
A compilation of essays from the Independent Constitutional Review Panel
CONSTITUTIONAL CONCERNS
Equality *not* Biculturalism
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The NZCPR publishes New Zealand's largest free electronic newsletter to over 28,000 subscribers each week. It was founded in 2005 by Dr Muriel Newman, a former Member of Parliament with a background in business and education.

CONSTITUTIONAL CONCERNS – Equality *not* Biculturalism
A compilation of essays from the Independent Constitutional Review Panel

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INTRODUCTION

As a pubic policy "watchdog", the New Zealand Centre for Political Research monitors the government's legislative programme. In 2010, we raised concerns about the foreshore and seabed law change when it became clear that a stacked review panel, set up by the Maori Party as part of their 2008 confidence and supply agreement with National, was proposing to repeal of Crown ownership of New Zealand's coastline to open it up for tribal claims. At the time, the Prime Minister had reassured the public that a law change would not go ahead unless there was widespread support. A public review showed overwhelming opposition, but the responsible Minister Chris Finlayson, suppressed the results until after the bill was tabled in Parliament and the law change was underway.

To this day, as a result of that process whereby a hand-picked panel quietly consulted with selected groups in private under the radar of media attention, many New Zealanders remain completely unaware that the public no longer own the foreshore and seabed. Since this same process is now being used for the Maori Party's constitutional review - a hand-picked Advisory Panel quietly consulting with invited groups in private – the NZCPR has prioritised raising awareness of the constitutional review as a key focus of our 2012 and 2013 work programme.

With the information being produced by the government's Advisory Panel to 'inform' the public already strongly biased towards incorporating the Treaty of Waitangi into a new constitution - and over $2 million of the $4 million in allocated funding being used on "Maori-only" consultation - it appears inevitable that the Panel will recommend to the government that New Zealand should adopt a new constitution based on the Treaty as supreme law.

The implications are profound. A Treaty-based constitution would

elevate Maori into a position of unassailable superiority, relegating all other New Zealanders to the status of second class citizens in their own land. It is therefore imperative that the public become aware of this dangerous threat to race relations and our democracy.

As a focus for the campaign against a bicultural constitution, the NZCPR has established the *Independent Constitutional Review* website at www.ConstitutionalReview.org. It contains a wealth of background information as well as providing a mechanism by which concerned New Zealanders can assist the cause through donating to the public information campaign and by volunteering to write letters to the editor and so on.

To counter the Maori Party's push for permanent Treaty privileges, the NZCPR has launched a *Declaration of Equality*, to call for equality under the law and an end to race-based preferment. Our goal is to have more than 100,000 New Zealanders sign the Declaration by September of 2013, when a demand for an end to race-based laws and practices will be presented to the government.

To counter the government's biased review, we have convened an *Independent Constitutional Review Panel* of experts to scrutinise the government's review and lead a "people's review" in 2013. The Panel is chaired by David Round, a lecturer in law at Canterbury University, along with Associate Professor Elizabeth Rata of Auckland University, Professor Martin Devlin of Massey University, Professor James Allan of Queensland University, NZCPR Research Associate Mike Butler, and NZCPR Founding Director Dr Muriel Newman.

Our challenge is not only to raise public awareness of the review and expose the political power grab that is underway, but to also highlight the benefits of our present constitutional arrangements. Through its simplicity and flexibility, our written constitution - which consists of consists of a collection of statutes, conventions, and common law rights that together set out the basic rules by which our country is governed – gives New Zealand one of the strongest Parliamentary democracies in the world. Our supreme law-makers are our elected Members of Parliament, who can be sacked if they lose the confidence of voters. Most countries have rigid constitutions, with judges - who cannot be sacked - as their supreme law-makers.

The bottom line is that the Maori Party's plan to impose a bicultural constitution onto New Zealand is a fundamental attack on our Parliamentary sovereignty and democracy. These radicals need to be exposed and stopped, but that will only happen if the passive and silent majority find their voice.

Our new book, *Constitutional Concerns – equality not biculturalism*, is a compilation of the research and analysis on constitutional issues produced by our Independent Constitutional Review Panel for the NZCPR. The book draws these articles together into a user-friendly format for your information and convenience.

The book is published as a PDF through the NZCPR website. It can be saved onto your own computer by using the "Save as" function on the FILE menu. All of the articles are hyper-linked through the page number on the "Table of Contents" page, and the "NZCPR" link will take you to the article on the main NZCPR.com website – in case you want to refer an article to others or forward one on to interested people.

Thank you most sincerely for your interest in the work of the New Zealand Centre for Political Research - we hope you find *Constitutional Concerns – equality not biculturalism* useful.

Muriel Newman
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NZCPR Founding Director.

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Extortion by a thousand demands

Dr Muriel Newman, 9 December 2012

In a recent editorial on his Newstalk ZB Breakfast Show, Mike Hosking made the point that in spite of paying out billions of dollars in settling claims and giving numerous apologies over a 30 year period, Treaty of Waitangi grievances are showing no sign of ending. He called the Waitangi Tribunal a circus and the whole process a farce, saying that the public are completely sick of it all.

But he also raised another important point. In response to new claims by Ngapuhi that they did not cede sovereignty to the Crown, he said, "This Ngapuhi report… has raised more questions than it's answered due largely to the fact that when you ask the questions (as we tried to on the programme yesterday) the answers either weren't forthcoming or if they were you didn't have a clue what they meant… So they didn't give authority to the Crown. What does that mean - they run the country? They're the Government, they can make the rules, they don't answer to our laws. What's been the point of all this? What's been the point of any of this?"[1]

As Mike found, the elite groups who are pursuing the Maori sovereignty agenda are almost impossible to pin down. They avoid addressing the issues, knowing if they did the public backlash against their power grab would crush any hope they ever had of achieving their goal. So instead, they are playing a long and careful game – extortion by a thousand small demands.

As each month passes, there are new rights, new privileges, new funding, new settlements - all in a relentless incremental transfer of money, power and public resources that goes largely unnoticed by most New Zealanders, who are too busy getting on with their own lives. However, *some* New Zealanders (especially those associated with the NZCPR) *do* notice, because we have come to realise that this is all part of a much larger agenda – a drive for the co-governance of New Zealand. How to alert a largely passive public, who are blindingly oblivious to the danger, will be our major challenge next year.

Let's look at the bigger picture: the Maori Party's plan.

They are using the $4 million taxpayer-funded constitutional review to impose a bicultural constitution on New Zealand. They have hand-picked an Advisory Panel that next year - as a result of a 'by-invitation-only' consultation process - will report to the government that New Zealanders are in favour of a 'new' written constitution that enshrines the Treaty of Waitangi. They will make recommendations to that effect.

Having received their report the National Party, desperate to keep the Maori Party on side, will set up a new working group to further investigate the issue and draft legislation. After further, largely Maori-only consultation, a bill will be tabled, which, with majority cross-party support, will be quietly passed by Parliament and a new bicultural constitution will be imposed on a largely unsuspecting nation.

The Maori Party is using the $4 million taxpayer-funded constitutional review to impose a bicultural constitution on New Zealand through a hand-picked an Advisory Panel and a 'by-invitation-only' consultation process

So what would a bicultural constitution mean?

At the present time, New Zealand has a written constitution that has been described as one of the most successful in the world.[2] Rather than being found in one document, our

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. This makes our constitution extremely flexible – changing the constitution involves simply changing the specific law. For instance, if New Zealanders decide that under MMP Maori are now over-represented in Parliament and that race-based Maori seats are no longer needed, they could be

Those calling for a new "written" constitution want to transfer that ultimate law-making power from our elected representatives to unelected judges - who cannot be sacked. By re-drafting our constitutional arrangements into a single document, lawyers and judges would be put in charge of law-making in New Zealand and if our elected Members of Parliament tried to change this arrangement, their attempts would be struck out as being "unconstitutional"

removed by simply repealing three main clauses in the Electoral Act. Similarly, if the public believes the race-based Maori Statutory Board is undermining local democracy in Auckland and should be abolished, that would involve repealing Part 7 of the Local Government (Auckland City) Act. If the public concludes that the Waitangi Tribunal has outlived its usefulness and should be abolished, then the 1975 Treaty of Waitangi Act would need to be repealed.

Under our constitutional arrangements, New Zealand has one of the strongest parliamentary democracies in the world, since the ultimate law-making power is held by elected Members of Parliament who can be sacked if they lose the confidence of voters.

Those calling for a new "written" constitution want to transfer that ultimate law-making power from our elected representatives to unelected judges - who cannot be sacked. By re-drafting our constitutional arrangements into a single document, lawyers and judges would be put in charge of law-making in New Zealand and if our elected Members of Parliament tried to change this arrangement, their attempts would be struck out as being "unconstitutional".

