily by that identity, then the option should remain. And the sooner a majority of those individuals vote to be identified with humanity as a whole, the better off we will all be."*

### 5(b) Maori seats:

Most submitters - 96 percent - thought the parliamentary Maori seats should be abolished. Only three percent wanted them retained. There were hundreds of comments saying the separate seats were racist - a form of apartheid, that they caused resentment and division, that they were well past their use-by date, that they are now causing an over-representation of Maori in Parliament, and that since we are all New Zealanders there should be no separate seats. Those wanting the seats abolished included those with Maori ancestry who had marched against South African apartheid. There were just 11 comments in favour of retaining the seats.

Here are some of the comments:

### **Abolished**

*"I am part Maori and part European New Zealander, I marched against apartheid in SA as part of the Halt all Racist Tours, and I'm against any separate entities based on race. Now I see that apartheid is alive and well in NZ, I am ashamed to be a New Zealander. It's disgraceful - we are all one. Any NZ Parliamentarian elected should be representing all New Zealanders regardless of race."*

*"Abolished because 'Maori' today are quite capable of making it into parliament on their own without privileged seats."*

*"Maori are more than adequately represented in Parliament. Maori seats should be abolished and no electoral participation improvement is required."*

*"They are well past their use by date - one only needs to watch how they vote... for themselves, rather what is beneficial for the country. They use the cultural card too often."*

*"Most of my friends already live in Australia as a result of racial separatism heavily weighted in favour of Maori. All of them have told me that they will never return to NZ to live, and every time they come back for a visit, they see an even bigger reason to hold on to that view. Sadly I have NO national pride in my birth country (NZ) and, having made many visits to Australia, I feel more Australian than I do a Kiwi. NZ needs a government with the 'balls' to stand up to Maori and stop insulting real New Zealanders by giving them special rights and privileges above all other decent people."*

### **Retained**

*"We have Maori seats as part of our special history."*

*"There needs to be seats that help support what the Maori people want."*

*“Until treaty claims are settled.”*

*“Not only retained BUT increased - the current seats are mere tokenism. More seats, more power, more change for the better, and the better off we all are!”*

### **5(c) Separate local government seats:**

Of the submissions received, ninety seven percent thought local government Maori seats should be abolished. Ratepayer polls have raised awareness of this issue, as have the “antics” of the Maori Statutory Board of the Auckland Council. Those opposing the separate local government seats raised concerns over special treatment for Maori, they asserted that we are all one people and so race-based politics should have no place in our democracy, that there was no national or local government mandate for the seats, and that they were divisive. Only seven of the 20 who wanted separate seats in local government made a comment.

#### **Abolished**

*“Surely the people vote for whichever representative they want in a democracy - next we will have Samoan, Chinese and Indians wanting these race-based privileges.”*

*“Local government decisions should be made on behalf of ratepayers - race has no bearing on these decisions. Maori boards represent a minority of citizens and don't speak for the majority of the local electorate.”*

*“There is a problem of accountability, where Maori are gaining influence in decision-making that affects the interests of more than Maori but without being accountable to those people. That is inequitable, undemocratic, even racist.”*

*“I am of Maori descent. Maori are People. Not Special People. The idea of apportioning rights on the basis of whose ancestors got here first is an attack on democracy.”*

*“Local government representation for Maori can only divide the people of the nation into two distinctive citizenry. Note that neither US nor South Africa have this distinction. A country that practices such a separate distinction, Malaysia, remains a disunited nation with racial problems and national disunity after 56 years of forging a nation.”*

*“The ratepayers of EBOP were not asked if we wanted this option. I now refuse to vote in this racially biased election and have not done so since maori seats were introduced.”*

### **Retained**

*“In central government and local government Maori rights need to be protected.”*

*“I do believe for local government it is important to allow for a representative of the local iwi to sit at the council table.”*

*“Not only retained BUT increased - the current seats are mere tokenism. More seats, more power, more change for the better, and the better off we all are!”*

### **6. Treaty-based constitution:**

Ninety six percent thought the Treaty of Waitangi should NOT be included in our constitutional arrangements. Reasons against inclusion were that the Treaty had a role in 1840 that was completed, the world has moved on, that it would lead to race-based separatism, that it would be open to interpretation and would have all sorts of meanings read into it, and that it would be used as a lever to gain more taxpayer resources. Only 10 of the 30 who wanted it included offered reasons why and three of those turned out to be reasons why it should not be included.