Any New Zealander who talks about the *need* for a *new* "written" constitution to *fix* problems that they perceive exist within our present constitutional arrangements should consider the implications very carefully. They need to ask themselves who they want to be in charge of law-making in New Zealand – elected Members of Parliament or unelected judges? If they believe Parliamentary democracy is one of New Zealand's cornerstone institutions that should be protected, then they should join us in strongly rejecting the call by the supporters of biculturalism for a *new* "written" constitution. Instead they should argue for change through the repeal of race-based laws, the strengthening of the Bill of Rights, or the amending of specific legislation that is the source of their frustration.

While it is vividly clear that a new written constitution would undermine our Parliamentary democracy, less clear are the implications of incorporating the Treaty of Waitangi into a new written constitution.

I asked this week's NZCPR Guest Commentator, David Round, a lecturer in law at Canterbury University and the Chairman of our Independent Constitutional Review Panel to outline for us what he thinks a new bicultural constitution could look like. Using a model produced by former Prime Minister Geoffrey Palmer, he has outlined 24 different ways in which Maori would gain superior preferential treatment over all other New Zealanders.

But as he notes, this is just a start. The crucial point is the

fabricated notion being pushed by Treaty activists that they have superior rights over everyone else. New Zealand would turn into a country where race is the single most important determinant of a person's future - controlling whether they were part of the ruling class, or a second class citizen.

"The Treaty, our politically active judges already tell us, involves some idea of partnership. Never mind that the Treaty actually says that the Queen is to be sovereign over all ~ by some strange legal alchemy, clever judges have transmuted this into its very opposite. This is now regularly interpreted to mean a partnership of equals. Maori are not to be subject to the Crown, but are to be its partner. This partnership is a fundamental subversion of democracy. Special reserved Maori seats on local bodies, and even in parliament itself, are just the start. Maori are claiming now that their involvement in decision making should not be on the basis of one person one vote, but instead on 50:50 representation. Some are already clamouring for a separate Maori house of parliament whose consent would be required for any laws. Imagine dealing with that! But they all seem to be united in expecting representation well in excess of what their proportion of the population would entitle them to. That is what they have on the official Constitutional Advisory panel~ five Maori and five European New Zealanders. That is what they are demanding in their new proposals for 'co-governance'
in the Hauraki Gulf Forum ~ equal numbers to all other interests combined. That is what they will be seeking everywhere; and once they have got this 50:50 representation, then they form an unassailable voting bloc. Then we will be forever at their mercy. And given what foolish judges have already said about partnership, it is entirely possible that Maori Treaty rights under a new constitution will give them this equal 50:50 representation."

The Treaty, our politically active judges already tell us, involves a partnership of equals. Maori are not to be subject to the Crown, but are to be its partner. This partnership is a fundamental subversion of democracy.

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If you share our deep concerns about these developments, then I urge you to read David's full article HERE. Don't leave yourself in the dark – become informed and see the ambush that awaits us in 2013. These radicals need to be exposed and stopped, but that will only happen if the passive and silent majority find their voice.

Back in 1995, the editor of the left-leaning New Zealand Political Review magazine, Chris Trotter, faced the same problem of trying to find out what a bicultural constitution might look like: "Talked about by many, explained by few, Maori Sovereignty – and its implications for our future - remains frustratingly vague". As a result, he had a go at writing one himself. In his article *The Constitution of Sovereignty*, he created a revolutionary scenario as the context from which "to give the promises of the Treaty of Waitangi concrete expression". He did this because, It is almost inconceivable that Pakeha New Zealanders would surrender their dominant position in this society without a fight". [Chris's full article can be read HERE]

Today, the truth is very different - while most New Zealanders

remain oblivious to any real threat, the radicals with their extremist vision of restoring the country back to Maori rule, are in the ascendancy. At the rate we are going, Chris Trotter's dreadful depiction of a bicultural Aoteoroa could be achieved almost without a word of complaint, much less the fight he had predicted. Following are some extracts from Chris's article.

"The First Article of the new constitution is devoted to the principle of Maori Sovereignty. Aotearoa is declared to be the birthright of the tangata whenua and the stewardship of its lands, forests and fisheries is irrevocably vested in the Maori nation.

"The Second Article recognises the Pakeha as the 'People of the Treaty of Waitangi' whose right to live alongside the tangata whenua was recognised in 1840. That right is reaffirmed by their agreement to establish a Republic in which the governance of Aoteoroa-New Zealand is vested equally in the Maori-Pakeha peoples.

"The Third Article sets forth the mechanism for returning ownership of lands, forests and fisheries to the Maori. In essence it abolishes the monarchy and transfers all Crown lands and all properties held from the Crown in fee simple to the Maori Nation. *Pakeha will thereby become honoured tenants of the tangata whenua…*

"The Fourth Article guarantees to the Pakeha full property rights in perpetuity to all private dwellings and their adjacent lands previously held in fee simple from the Crown.

"The Fifth Article converts all lands, forests and fisheries exploited for commercial gain into leasehold property and requires the leaseholders to pay compensatory rents to the Maori Nation for a period of 150 years.

"The Sixth Article declares all remaining property – including

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basic infrastructure, commercial buildings and public services – to be held in trust from the Republic of Aoteoroa."

In his article Chris Trotter suggests that a *National Maori Assembly* would be the constitutional embodiment of the Maori Nation to sit alongside the *House of Representatives* as the constitutional embodiment of the Pakeha Nation. A *Senate* would provide for shared governance and a *Council of State* would run government departments. The *President* would be elected alternatively by the Maori and Pakeha Houses of Parliament for a single 7 year term. The *Supreme Court*, whose primary job would be developing the constitution, would be made up of equal numbers of Maori and Pakeha judges. A *Citizens' Charter* would be established to tie in to the rights agenda of the United Nations, and full procedures for amending the constitution would include a 75 percent vote in all three Houses of Parliament to be "ratified by a public referendum supported by a simple majority of *both* the Maori and Pakeha electorates".

While Chris Trotter' scenario was clearly fictional, unless New Zealanders rise up to defend their rights and our democracy, who knows where this drive for a bicultural constitution will lead.

Footnotes:
1.Mike Hosking, Ngapuhi report fantastical bollocks
2.James Allan, What a disgrace

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A Treaty of Waitangi Constitution

David Round, 9 December 2012

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

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

● *The rights of the Maori people under the Treaty of Waitangi are hereby recognised and affirmed.*

● *The Treaty of Waitangi shall be considered as always speaking and shall be applied to circumstances as they arise so that effect may be given to its spirit and intent.*

● *The Treaty of Waitangi means the Treaty as set out in Maori and English in the Schedule to this Act.*

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

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

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officials. For another thing, the politics of most judges are actually irrelevant. We have a hierarchy of courts, and appeals from one to another. The final rulings are made by the five judges of the Supreme Court. They can overrule anyone else. Once those five people declare that black is white, then every other judge in the country is obliged to

agree. Under a written constitution, then, many political decisions on all sorts of matters of the highest importance will be handed over to this tiny handful of unelected and undismissable judges. They will be our rulers, and if we do not like it there is absolutely nothing we will be able to do about it.

2. Our present Chief Justice, who sits on the Supreme Court, has already made it clear that she considers herself entitled, right now, to strike down Acts of Parliament if they offend against her understanding of 'Treaty principles'. To do so now would be to deny the supremacy of Parliament; it would be a death-blow to democracy and equality before the law. It would be, in effect, treason; an illegal usurpation of power. Not that this seems to worry her. We can be quite certain, however, that once authorised by a written constitution which 'recognises the rights of the Maori people', she and her like-minded colleagues would need no second bidding to do what she so clearly longs to do, and establish herself and her colleagues as supreme over Parliament and people.

3. Once this principle is established, then it is inevitable that just about every law in the country will be liable to challenge as being in breach of the 'rights of the Maori people'. No law would be safe. Even if judges ultimately upheld a law, the challenge to it would introduce enormous uncertainty, as well as great vexation and racial ill will. These arguments will of course provide lawyers with an incredibly lucrative new area of work, and we are already noticing that rich Maori organisations are able to employ the best lawyers to argue their cases. It would also bring all judges and our judicial system into disrepute. Judges would be making political decisions. They would come to be perceived as a species of politician, and unelected politicians at that. This would not be good for our judicial system or for public respect for judges or the law.

4. Bear in mind, also, that the nature of the judiciary will change. The United States Supreme Court, which has the power to strike down laws as unconstitutional, is now openly political. Judges are appointed according to their political attitudes, and many decisions openly reflect their politics. This is in itself a bad thing. So here in New Zealand political

Sir Geoffrey's Treaty clause makes some highly debatable assumptions and assertions ~ which any Treaty clause, however phrased, would inevitably make. It assumes that there is still a 'Maori race'. This could never be denied in future

influence will very probably mean the future appointment of more Treatyist judges.

5. Sir Geoffrey's Treaty clause makes some highly debatable assumptions and assertions ~ which any Treaty clause, however phrased, would inevitably make. It assumes that there is still a 'Maori race'. This could never be denied in future ~ after all, the constitution says that one exists. It would then, of course, be left to the judges to decide who could qualify as a member of that race, and who not. The clause speaks of the 'rights' of the Maori people under the Treaty, without saying what they are. So the judges will continue to say what they are, and we can be sure that the judges will continue to find them to be a lot more than just to be subjects of the Queen like everyone else. If the Treaty is to be 'always speaking', indeed, then that is inevitable.

6. So what would this mean in practice? Here are some examples ~ but they are only examples. The Treaty could be

used in every single situation we can think of as an argument as to why the law should grant special privileges to members of the 'Maori race', and why any law that does not do so is defective. Even if judges should dare to decide against Maori favouritism, the threat of challenge is always there. We can never be certain, with any legal or social arrangement, that at some time in the future someone will not pop up and say 'it's against the Treaty', and a judge might agree with them. A Treaty clause is an invitation to endless litigation, and a guarantee of eternal uncertainty and racial bitterness.

7. So, some examples. Already, some Maori are saying that there can be no such thing as a full and final settlement ~ that such a binding of future generations is 'not the Maori way'. (That being so, of course, the Treaty would cease to have any possible effect when its generation of signatories all died. Well…) Some Maori leaders are actually saying openly now that of course there will be another round of claims in the next generation ~ which is rapidly coming up. So ~ if that is a right of the 'Maori people', we will be putting our hands in our pockets for ever.

8. The word 'taonga', which in 1840 merely meant 'possessions' ~ of which land was the chief ~ is now interpreted to mean absolutely anything that Maori people 'treasure' or just want. Oil reserves deep underground ~ deep under the sea ~ are now claimed by Maori under the Treaty. By law, at present, they are the Crown's, the property of us all. But if a constitution requires that the Treaty be respected, and that it is 'always speaking'….

9. Water ~ the new oil ~ is at present our common property. But as we know, the Waitangi Tribunal claims that by the Treaty Maori still own it…

10. Maori would clearly like the public conservation estate ~ an enormous area of land, full of useful timber, minerals, water, scenery for tourism ventures… Already they enjoy special rights in various places to gather plants and timber. There have been extravagant claims about the Department of Conservation's duty under the Conservation Act's Treaty section. The courts have already recognised a certain duty to give racial preference to Maori in the granting of commercial concessions. There have been several attempts made to acquire rights to take protected species of fish and birds. The ill-conceived 'cultural harvest' proposal of the mid-1990s was one. Another was the Wai 262 claim, which claimed

The Wai 262 claim, which claimed ownership of every single native plant and animal in New Zealand, claimed, among other things, that any laws which protected them, by forbidding the killing of endangered species, were breaches of the Treaty.

ownership of every single native plant and animal in New Zealand, and claimed, among other things, that any laws which protected them, by forbidding the killing of endangered species, were breaches of the Treaty. (The Tribunal did not go quite so far in its eventual ruling on this claim, but made very far-reaching recommendations all the same.) The Ngai Tahu settlement recognised many 'taonga species', and the recent Urewera settlement has made fundamental changes to the underlying arrangements of the Urewera National Park. There will be a lot more of this. In a recent television programme on rivers the narrator, at the end of one down-river raft trip, paid a 'koha' to the tribe of the territory for 'using their river'. There will be a lot more of that. Conservationists are rightly concerned about the privatising of the conservation estate, but in their vigilance against white

capitalists often seem to overlook the threat from the brown ones.

11. But why stop at public property? Already, 'wahi tapu' ~ 'sacred sites' ~ can be established over private property. The Historic Places Trust and District Councils can both declare them. The landowners' consent is not necessary. There need not even be any physical thing ~ a burial ground, a pa site ~ actually *there*. It might well be enough that this place is mentioned in a song or a story, for example. And we simply have to take the word of a self-appointed spokesman for that. Once the wahi tapu designation is there, a landowner may not disturb his land, subdivide ~ make any changes, really ~ without special permission. Essentially, the consent of the tribal spokesmen will be required. And inevitably, that will require the greasing of palms. Even as we speak, the Kapiti District Council is proposing the establishment of forty wahi tapu on private property in its district. There will be a lot more of this when respect for Maori treaty rights is part of our supreme law.

12. And I would not be surprised if the Resource Management Act were found inadequate in many other respects in its regard for Maori matters. Practically anything any landowner does with his land may affect Maori sensitivities. Watch for amendments here.

13. Needless to say, the latest compromise on the foreshore and seabed will be found to be unsatisfactory. Under the current law there is already the possibility that we may be excluded from parts of our coastline, or have to pay for the privilege. Many Maori, as we know, have denounced these current provisions as inadequate to satisfy their interests. So…..

14. When it was originally constituted, the Waitangi Tribunal was able to make recommendations that privately-owned land be 'returned' to Maori ownership. But it was objected that that caused considerable injustice to innocent landowners who suddenly found that their land was unsaleable, or at the very least considerably diminished in value. So Parliament restricted the Tribunal's powers so that it could no longer make such recommendations. But how long would that restriction last, if Treaty rights were our supreme law, if there were further rounds of historic claims, and if less publicly-owned land were available to settle those new claims? If

When it was originally constituted, the Waitangi Tribunal was able to make recommendations that privately-owned land be 'returned' to Maori ownership. If Maori Treaty rights were our highest law, surely Maori claims to land ownership should take priority over anyone else's?

Maori Treaty rights were our highest law, surely Maori claims to land ownership should take priority over anyone else's?

15. Some years ago, you may recall, an old Maori man in Northland was declined kidney dialysis treatment. He was declined, not on racial grounds, but on clinical ones. There simply was not enough dialysis treatment available to treat everyone, and the merits of his own case ~ he was old and had several other serious medical conditions ~ simply meant that he had to yield to others who would benefit more from the treatment. Race, I stress again, just did not enter into the decision. The Maori Council, however, claimed that this decision was a breach of the Treaty. Old people, the Council claimed, were a taonga guaranteed under the Treaty. Therefore, the Treaty required that ~ simply because of their race ~ they be given preference in medical care. Doubtless young and middle-aged people are also taonga. All Maori

people are taonga, and precious in the Treaty's eyes. The Maori Council, then, is already saying that the Treaty requires a racial preference in health care. So if Maori Treaty rights appear in any new constitution we might well expect the courts to issue a directive to that effect. And since there is already not enough money to provide full health care for everyone, who would be missing out?

16. The courts could well go further. They could overrule the allocations of money made by District Health Boards, and require more to be spent on Maori persons.

17. By the same token, there is no reason in principle why the courts could not overrule any allocations of money made by Parliament itself. If Maori Treaty rights required more money to be spent on Maori health, or Maori social welfare, or Maori education, or Maori anything, justification for the courts' interference is there in the constitution. We will still be paying the tax, but the courts, authorised by the constitution's Treaty clause, will be saying how the money must be spent. We may still have parliaments, but if they cannot make final decisions about how our taxes are spent then we will have taxation without representation. The bad old days will be back.

18. The judges have already discovered an obligation on taxpayers to fund the Maori language extremely generously. The money is not enough, though, actually to get Maori to speak it. It goes without saying, then, that more money will have to be spent on that precious taonga.

19. Many institutions of higher learning already reserve special places for Maori students who would not qualify to enter them on purely academic grounds. (Some Maori already dislike such quotas as patronising statements that Maori are inferior and need special treatment.) It would be very surprising if these quotas, and other forms of 'affirmative action', were not upheld and expanded. And as funding for education inevitably declines, these quotas will have the effect of allowing entry to more and more less-gifted Maori students at the expense of more gifted non-Maori, who will be excluded.

20. In theory, anyway, these Maori students, once they are admitted, usually have to fulfil the same standards as everyone else ~ although we have our doubts. But that may not last. Once 'Maori science' and other Maori 'disciplines' are given equal standing with proper science and other disciplines, all standards will fly out the window. Who are we, after all, to impose our narrow cultural prejudices on other cultures? Equal respect for Maori worldviews and cultural perspectives ~ and qualifications in the same ~ will surely count as a Treaty right.