Some comments were:

### **Not included**

*“It is a historic document belonging to 1840. The world has evolved significantly since then, Maori and European have greatly integrated and all New Zealanders' customary rights are being abused by applying new interpretations of it to the present day. Trying to divide up New Zealanders and their rights based on which culture they identify with is racist and corrupt.”*

*“If the Treaty itself were to be included it would become a minefield of conflicting interpretations. Treaty principles should be abandoned as it was clear from the inception of the Resource Management Act that nobody knew how to define these ‘principles’ - I recall a report from DoC saying just that.”*

*“The Treaty has been erroneously and mischievously interpreted by radical Maori groups and others as granting special privileges for the Maori race. Its inclusion would therefore defeat the concept held to be true by the majority of New*

*Zealanders; namely that we are 'One nation, one people, one flag' with no special rights or privileges granted to any particular race or creed in any legislation."*

*"The treaty was a document ceding sovereignty and should now be consigned to history not used as a political lever."*

*"If the Treaty of Waitangi were to be included in our constitution, this would create a two-tier society with Maori having greater power and privileges than the rest of the population. This would be a disaster for democracy, for the future of the country and for our children and grandchildren. This must never be allowed to happen. We must be one Nation, one people with no special privileges for any race or segment of the population."*

*"As a NZ citizen who is proud to know that I have a mixed heritage, part Maori and part NZ European I feel that it is completely unnecessary to include the Treaty of Waitangi in our constitution. It is a move backwards for race relations in this country not forwards. The treaty has played a big part in this country's history and I feel too much of a part in its present. Including it in the constitution is almost like opening the door to a country that judges how its citizens are treated by how long their ancestors have lived here - a very dangerous and contentious way forward. We should be looking for ways to improve the way ALL cultures and ethnicities are treated and ensuring that it is all completely and utterly equal."*

## **Included**

*"The Treaty of Waitangi should be included, but not used as a way of measuring legislation against. The Magna Carta should also be included as well."*

*"This will ensure the Maori rights are maintained but should become subservient to the prime composition of the New Zealand race. None of us (NZ population) have a pure racial line anymore."*

*"The Treaty is about equality, fairness, reasonableness and democracy not about elitism."*

*"As our founding document, anything less would lead to unacceptable and unnecessary public outcry."*

## **7(a) Property rights:**

Seventy percent thought the protection of property rights should be included in the Bill of Rights, 11 percent were opposed and 19 percent were undecided? Those advocating the protection of property rights saw it as fundamental to the operation of a democracy, and as important as political rights since without property rights

political rights can be lost. A number saw the most serious threat to property rights being legislation.

Some of the comments from submitters were:

### Yes

*“Yes for sure as my private property feels like it is everybody else’s because I have to ask permission to do almost anything.”*

*“A man’s home is his castle.”*

*“Especially local government. In Porirua they are attempting to rob ratepayers of property rights via a dreadful Significant Urban Vegetation Zone proposal to change the District Plan. If a Council can take away one's enjoyment of their property then there ought to be very strong checks & balances and significant compensation for the aggrieved.”*

*“Absolutely, we don’t want to be like Zimbabwe.”*

*“A landowner takes all the risk and all the cost of that ownership yet must beg the indulgence of petty officials to use his land how he sees fit. In my own case Rodney council felt the need to charge me \$50,000 to consider if I could partition my large house into two flats now the kids have flown the coop - approved or not approved the \$50,000 was forfeited.”*

*“People today are very unclear as to their property rights when they come to subdivide or develop their property in accordance with the law. Anyone seems to be able to hold owners to ransom through the resource management system to the detriment of the whole country. This system as it is now is manifestly wrong.”*

### No

*“Some compulsory acquisition should be allowed for (with safeguards and compensation) to obtain private property for the public good.”*

*“Bills of Rights give little real protection, but instead become the thin edge of a wedge for introducing imagined rights and promoting special interests. I don't see any need for listing private property rights.”*

*“I am strongly opposed to the whole ‘rights’ issue. I do not believe that we gain any worth by enunciating every kind of ‘right’. It is usually for wrong reasons that ‘rights’ are established. They have become a distortion of reason and truth, often seeking instead to establish an identity or advantage for a particular group or cause. What is wrong with the principle of ‘fairness to all’ - is one group more deserving? For example, when an armed burglar enters a house threatening its inhabitants’ safety,*