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

22. So many Maori are in prison. Some people attempt to justify this by explaining that Maori commit a vastly disproportionate number of serious and violent crimes. Well, that might be so ~ but even so, prison is so unkind! It is not the Maori way.

Although at other times we are told that theirs is a warrior culture…The Maori way is aroha ~ not that most of these villains seem to have received much of that as they were growing up. I'm sure that constitutionally-guaranteed Treaty rights will include marae-based justice, gentle care, and courses in weaving, gardening and stick games. Will this work? It doesn't matter. It's their Treaty right. End of story. Lock your doors and keep your powder dry.

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

24. You are getting the idea, and this list is becoming repetitive. I shall mention only one more thing. The Treaty, our politically active judges already tell us, involves some idea of partnership. Never mind that the Treaty actually says that the Queen is to be sovereign over all ~ by some strange legal alchemy, clever judges have transmuted this into its very opposite. This is now regularly interpreted to mean a partnership of equals. Maori are not to be subject to the Crown, but are to be its partner. This partnership is a fundamental subversion of democracy. Special reserved Maori seats on local bodies, and even in parliament itself, are just the start. Maori are claiming now that their involvement in decision making should not be on the basis of one person one vote, but instead on 50:50 representation. Some are already clamouring for a separate Maori house of parliament whose consent would be required for any laws. Imagine dealing with that! But they all seem to be united in expecting representation well in excess of what their proportion of the population would entitle them to. That is what they have on the official Constitutional Advisory panel ~ five Maori and five European New Zealanders. That is what they are demanding in their new proposals for 'co-governance' in the Hauraki Gulf Forum ~ equal numbers to all other interests combined. That is what they will be seeking everywhere; and once they have got this 50:50 representation, then they will form an unassailable voting bloc. Then we will be forever at their mercy. And given what foolish judges have already said about partnership, it is entirely possible that Maori Treaty rights under a new constitution will be discovered to entitle them to this equal 50:50 representation.

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

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

So true. And then he asks
…what rough beast, its hour come round at last, Slouches towards Bethlehem to be born?

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Illegitimate Constitutional Change

Dr Muriel Newman, 3 December 2012

Egypt is in a state of constitutional crisis. Newly elected President Mohammed Morsi has granted himself near enough to absolute dictatorial power in order to neutralise the judiciary - the only branch of the state not already under his control. This act of absolute control has again divided his county. On the one hand are his Muslim Brotherhood supporters, and on the other, a largely secular and liberal opposition along with the nations' judiciary. Two people have been killed and hundreds injured as civil protest grows.

It is worth noting the parallels between what is happening in Egypt and what is going on in New Zealand - over constitutional change.

In Egypt, President Morsi is attempting to force through a draft constitution that would impose a new Islamic vision on the country.

In New Zealand, using a low-profile government constitutional review, the Maori Party is attempting to force through a new bicultural constitution that would impose the vision of the Maori sovereignty movement onto the country.

In Egypt, the draft constitution states that the Islamic institution Al-Azhar must be consulted on any matters related to Sharia law, a move that critics fear will give clerics oversight of legislation.

In New Zealand, a new bicultural constitution would require an institution like the Waitangi Tribunal to be consulted on all new laws to ensure they complied with the Treaty of Waitangi, a move that would give the Waitangi Tribunal oversight of all legislation.

In Egypt, the new constitution seeks to define the "principles" of Islamic law by saying it reflects theological doctrines and tenets. It is claimed that by trying to define the intentionally vague "principles", the reach of Sharia and its influence on the country will be vastly expanded.

In New Zealand, a bicultural constitution would almost certainly redefine the "principles" and the rights outlined in the Treaty of Waitangi so they can be enforced by Maori in a way that's not possible at present. This would massively expand the reach and influence of the Treaty on the country. Such power would have the effect of legally enforcing Waitangi Tribunal decisions as well.

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In Egypt, critics are arguing that the constitution is being "hijacked" by the Muslim Brotherhood in an attempt to "kidnap Egypt from its people".

In New Zealand, it is the Maori Party who is attempting to "hijack" the constitution in order to radically change the governance of New Zealand.

In Egypt, the President is expected to call for a nation-wide binding referendum on the draft constitution within the next two

weeks to give voters the final say on whether his new constitution passes into law or fails.[1]

And that is where the parallels end.

In New Zealand, although we have a long and stable democratic tradition, astonishingly, the Government has not ruled out

completely bypassing the public over what could become the

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.

most radical constitutional change in our history. Instead of guaranteeing that any major constitutional change would only be approved as a result of a binding referendum of voters, it look likely that the majority will be locked out from having a say.

This week's NZCPR Guest Commentator, Professor James Allan of Queensland University, a constitutional law expert and member of our Independent Constitutional Review Panel, explains:

"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. Or, to focus on more salubrious nations, the sort of thing the amazingly democratically-deficient European Union might, and did, do before moving to the euro currency.

"And yet, unbelievably, that same disgraceful possibility is a real one here in New Zealand of all places. It is a real possibility because Deputy Prime Minister Bill English, at the launch of the Constitutional Review in December 2010, stated that 'significant change will not be undertaken lightly and will require *either* broad cross-party agreement or the majority support of voters at a referendum'.

"The key point to notice is that Mr. English is clearly implying that New Zealand's constitutional arrangements – arrangements that have been amongst the world's most successful over the past century or two – might be changed solely on the basis of 'broad cross-party agreement'.

"And that is a completely bogus and illegitimate way to change New Zealand's constitution." To read the full article, click HERE.

Professor Allan goes on to explain that there are in general two legitimate methods commonly used by governments for major constitutional change. One is to hold a binding referendum as most countries do - and as they are doing in Egypt. The other is for parties to make the issue such a major part of their manifesto that voters are given the chance to have their say through the ballot box at the next election. The fact that neither of these options has been definitively championed, *could* mean, as Professor Allan surmises, that the top echelon of the National Party will stitch up a deal with the Maori Party – and possibly the Labour Party - in favour of cross party support for a bicultural constitution, bypassing the public altogether.

And before you say no, that couldn't possibly happen, what about the National Party's secret deal with the Maori Party to commit New Zealand to the United Nations Declaration on the Rights of Indigenous People? And don't forget the foreshore and seabed debacle. No supporter of the National Party would have believed at the outset, that the party could have possibly

considered doing a deal to repeal public ownership of the coast to open it up for Maori tribal claims - when it hadn't even been mentioned in their election manifesto. But they were wrong.

When it comes to power, National, like most political parties, is more than capable of sacrificing almost anything for the right to rule. The National Party sacrificed public ownership of the coast in order to retain the support of the Maori Party and the right to govern again. However, given the underlying tensions between the founder of the Maori Party and the Labour Party, it is unlikely that the Maori Party's support would have gone anywhere else - even if National had refused to do more than hold a review, which is all their coalition agreement required!

New Zealand is in exactly the same position now as it was back then. The National Party has done a coalition deal with the Maori Party that included a review of our constitutional arrangements. It has committed $4 million of taxpayers' money to the project. The Maori Party is very clear – it wants a new written constitution enshrining the Treaty of Waitangi as supreme law. The question is would National will go that far? Knowing the divisive impact a bicultural constitution would have on the country, would National sign away our social cohesion and unity to satisfy the Maori Party? If they did, they would, of course, claim they were doing it "in the interest of stable government". In truth they would simply be deal-making to fortify their diminishing chances of governing after the next election.

This question of what National may or may not do is clearly something that we cannot answer. What is a concern, however, is that they are using a deliberate strategy of keeping the whole constitutional review under the radar of public opinion. That means there is a genuine risk that the country as a whole will remain largely unaware that any major threat is on the horizon.

The same cannot be said about Maoridom. A whole separate engagement process has been set up for active consultation with Maori. Some $2 million out of the total $4 million budget has been allocated for this purpose. This means that supporters of the Maori sovereignty movement will be extremely well informed and very aware of what is at stake. They will no doubt be encouraged to actively engage in support of a new bicultural constitution with the Treaty as supreme law.

With a pro-Treaty bias underpinning the whole government review process - including the appointment of the Advisory Panel - it is clear that a public referendum would be our only real

If a public referendum held on the proposal to introduce a bicultural constitution into New Zealand resulted in a massive defeat, it would send a definitive message to the government that New Zealanders want to move forwards not backwards, that we are a nation of many peoples not just two, and that we completely reject the notion that race should define our future in New Zealand.

democratic safeguard. A public referendum asking whether New Zealanders want a bicultural constitution would raise awareness of the issues to enable every voting-age Kiwi to understand what is at stake.

If a public referendum held on the proposal to introduce a bicultural constitution into New Zealand resulted in a massive defeat, it would send a definitive message to the government that New Zealanders want to move forwards not backwards, that we are a nation of many peoples not just two, and that we completely reject the notion that race should define our future in New Zealand.

Three years before the Maori Party did its 2008 deal with the National Party to launch a review of "New Zealand's constitutional arrangements", the then Labour Government had established a special Select Committee of Parliament to undertake a sweeping review of "New Zealand's constitutional arrangements". The Select Committee, which reported back in August 2005, had spent nine months undertaking the review to conclude that "There are no urgent problems with New Zealand's constitutional arrangements".

The Select Committee's investigation found that the most widely used process for constitutional change is through a public referendum. They reported that New Zealand's only Royal Commission into electoral affairs recommended its suitability for New Zealand: "The 1986 Royal Commission in New Zealand recommended that referenda ought to be held on major constitutional issues".

This fact, more than any other, demonstrates that in spite of all the soft-soaping rhetoric, the sole purpose of the National/Maori Party review is political self-interest.

The Select Committee's investigation found that the most widely used process for constitutional change is through a public referendum. They reported that New Zealand's only Royal Commission into electoral affairs recommended its suitability for New Zealand: "The 1986 Royal Commission in New Zealand recommended that referenda ought to be held on major constitutional issues".[2]

They explained that "using referenda to consult citizens directly on constitutional issues is beneficial because it acknowledges the fact that a nation's democracy and its constitution ultimately rest on support from the people".

The Select Committee also reported on the results of a decade-long investigation into constitutional issues that had been carried out in Australia. They believed it was relevant to New Zealand's situation. The investigation found there was, "overwhelming public support for referenda as part of the process for constitutional change", and that public trust was an essential element in any discussion of constitutional arrangements - which means ensuring that "information and activities are *independent* of party politics".

Judged on these two criteria, the current constitution review being held in New Zealand is an abject failure. With no guarantee that major change will need to be approved by voters through a public referendum, the whole process is a disgrace. And with the Maori Party controlling the review, there is no possibility that the process could be deemed to be anything but political, so they fail on the public trust criteria as well.

Meanwhile we will watch developments in Egypt – as outrage over the political manipulation of their constitution builds – with interest!

FOOTNOTES:

1.Herald, Islamists fast-tracking vote on constitution

2. Report of the Constitutional Arrangements Committee, Inquiry to review New Zealand's existing constitutional arrangements

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What a Bastard

Prof James Allan, 3 December 2012

I recently wrote an article (HERE) about why any move in New Zealand to a written constitution would be fraught with uncertainty and potential dangers. The unelected judges who would be charged with interpreting the final document would have much increased power, and the elected legislature would have less power. That is the fact and inherent nature of any such written constitution.

Worse, New Zealand would be highly unlikely to opt for an Australian-style written constitution, one that has hardly any morally pregnant, vague and amorphous provisions – no bill of rights for instance. No, New Zealand would be very likely to opt to constitutionalise the Treaty of Waitangi, a document whose every word is contested and that at the least is highly indeterminate as regards to how it bears on many of today's contested issues. The result would be a transfer of decision-making authority from the elected legislature over to the judiciary, under the guise of constitutional 'interpretation'.

So my earlier article warned against making this move, not least on democratic grounds.

But that earlier article of mine was focused on the substance of the debate, the dangers and demerits of making any move from New Zealand's current unwritten constitutional structure, to a written constitution. In this article I want to turn to the question of process, and how a country might legitimately change its constitutional arrangements.

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. Or, to focus on more salubrious nations, the sort of thing the amazingly democratically-deficient European Union might, and did, do before moving to the euro currency.

And yet, unbelievably, that same disgraceful possibility is a real

The key point to notice is that Mr. English is clearly implying that New Zealand's constitutional arrangements – arrangements that have been amongst the world's most successful over the past century or two – might be changed solely on the basis of 'broad cross-party agreement'. And that is a completely bogus and illegitimate way to change New Zealand's constitution.

one here in New Zealand of all places. It is a real possibility because Deputy Prime Minister Bill English, at the launch of the Constitutional Review in December 2010, stated that 'significant change will not be undertaken lightly and will require *either* [emphasis mine] broad cross-party agreement or the majority support of voters at a referendum'.

The key point to notice is that Mr. English is clearly implying that New Zealand's constitutional arrangements – arrangements that have been amongst the world's most successful over the past century or two – might be changed solely on the basis of 'broad cross-party agreement'.

And that is a completely bogus and illegitimate way to change New Zealand's constitution. Why? Because not one of the major

political parties before the last election signalled to voters that this was a live or real possibility. In fact neither National nor Labour had a review of the constitution as part of their manifestoes.

Indeed, only the Maori Party even mentioned a possible review of the constitution. So the sole signal to voters that their highly successful constitution might be changed was made, and made quite briefly at that, by a political party that garnered fewer than 1 in 50 votes.

Only in negotiating a confidence and supply agreement with the Maori Party did the National Party and Mssrs Key and English agree to a review of the constitution. They did not make such a change party manifesto policy or commit National to such a change so voters could vote accordingly.

But that, as anyone would notice, wholly and completely sidesteps any input from the voters. Worse, with Mr. English's Clintonesque formulation of 'broad cross-party agreement' there is the pretence that the political parties have earlier asked their supporters about this. For 49 out of 50 of us, they haven't. It's a Bill Clinton-like fudge.

So this, should it come to pass, would be an incredibly illegitimate process. As I said, it would be a disgrace. It would amount to a country's constitution being changed on the say-so of a few top National Party people and the Maori Party. Or throw in the Labour Party too, it would still be a stitch-up, a top-down, bypass-the-voters ploy to make any EU bureaucrat smile with envy.

Look, smart, nice, reasonable people can and will differ on whether they prefer a new constitution for New Zealand, or not. But there are legitimate and illegitimate ways to attempt that change.

A binding referendum would be a legitimate process (though I personally am quite confident proponents of change would be slaughtered in any such referendum, which may explain why it is frowned upon by some such proponents). Another legitimate process would be for all political parties inclined to support this change to make it a clear, major component of their manifesto before the next election, so that after that coming election 'cross-party agreement' had some scintilla of legitimacy to it.

Let's be clear. Barring that, cross-party agreement – however broad – is democratically illegitimate. It mimics the 'do everything we can to avoid asking our own citizens' EU approach to change that is looking less than wonderful these days, to put it as kindly as is humanly possible.

When deals are stitched-up *after* elections without changes having been signalled to voters by political parties before the election, well that is bad enough when it comes to regular, day-to-day political issues.

But when it is done on something as fundamental as changing the constitution itself, we are then in the realm of near total illegitimacy. It has then become a bastard process worthy of scorn, defiance and a vow by all of us never in future (under any circumstances) to vote for political parties that foisted it on us.

What a disgrace constitutional change of that nature would be.

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Focus on the Review

Dr Muriel Newman, 4 November 2012

After a year of operation, and hundreds of thousands of dollars worth of spending of public money, most New Zealanders still have no idea that a government review of our constitution is underway.

Two recently held Focus Groups confirmed that fact. A professional facilitator guided discussion around a series of questions about the state of race relations in New Zealand and the government's constitutional review. On the issue of race relations, the groups were very well informed. They were emphatic that the Treaty of Waitangi was no longer an historic symbol of unification but had become a political weapon of division. The Waitangi Tribunal was also seen as divisive and backwards looking.

Overwhelmingly the groups supported the notion of equality - New Zealand as a country where all people are treated as equals, "If you are a citizen, you are a citizen, a Kiwi – you should be treated the same". And they emphasised that New Zealand was no longer a society of two races, but a country of many. They thought that while people should keep in touch with their background culture and heritage, they should be prepared to blend in and become Kiwis first and foremost.

Many saw biculturalism as divisive, dangerous, and backwards looking – segregating everyone on the basis of race was not the way for a modern society to move forward.

One immigrant mother told a story about how her daughter no longer wanted to go to school, "All the Pacific Island and Maori kids are ganging up on her because she's the only white girl in the class and they are saying they are going to kick her out of the country. Now these are 12 and 13 year olds and they are serious. And she's saying she doesn't want to live here any more because she doesn't feel at home, she doesn't feel she belongs …" Nowadays, racism is brown against white.

They felt it was time that the Maori seats and other symbols of a bicultural past were abolished. New Zealand had evolved and moved on – "one people, one country".

When it came to the constitutional review, there was very little awareness of it at all. The following statement was read out: "The possible outcomes for this review could be a proposal to place the principles of the Treaty of Waitangi in a written constitution based on biculturalism. This would mean that all Acts of Parliament would be tested against these principles and the rights outlined in the Treaty would be able to be enforced by Maori in a way that's not possible at present. In effect such power would legally enforce Waitangi Tribunal decisions as well. The governance of New Zealand could be radically changed".