*do we preserve his personal right to be treated with the same care as the inhabitants of the house? We have carried this 'rights' nonsense way too far and common sense no longer prevails. Let reason prevail and balance be kept."*

*"Protection of property rights is a matter that can be addressed by ordinary legislation. Circumstances and situations alter, and the protections available can be addressed at the time. Fettering by inclusion in the Bill of Rights (Act) dilutes the other existing protections provided by that Act."*

### **7(b) Entrenched Bill of Rights:**

Fewer had clear ideas on whether the Bill of Rights should be entrenched, with 45 percent in favour, 27 percent against and 28 percent undecided.

#### **Entrenched**

*"Agreed, these rights are the most important things we have."*

*"Political parties frequently agree on things for political advantage, not because it is in the interests of the public. Some important laws should not be changed without full support via a public referendum."*

*"Provided that doing so does not reduce or impinge upon the concept which, in my opinion, is held to be true by the majority of New Zealanders; namely that we are 'One nation, one people, one flag' with no special rights or privileges granted to any particular race or creed in any legislation."*

*"Can't trust politicians not to do a 'swifty' and insert legislation through the back door somehow or against public support – eg the anti-smacking bill debacle."*

#### **Not entrenched**

*"It would be a millstone round our necks: all entrenched legislation creates limitations on personal freedom, of a sort that prevents the nation from adapting to the contingencies of the times."*

*"Some alteration might be necessary from time to time. An entrenched Bill of Rights could lead to activist judges rather than Parliament making decisions on debateable matters. If something is not quite right then Parliament can make adjustments. All this assumes the politicians actually reflect the will of the people."*

*“The New Zealand Bill of Rights Act 1990 does not need to be entrenched since by convention no government would change such a law without wide parliamentary support.”*

*“New Zealand already has a very good record of human rights written into our law codes. This is enough and it’s Kiwi. We do not want or need to be governed by the World Councils.”*

## **8. Written constitution:**

Eighty six percent thought New Zealand should retain our present flexible constitutional arrangements, where the ultimate law-making power is held by elected MPs. Only 11 percent thought NZ should move to a new written constitution and give that power to un-elected judges. They argued that our current flexible constitution is working well and “if it ain't broken then why fix it”. A number saw a written constitution (especially if Maori separatism is built in) as a nightmare. There was significant opposition to a written constitution with judges being interpreters, with comments that judges frequently demonstrate that they are out of touch with society.

Some of the comments were:

### **Retain flexible constitution**

*“Absolutely no written constitution that entrenches the Treaty of Waitangi. The Treaty should not influence any constitution. We are all equal.”*

*“We only have to look at some of the decisions from Judges who have a liberal agenda and forget that they occupy their position to apply the law based on precedent and the intentions of parliament to clearly see the danger of removing our present system and have it replaced by a written constitution.”*

*“Our basic constitutional document is the Act of 1854 or thereabouts establishing representative government. Everything has developed from that by convention and by parliamentary resolution, and sometimes by judicial rulings. Attempting to reduce all that to a single written code would result in a lengthy, complex document which would, as with the Bill of Rights, be hostage to the history.”*

*“I still think we should do so. Just this morning I read that the US Supreme Court will decide whether same sex marriages will be lawful in US under their constitution. I think that these questions should be decided by elected representatives; not by a few un-elected judges. I have no confidence that such people should be given power to decide important questions like this. I fear that a written constitution will not treat*

*all citizens equally and will give co-governance rights to Maori which is a recipe for racial disharmony.”*

*“It is clear that having a written Constitution is no guarantee of liberty, since all the tyrannical and oppressive regimes in the world have written Constitutions. It is also clear that there is no consensus among New Zealanders about matters that would be set out in a Constitution, such as whether we should become a republic, or whether the constitutional status of part-Maori citizens should be different from that of other New Zealanders. I therefore do not favour adopting an entrenched written Constitution.”*

*“I choose to live in NZ, not America or elsewhere where there are written constitutions. If I wanted to live under such a system then I would emigrate, but I do not want to!! Keep it as it is. If changed, then NZ would not be the wonderful country it is today, where people have the opportunity to be heard, and where their MPs are working for them and not for their own agendas. Anything less than our present democratic system could leave the country wide open to corruption!”*