The response was deep concern. They felt a bicultural constitution was asking for trouble. They worried that if it protected Maori, then it would exclude everyone else, and they asked, "Do Maori have more value than everyone else? It's making us different when we are all one people and should all be treated the same."

They understood the present constitutional arrangements were working and they were suspicious of what it was that the government was trying to push through. They were fearful of what it might mean for them and worried that it would speed up the exodus of good Kiwis to Australia. They felt that any changes to the constitution should not be decided by politicians but should be put to a binding referendum of voters, "It shouldn't be left up to the politicians". They wanted to know who the people running the review were, and they wanted to know why it was being undertaken at a time when everyone already had more than enough to worry about. As one woman said, "they need to

listen to what New Zealand wants – what the majority wants and put it into practice rather than say 'we'll do the survey, we'll listen to you all but at the end of the day we're going to make the decision for you!'"

They have good cause to worry. The government's "consultation" process is a $4 million sham. The Maori Party led review is engineered to deliver a predetermined recommendation – a need to "modernise" our constitutional arrangements by introducing a new written constitution that recognises the Treaty as our "founding" document.

The implications of this are alarming and profound. A Treaty-based constitution would enshrine Maori privilege, turning non-Maori New Zealanders into second class citizens in their own land. A new written constitution would give un-elected Judges supreme power over our elected Members of Parliament, ensuring that no future Parliament could ever remove the Treaty from our constitution. New Zealand would forever be locked into a future of separatism and racial division.

This review is underway because the National Party agreed to it in 2008, when they signed their confidence and supply agreement with the Maori Party. A Constitutional Advisory Panel acceptable to the Maori Party was appointed by the Deputy Prime Minister Bill English and the Minister of Maori Affairs Pita Sharples in August 2011. Five of the 12-member panel are Maori studies academics with vehement anti-colonialist views, and seven are on record as saying they regard the Treaty of Waitangi as New Zealand's founding document.[1]

Although budgets are tight across the public sector, over $4 million of taxpayers' money has been allocated to the panel for this review. Their objective is to lead an "engagement process" that delivers a final report to the government between September and 14 December 2013 on New Zealanders' perspectives on our constitutional arrangements. The report is to include details of where reform is considered "desirable".

Maori have been singled out as needing special segregated consultation. Half of the $4 million budget has been earmarked for that purpose. The end result will be a biased report that will not reflect the views of the majority of New Zealanders. This is exactly the same strategy used during the build up to the foreshore and seabed law change. The whole process is an absolute disgrace and should be discredited.

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Professor Martin Devlin, a member of our Independent Constitutional Review Panel, examined the government's engagement strategy in detail. His scathing analysis was published as an NZCPR guest commentary in September HERE.

In spite of their massive budget, the advisory panel has decided that the best way to "have a conversation" with New Zealanders is not through open public meetings, but private meetings with carefully-selected interest groups. Some of the groups approached have expressed concern that by agreeing to become involved, their names will be used by the Panel as "evidence" that they are undertaking widespread consultation and have widespread support.

The groups named on the Panel's website (HERE) are:

Aotearoa, Education Institute, Employers and Manufacturers Union, Ethnic People's Advisory Panel, Federation of Multicultural Council, Forest and Bird Protection Society, GABA (Gay Auckland Business Association), Human Rights Commission, Independent Maori Statutory Board, Kōhanga Reo Trust, Local Government NZ, McGuinness Institute, Monarchy NZ, Museum of New Zealand - Te Papa Tongarewa, National Council of Women, National Urban Māori Authority, NZ Law Society, Office of the Clerk, Pacific Peoples Advisory Panel, PACIFICA, PPTA (Post Primary Teachers' Association), PSA (Public Service Association), Recreation Association, Republican Movement of Aotearoa NZ, Royal NZ Foundation of the Blind, Rugby Union (NZRU), Rural Women NZ, Society of Authors (PEN NZ Inc), New Zealand Union of Students' Associations, Te Atakura Society for Conscientisation, Te Mana Ākonga (National Māori Tertiary Students' Association), Te Rūnanga Nui o Ngā Kura Kaupapa Māori, Temple Sinai – Wellington Progressive Jewish Congregation, Vice Chancellors - Universities NZ, Young Nationals, Youth Law, Grey Power, Te Hunga Roia Māori Māori Lawyers' & Law Students' Association, Anglican Church, Collaborative for Research & Training in Youth, Student Volunteer Army, Council of Social Services (Christchurch), Waitangi Associates, Canterbury Employers' Chamber of Commerce.

In September the Advisory Panel released a 70 page propaganda-filled document, *New Zealand's constitution: the conversation so far.* Promoted as a "background" paper, to inform the public about our existing constitutional arrangements, I asked this week's NZCPR Guest Commentator, Canterbury University law lecturer David Round – the Chairman of our Independent Constitutional Review Panel – to critique the report for readers. He concludes that the panel that wrote the report is little more than a spokesman for further Maori privilege, that their report avoids unpalatable facts and difficult questions, and that it contains numerous examples of half-truths and racist political positions to push the view that much greater legal authority must be given to 'Treaty principles' to entrench a racial minority in a position of perpetual privilege.

An example he highlights is on the role of the Treaty: "Here things start to get really bad. This section, which claims to be a summary of the present situation so as 'to inform a conversation about the future', is subtitled 'The Treaty of Waitangi in Our Constitution'. This of itself is misleading. The Treaty is not part of our constitution. The panel claims that the Treaty has an 'accepted position as the founding document of New Zealand'. At a legal level, this is simply untrue. The Treaty, as every judge still says, has no legal status. It is, of itself, not part of our law… Yet anyone reading this section would naturally assume from this description as our 'founding document' that it was the legal foundation of our state. Not to spell this out carefully is, putting the best interpretation upon it, negligent ~ and since it is impossible to believe that this document was not extremely carefully written, we must suspect that it is deceitful."

In his report, David reminds us that, "This whole inquiry is a concession to the Maori Party. This is radical Maori's big chance. If they pull this one off, they will have won. They will be on top forever, the rest of us ~ those who have not decided to flee to Australia ~ helots in our own land."

His statement, "This is radical Maori's big chance. If they pull this one off, they will have won. They will be on top forever, the rest of us helots in our own land" says it all. That's what this battle is all about. Constitutional power and the right to the co-governance of New Zealand is what the Maori elite have been seeking all along. Thanks to National, it is now within their grasp. Unless this review is discredited as a political power grab by the Maori sovereignty movement, New Zealand stands in a position of grave risk.

David ends his report with this. "A lady recently sent me a news

item reporting that Peter Sharples, the leader of the Maori Party and Minister of Maori Affairs, wanted to see more teaching of 'Maori history' in schools. The lady commented 'They never stop pushing, do they?' No, they never do stop pushing, and that is why they are succeeding. That is why we are on the back foot; because we sit quietly and comfortably at home while the rabble-rousers are imbuing their following - both the no-hopers and the young flash ones who are doing very well - with a sense of perpetual grievance..." You can read the rest of this comment and David's comprehensive analysis HERE.

If you want this gravy train to stop, we need your help. Stand up for New Zealand – for our future - by signing the Declaration of Equality HERE. Urge your family and friends to take a stand and sign the Declaration as well. Volunteer your skills and energy HERE. Donate to our public information campaign HERE to help us inform our fellow citizens of the danger that lies ahead. And

start holding your Members of Parliament to account – their contact details are HERE. This nightmare is only happening because National is allowing it to. How far will they go? Do National MPs really understand the underlying agenda? Do they realise that the Maori Party's plan is to usurp the sovereignty of Parliament and put un-elected judges in control? Do they realise that a Treaty-based constitution would require Maori to have a binding say on every single law that goes through Parliament? Do they realise that they too are being manipulated and that if the future of our country is to be protected, they too must take a stand? And what do opposition MPs think? Will any of them support the majority of New Zealanders who just want us all to be equals?