### **Adopt written constitution**

*“I would like to see a new written constitution compiled to protect both the Crown (Monarch & Governor-General) and the people from being held in subjection by Parliament. Parliament needs to be reminded that they are the servants of the people - NOT the rulers of the people! All MPs should be directly elected by the people – and subjected to term limits. The 'Supreme Court of New Zealand' should be abolished in favour of both restoring the right of appeal to the Judicial Committee of the Privy Council in London, and the creation of a powerful Constitutional Court of New Zealand along the same lines as the Constitutional Court of South Africa.”*

*“Politicians have made many bad and corrupt decisions over the past 30 years and can walk away from the havoc they create.”*

*“A constitution is a new start for New Zealand as a nation. Self-determination and a break from monarchy and nepotist Maori elitists.”*

*“As it is in almost all other democracies a written constitution does not give law making power to judges. Constitutional courts there could only decide if a common law passed by parliament conforms to the constitution if a case arises. Even the constitutional court has no power to make law. Nowhere in any democracy has the judiciary the right to take part in the legislative process. The basic of a democracy is the three-partite of power: the legislative, the judiciary and the executive power.”*

*“A written constitution using sound, fair and just laws, overseen by elected independent judges, who can be sacked, overseen by the Crown.”*

### 9(a) Declaration of Equality:

Eighty three percent thought the [Declaration of Equality](#) should be enacted by Parliament. This declaration that was posted on the Independent Constitutional Review website and signed by 50,023 people (09-12-2013) affirms that:

1. We reject references to the Treaty of Waitangi or its principles in any constitutional document.
2. We ask that such references be removed from all existing legislation.
3. We ask that race-based parliamentary seats be abolished.
4. We ask that race-based representation on local bodies be abolished.
5. We ask that the Waitangi Tribunal be abolished.

Therefore in the interests of New Zealand we call on the members of the House of Representatives to implement the principles of this Declaration of Equality to ensure that there is one law for all.

Those seeking inclusion of the declaration in our statutes said equality was our only practical way forward. Many were tired of the separatism that successive governments have promoted to get votes. There was anger that the country has been held to ransom by Treaty of Waitangi claims for decades.

Some of their comments:

#### Yes

*“Get rid of the useless Waitangi Tribunal, get rid of race-based seats and representation. Any changes to our constitution must be done by binding referenda.”*

*“Because we are all equal, one’s ancestry should not give you privileges at the expenses of everyone else - that’s apartheid. If a citizen of this country, either by birth or choice, then one is a New Zealander. Ethnic origin is irrelevant.”*

*“We have shifted from a white racist country to a Maori racist country. New Zealand is no longer just non-Maori New Zealander and Maori, but is a very mixed ethnic country with Pacific Islanders, Indians, Asians, Arabians, Scots, Americans, English and more. We need to be New Zealanders.”*

*“We are listed all over the world as one country, not a country with two lots of laws.”*

*“When Dame Whina Cooper was marching for the land marches, one thing she kept preaching was ‘One Land, One People’, and so it should be. If I can’t hire or not hire on racial grounds then there should be no other areas in New Zealand law that can.”*

*“Absolutely yes. What we have today is ‘Kiwi Apartheid’. It is institutional racism, manifestly unjust and widely despised. Is it any wonder that 6 February is loathed by most New Zealanders?”*

*“I feel I am a second class citizen in my own country when legislation based on race is enacted. All groups should have a say and all be heard responsibly. I feel the Maori rights movement has milked the system at the disadvantage of all other groups of New Zealanders including Chinese, Asian, European etc. I have no problem with fixing and compensating legitimate claims from the Crown, but the over extension of the system to all things Maori rather than the general population as New Zealanders is a practice that will cause division. I only hope the Maori population will see what has happened in USA with black preferentialism - we get the development of a rich elite, a middle class and still a huge group of people needing support.”*

**No**

*“Clever lawyers and activist judges would find their way around it. It is better to leave these things to the continuing dialogue between rulers and ruled. The more these things are fixed in law, the less people feel that they have any responsibility to maintain civilised codes of conduct.”*

*“I cannot agree with your Declaration of Equality. I don't have a problem with the Treaty settlement process per se. The idea is that Maori have grievances, under Article 2, and that society recognises that, and is willing to provide a measure of redress. We do need to rewrite the settlements policy that was unravelled by Dr Michael Cullen when he was Minister for Treaty Negotiations. By Article 2, I mean things that belong to Maori, it should not extend to resources owned by everybody such as freshwater. Perhaps, there should be an iwi share for the allocable quantum of tradable water.”*