FOOTNOTE:
1.Mike Butler, Treaty beliefs in their own words

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DECLARATION OF EQUALITY

We, New Zealanders, utterly oppose any laws which establish or promote racial distinction or division. There shall be one law for all:

- ***We refuse to accept any reference to the Treaty of Waitangi in any constitutional document.***
- ***We require that such references be removed from all existing legislation.***
- ***We require that race-based Parliamentary seats be abolished.***
- ***We require that race-based representation on local bodies be abolished.***
- ***We require that the Waitangi Tribunal be abolished.***

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Report on "NZ's Constitution; The Conversation So Far"

David Round, 5 November 2012

A 'conversation'. The very word fills me with foreboding. 'Conversations' are creatures of the caring classes; the schoolteachers and academics, the higher-paid end of the public service and all the professional carers in charities, lobby groups, trusts and the social sciences; all comfortably off, and all dedicated to their own deadly vision of a truly caring and happy world where they and people just like them intend to be in charge. The very word has echoes of nanny telling us that we must be civilised and behave like grownups, and that our silly childish prejudices do not justify us depriving other people, the poor, for example, or even Maori, say, of their rights under the Treaty…..That is the sort of context in which we hear the word, anyway. 'Conversations', although allegedly two way, inevitably end up with us having to listen to a small group of the shrill self-interested and self-righteous lecturing us on why we need to change. There are other words that could have been used to describe this process of constitutional review. Why not 'review'? Or we could try inquiry, or consultation, or discussion? What is wrong with 'discussion'? That is friendly and relaxed enough. Or stock-take, or study, or examination? Some of those words ~ although not all of them ~ might be said to smack too much of officialdom and bossy people being in charge; but that would, after all, be no more than the honest truth. Besides, we surely want a word with some overtones of officialdom, because this is, after all, a proper, sober, official inquiry. Isn't it? We would not want to mislead New Zealanders into thinking that this was just some casual random chat that they might like to get involved in or might not, depending on how they felt on the day. Isn't this something important, which ought to be named with an appropriate important word? New Zealanders, surely, are not so feeble that they will be intimidated by a word like 'review'. The very word 'conversation' is patronising. It implies that we are so timid or feeble that we need special reassurance and moral assistance before we dare poke our shy little noses out of our hidey-holes.

And by the same token, why an 'advisory panel'? Why not a 'commission'? 'Advisory Panel' is hardly an appropriate name. New Zealanders are being asked for their opinions on immensely important matters. This inquiry is far more important for the country's future well-being than one, if I may be forgiven for taking the longer view, into the causes of a mine explosion or even the collapse of buildings in an earthquake. Those inquiries were important, and deserved commissions of inquiry. But the future constitutional shape of our country, something that will affect us and our descendants, our prosperity and our very identity; this is shoved away in a corner to be considered by a mere 'advisory panel'?

Something funny is going on here. This behaviour is not honest. It is stealthy. Someone is about to be ambushed. It might, perhaps, be radical Maori and the Maori Party, misled by National into believing that they might really be able to acquire serious legal privilege for ever. (Even if they do not succeed in doing that, of course, harm will have been done, because their expectations will have been raised, and they will feel aggrieved that they have once again (so they will say) been swindled out of their rights.) They will only have been defeated, of course, because a thoroughly alarmed population will finally have been aroused out of its longstanding apathy. But it might be that the majority of our population is not alarmed, but continues in its inert torpor, and so it ~ we ~ are the ones who are ambushed. I am inclined to think this will not be the case; there seem to be stirrings, and I certainly hope they are more than just that; but I have been hopeful before. If we are not alarmed and angry, then bad things will happen.

I read 'The Conversation So Far', of course, with suspicion, and you might argue that such an attitude naturally leads one into paranoia, and to see plotting and treachery ~ or, to call it by a gentler term, self-interest and personal agendas ~ where none exist. But of course there are personal and political agendas. This whole inquiry is a concession to the Maori Party. It is not a disinterested review where no-one involved has any axe to grind. Why would we not think that there are private agendas? This is radical Maori's big chance. If they pull this one off, they will have won. They will be on top forever, the rest of us ~ those who have not decided to flee to Australia ~ helots in our own land. So why, even before we look at them and see who they are ~ would we not think that many members of the Panel and their friends and allies might have some axes to grind?

We might not expect anything particularly blatant in an introductory document such as this, but without being blatantly biased ~ without saying anything that is not perfectly reasonable and accurate ~ one can nevertheless contrive to give a certain tone, a certain slant, a certain colour and direction to a perfectly neutral document. Just ask Sir Humphrey Appleby. This is done here. I shall give some examples below. But, as we shall see, there is more than mere delicate slanting in the chapter on 'Crown-Maori Relationship Matters'. In that chapter there are many statements which are actively misleading. Their presence does not do the Panel any credit. Nor does it give us any faith in their fairness and openmindedness.

After a ten page description of our present constitutional arrangements, the document has two big chapters ~ 'Electoral Matters' and 'Crown-Maori Relationship Matters'. Crown-Maori matters, note. The fiction is maintained that the Treaty was between Maori and 'the Crown', and there is inevitably the implication that the settling of claims and the 'honouring' of 'Treaty principles' is a matter in which we, the people, are not entitled to interfere.

Anyway. The first chapter, 'Electoral Matters', covers several matters. There is the size of Parliament ~ should it stay the same, or be reduced to perhaps 100? Then there is the question of the term of Parliament ~ three or four years? Should the date of elections be fixed well in advance, or should an early election date be left, as it is now, to the Prime Minister? Then there is mention of the number and size of electorates, and finally the possibility of 'electoral integrity legislation', such as was enacted in 2001 (but expired in 2005) to deal with the 'waka-jumping' of Alamein Kopu and others, who were elected as list MPs for one party but then decided to leave it and support another.

This whole inquiry is a concession to the Maori Party. It is not a disinterested review where no-one involved has any axe to grind. Why would we not think that there are private agendas? This is radical Maori's big chance. If they pull this one off, they will have won. They will be on top forever, the rest of us ~ those who have not decided to flee to Australia ~ helots in our own land.

Yes, these are not unimportant issues, but they are entirely a smokescreen. There is no need to include these in the review at all. They must be included, it must be explained, because the Panel's terms of reference require them to be; but this is not the panel's purpose. The Minister of Maori Affairs, for example, who, with the Deputy Prime Minister set the terms of reference, has said that the purpose of the review is that 'Maori want to talk about the place of the Treaty in our constitution', and 'how our legal and political systems can reflect tikanga Maori'. We all know this. The hope is, I imagine, that the raising of these electoral issues will divert some public attention away from the Panel's

real purpose, and perhaps lend an air of spurious legitimacy to that actual purpose.

Bear in mind that all of these electoral issues have either been recently settled or are just non-starters in the first place. The size of Parliament? A select committee considered this in 2001. Submissions to the committee were 99 for the present size and 55 for smaller. In 2006 the Justice and Electoral Select Committee also recommended that a member's bill to reduce the number of seats not be passed, for reasonable and practical reasons ~ with which, I must say, I agree. But the point is that the issue has often been canvassed recently. Are MPs of any party seriously willing to consider reducing the number of seats? I think not. So why is it being raised again?

The second issue, the term of parliament (three or four years?) is 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. The proportion of those favouring three years was actually up slightly (69.3%) in 1990. So why is this mentioned again?

Then, third, there is the matter of the number and size of electorates. The reason for the presence of this issue is a little more perplexing. Surely, we might think to ourselves, the number of electorates depends on our answer to the first question, the size of parliament. Parliament of course has both constituency and list MPs, but nevertheless we thought we could assume a general rule that any reduction or increase in electorates will just be the other side of the coin of changing the size of parliament and number of MPs. How can it be a separate issue? This question seems unnecessary. But here is concealed something that could be very unpleasant. The document's discussion raises several possibilities: that the South Island quota of 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 10% variation, 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 M.P. of properly servicing the larger electorate. We can easily see foundations being laid here for a Maori gerrymander. Abolish the minimum number of seats for the South Island ~ even though it has big electorates they are all white people down there ~ and give the extra representation to an increasing number of Maori seats with the smallest legally possible populations. Watch out for trickery here.

Finally, there is the proposal to create new laws against 'waka-jumping'. I was not aware that this was a burning issue. After an initial period of instability after MMP's appearance, politics is settling down. ACT will be gone at the next election, if not before, and United Future and New Zealand First will not outlive their present leaders. The Mana Party will last only as long as Hone does ~ which may be some time, admittedly ~ and the Maori Party's future seems to be quite uncertain. The Conservative Party ~ who can say? It is quite easy, anyway, to imagine Parliaments in the near future with fewer parties than now, and certainly with rather more party discipline within those parties. So again, electoral integrity legislation seems to be nothing but a smokescreen.