*“How can we have a declaration of equality when the founding document that allows all non-Maori to be here in Aotearoa has never been honoured or kept and has been used by Pakeha to divide our nation and ultimately create inequality.”*

### **9(b) Referendum:**

Ninety five percent supported the principle that any change to our constitution is only legitimate if approved by voters through a public referendum process. Some noted that the current constitutional review had been quietly moved forward by the Maori Party and said that because it affects the whole country it needs to go to the

people. It is a major issue that should be approved by all New Zealanders. A new constitution should not be passed by a small percentage of the population as was done in Egypt. Public education as part of a referendum would need to be comprehensive, unbiased, and administered by a non-political body. There must be a majority far greater than just 51 percent. Some said 75 percent and one required a turnout of more than 75 percent of registered voters. If a minority forced their view onto others it would fail. The outcome of a referendum should be binding. Those against a referendum pointed out that a public referendum is no guarantee of common sense. The MMP referendum is a good example of this. Did the supporters of MMP ever envisage the creation of so many splinter parties with conflicting agendas?

## Yes

*“Since MMP has been introduced New Zealand is crying out for a system such as binding referendums - if only to control the excesses of minority parties and unelected MPs.”*

*“Parties have proven they are prepared to pass laws despite opposition from the overwhelming majority of the population.”*

*“We have never had an honest national debate on our Constitutional arrangements. In the end, we all arrived here on a waka of some sort. We are all humans. We are all members of this society.”*

*“We must not let democracy get eroded by self-interest including any version of ‘us and them’. History is full of attempts to govern by elite groups: the so-called Aryans, Sunni vs Shia, Catholic vs Protestant, the list goes on. It never works; it always causes massive pain. The irony of this proposal is that it is likely to create the very situation the Treaty of Waitangi sought to resolve. Bring back the spirit of the Treaty, place that in a modern context and do whatever it takes to divert deepening racial division.”*

*“The very fact that this question needs to be asked and answered speaks volumes about the erosion of our common sense and fairness over years of subtle and not-so-subtle manipulation by politicians, not to forget the media.”*

*“This affects the future of New Zealand and needs to be discussed by all New Zealanders, not a selected few with agendas of their own. Everyone I have discussed this matter with is adamant that the Treaty should not be enshrined in our constitution - it is well past its use by date.”*

**No**

*“Referendums are too easy to manipulate in the referendum-holder’s favour.”*

*“If you had asked this question 170 years ago then I would have answered ‘Yes’. However, because your people (Pakeha) have had control over immigration since the signing of the Treaty then ‘No’! Generations of Pakeha settlers and their families as well as a number of immigrants (recent and old) are not fully aware of the implications that the non Honouring of the Treaty by Pakeha has had on Maori and so a public referendum would not be fair or constitutional in itself.”*

*“The danger with referenda is that in complex issues, say, population dynamics, prejudice swamps informed opinion.”*

**9(c) Other issues:**

Some 450 submissions included comments on “other issues”, ranging from restoring access to the Privy Council, to making all public referenda binding, to abolishing MMP. However, the two issues that attracted the most comment were the need to leave our constitution alone, and a call to ensure the equality of all citizens by ending official biculturalism and any other form of separatism.

## 11. Our recommendations

1. No constitutional innovation is acceptable unless it has been the subject of the widest public debate, so that there is a very widespread public understanding of the issues, the changes and their consequences; and then the public themselves must consent to those innovations, by sizeable majority. This would, in all but the most extreme circumstances, entail approval by referendum and by something more than a 51% majority in that referendum. Government rests on the consent of the governed, and if the fundamental rules of government are to be changed, in far-reaching and well-nigh irreversible ways, then that may only be done with the fully informed consent of the people ~ of all, or at least nearly all, of the people. Anything less is completely unacceptable, both as a breach of internationally-accepted human rights and of ancient and hard-won liberties, and also because a legal system seeking to rule in defiance of a large section of public opinion will very quickly lose respect and legitimacy.
2. The current CAP exercise has been furtive. It has clearly been from its inception nothing but an attempt to entrench the political agenda of one particular interest group, an attempt which fits in nicely with the social reconstruction desired by a small urban 'intellectual' class. Any respect given to its recommendations ~ whatever they might be ~ cannot arise from the quality of the exercise. It is therefore unacceptable that any constitutional changes should be based on the CAP's recommendations, and it would be not just unacceptable but little less than a direct attack on our ancient liberties were any changes to be voted in by a parliament without strong public approval in a referendum.
3. It is equally unacceptable that our constitution be changed to give unelected and unaccountable judges any jurisdiction to sit in judgment on Acts of Parliament. That would be foreign to our entire constitutional tradition, and would, indeed, be bad for the judges themselves. Parliament must remain supreme, as it has always been. The disgraceful political ambitions of certain judges are to be condemned, not indulged.

4. The Maori parliamentary seats should be abolished. They are unnecessary; they are anachronistic; they institutionalise Maori separatism, they are a form of racial discrimination and they threaten to manipulate MMP electoral outcomes through 'overhang'<sup>15</sup>.
5. Special reserved seats for Maori, or indeed any other race, on elected local bodies are race-based, unnecessary and undemocratic. New Zealanders are not racist; a Maori transsexual has been both Member of Parliament and mayor of Carterton, and the Chinese member of the CAP is a former mayor of Dunedin. Maori are New Zealanders like everyone else, and should engage in the same democracy as everyone else.
6. The Waitangi Tribunal should be abolished. It is a racist lobby-group, without even a shadow of an excuse for its existence since the loss of its jurisdiction to hear 'historic claims'.
7. References to Treaty principles in legislation should be removed. Historic claims have been settled; it is time to put the past behind us, and move together into the future as one people. In a secular pluralistic society, race and culture should, like religion, be private matters to which the state pays no heed. We should respect all our fellow-citizens; we do respect them, without needing Treaty clauses; so should it be with Maori.
8. There should be no reference in any constitutional document to the Treaty of Waitangi and its 'principles'. Any such reference will inevitably become a pretext for racial preference ~ racism ~ in laws and policies, which should rather be guided by general principles of wisdom, prudence and compassion. Virtue has no racial dimension.

Finally, we observe that in legal and constitutional change as much as in any other branch of decision-making, we should be guided by that wise rule of thumb, the precautionary principle. We should not introduce changes until we can be confident that they will do no harm, or at least not as much harm as good. It is by no means apparent that giving more and more property, assets and now power to one small sector of the community, at the expense of everyone else, is wise. There is surely abundant evidence to raise the possibility, at least, that this policy, pursued with

---

<sup>15</sup> See Prof P.A. Joseph, *The Maori Seats in Parliament*, NZ Business Roundtable, May 2008

increasing insistence for the last generation, has been unsuccessful even on its own terms, in raising the physical, mental and spiritual level of those of Maori ancestry. No calculations appear to have been done of the cost of these policies to the rest of the country.

Nations can fail, and from time to time they do. New Zealand enjoys no exemption from the laws of history. We are so used to our reputation as the 'social laboratory of the world' that we seem to have forgotten that not all laboratory experiments succeed. We have been so bewitched, or so intimidated, by the mystique of the Treaty, that it seems never to have occurred to us that any policy attributed to that magical document could ever have anything but the happiest consequences. But the Treaty offers no magical guarantee that anything done in its name will bring only blessings. Nations can fail, and they can be brought to their ruin by policies entered into with the highest motives. The road to hell is paved with good intentions. New Zealand's history has not been without injustices, although they are often exaggerated. But whatever justification there may have been in the past for Treaty claims, the Treaty industry is now the self-perpetuating vehicle by which a small greedy and power-hungry clique practises a gigantic con-job on the people of New Zealand. It is time ~ it is long past time ~ that we shake ourselves free from the baleful spell the Treaty industry has cast upon our nation, and calmly and clearly assess the good and ill it has actually done. We must assess where we are, and examine the ways ahead.

Our country stands now at a crossroads. To introduce the Treaty into our constitution, with all its inevitable consequences, would be to commit ourselves irrevocably to one particular path ~ the path of racial discrimination and hatred, social disruption, poverty and civil strife. There is still time to take the better way, but the opportunity to do so will end forever if we make the wrong decision on the constitutional issue now confronting us.

.....

*David Round (Chairman)*

*On behalf of the Independent Constitutional Review Panel*

*For more information please visit our [www.ConstitutionalReview.org](http://www.ConstitutionalReview.org) website*