II

And so, behind the smoke, we come to 'Crown~Maori Relationship Matters', the real interest and purpose of the advisory panel. This chapter is divided into three headings; Maori representation in Parliament, Maori representation in local government, and the 'role' of the Treaty of Waitangi. Again, these headings and their sub-headings are prescribed in the Terms of Reference. The observant reader notices at once that this chapter is much more detailed than the previous one. There are numerous references to various Acts of Parliament; so many, indeed, as to cause a little disquiet, as we realise what inroads

Maori have already made into our democracy of equals. This may well be part of the purpose of the description ~ to suggest to the reader that these things are already established and accepted, and so we might as well put provisions of a similar nature in a written constitution. Our reaction might well be the opposite, however ~ horror at the discovery of how far down the slippery slope we already are, and determination to arrest and reverse the slide.

The Waitangi Tribunal is also often quoted, but always with the greatest deference. This is a real cause of dismay, and good evidence of the Advisory Panel's bias. Yes, we know that the Waitangi Tribunal is established by law (the Treaty of Waitangi Act 1975) and we know that it is empowered to make recommendations based on its views of what 'Treaty principles' require. The Advisory panel would doubtless argue that that fully justifies frequent quoting of Tribunal 'findings'. But it does not ~ because, as everyone, not just readers of this column, is very well aware, the Tribunal is not even an impartial finder of historical fact, and its view of what Treaty 'principles' are and require is always strongly politicised and slanted to the benefit of claimants. This is beyond dispute. Even admirers of the Tribunal say as much. Reading the 'Conversation' one would get the impression that the Tribunal is an absolutely authoritative and unquestioned authority, but in fact its findings are often factually and logically shaky, and with motivations which have no place in a proper judicial tribunal. To quote it as an authority, then, and say absolutely nothing to indicate the tendentious and disputed nature of its 'findings', is no less than misrepresentation; it is to be guilty of a confidence trick against the public.

Let us go into more detail.

1. *Maori Representation in Parliament*

Page 41: 'Over the years, the Maori seats have provided a voice for Maori perspectives and interest in parliament. Commentators say the Maori seats serve as a reminder to successive governments of the promises made through the Treaty.'

Some commentators may say that. Other commentators point out that the seats have nothing to do with the Treaty, that they were introduced almost thirty years later and that they were intended to be a merely temporary measure. For much of their more recent history they have, in effect, been captured by the Labour Party, and their usefulness in providing a voice for Maori perspectives in Parliament has been entirely questionable.

Page 43: The Waitangi Tribunal is quoted as finding that the Crown is obliged under the treaty 'actively to protect Maori citizenship rights and in particular existing …rights to political representation…' That is to say, the Tribunal 'finds' that the Treaty requires the Maori seats to remain. No comment on this finding is given; the impression is that the matter is settled, instead of being just one political opinion and hardly justified by the historical facts.

Earlier on that page we are told that the 1987 select committee considering the future of the Maori seats 'was not convinced by the Royal Commission's position [the 1986 report of the Royal Commission on the Electoral System] that the introduction of MMP would enhance Maori representation in parliament'. 1987 was twenty-five years ago; the issue of whether the Royal Commission was correct or not is completely ignored. It would be very simple to provide an answer. I do not have the figures in front of me, but my distinct understanding is that, ignoring the Maori seats completely, Maori membership of the House of Representatives is about equal to, if not slightly greater than, the proportion of the population who identify themselves as Maori. But my main point, in any case, is simply that the Panel simply fails to answer this obvious question one way or the other. Why? We are forced to speculate, and I am afraid my speculation suggests that the Panel knows but simply does not like the answer.

To be fair, page 44 tells us of the view of the ACT Party member of a 2001 Review Committee that the Maori electoral option was undesirable in that it promoted racial distinction and tensions. But even then, it does not tell us of ACT opposition to the seats themselves. It does tell us that Professor Joseph, my learned colleague at the University of Canterbury Law School, 'did not see separate Maori representation as being critical to the integrity of the electoral system and therefore did not see it as legitimate subject-matter of constitutional entrenchment'. We note with interest that both the Greens and Labour supported entrenchment of the Maori seats; although given the things which National is doing now and Helen Clark never did ~ establishing this review, for a start, signing up to the United Nations Declaration on the Rights of Indigenous Peoples, and passing the new foreshore and seabed legislation ~ I do not think we should necessarily be unkind to Labour. Credit where credit is due.

And then, after considering the questions of maintaining Maori seats, their entrenchment, and the Maori electoral option, the Panel helpfully raises the subjects of waiving the 5% requirement before a list party can get its candidates into parliament (an idea unanimously rejected by the 2001 committee) and mentions a Ngati Porou proposal to establish a completely new Maori representation Commission 'to return to first principles and new forms of Maori representation in a three year consultation process'. At this point I think we have reached the stage where the Panel is putting ideas into people's heads. Why raise again something unanimously rejected by a select committee? The answer, I suggest, is this ~ that these ideas are the logical next steps which Maori will want to take in their slow stealthy power grab. They have the Maori seats ~ perhaps they even have the Maori seats entrenched. So what next? How can Maori go forward from here? Let us think. But what is this? Good heavens! Right here, as it happens, a suggestion ~ from the traditional leaders of one tribe, no-one else ~ that Maori representation cease to be a matter for Parliament, but should be handed over to a permanent Maori committee. Well, that would be handy! The Maori seats, then, would no longer be a matter for the wider public, but just for Maori ~ some Maori ~ themselves. This Maori committee will inform us from time to time about their latest demand ~ I am sorry, they will tell us what they have discovered our evolving duties under the Treaty to be ~ and we will then have no choice but to do as we are told. (The Treaty is, the late unlamented Sir Robin Cooke told us, 'an embryo, not a fully-developed set of ideas'. In other words, it is a blank cheque, so of course there will be all sorts of surprises in future as we continue to keep what is evidently our side of the bargain. Bargain?! As currently interpreted, it is a very expensive 'bargain'.) And so now the Panel mentions this interesting idea in passing, and if anyone wants to follow it up, well…This is what is known in the law as leading the witness, and except in cross-examination is generally considered improper.

2. In the section on *Maori Representation in Local Government* we are told on page 47 that '[a]s tangata whenua Maori have a close and direct concern with the management of natural resources. Maori therefore have a close interest in effective representation in local government to ensure their views and perspectives are represented'. Now what is that but a blatant statement that Maori deserve something more than just one normal vote each just like everyone else? 'As tangata whenua'? As inhabitants of New Zealand we all have a very great interest in the management of natural resources right now, but that seems not to concern the Panel. Some of the ancestors of present-day 'Maori', usually a small minority of their ancestors, were of the Maori race, yes. How does that give them a special say to managing natural resources?

The Panel then tells us as a *fact* that '[h]istorically Maori exercised kaitiakitanga, managing all of New Zealand's natural resources. Maori and the Crown agreed, through the Treaty, that Maori would maintain authority and control over their taonga,

including natural resources. Now, much of the management and regulation of these resources is the responsibility of local government'.

Put it like that, and the only conclusion is that local government (all of us) should hand over to Maori (just some of us) more control over the natural resources on which this country's economy and life are based. If Maori were promised the right to manage everything, even after they'd sold it (a point the Panel does not touch on) ~ and if they don't have that right now ~ well, clearly we've taken it away from them, and we have to give it back. That is the only conclusion that paragraph can lead you to.

Yet there is not a single fact in that paragraph. For a start, pre-European Maori were not 'managers' ~ in their own way, they over-exploited resources and lived beyond their environmental means as much as anyone else. The record of Maori environmental destruction is clear ~ perhaps thirty or more bird species rendered extinct, between a third and a half of our pre-human forests burnt, and other resources used unsustainably. Dr Tim Flannery, the respected author of *The Future Eaters*, suggests that by the late eighteenth century a Maori 'resource crisis' was in full swing, and, had it not been for the white man's pork and potatoes there would have been a catastrophic collapse in the Maori population. And then 'kaitiakitanga' ~ the word, for a start, is a missionary word, coined by Henry Williams for insertion into the Treaty. How could Maori have exercised something they did not even have a word for? I notice that the panel's definition of kaitiakitanga, in a footnote, defines it 'in a modern resource management context'. Very wisely, there is no attempt to define it as it was understood environmentally in 1840. It would have been nonsensical to try, because no-one in 1840 was thinking about 'natural resources', and the understanding would certainly have been that if lands and rivers, say, were sold to the Crown, then Maori rights over them would cease. There is nothing in the words or even in the 'principles' of the Treaty which says that even after Maori have sold land they're still entitled to all sorts of rights over it to 'manage' its natural resources, which they have just sold. But the panel presents this as a statement of fact which, it also makes clear, obliges us to 'return' to Maori the rights of governance that local government stole from them. This really is part of the next stage of the Maori agenda; it is time that Maori really got their hooks into local government as well as central government. This is one of the logical new fields of Maori takeover attempts. But we do not expect an allegedly impartial review panel to instruct us that it is our duty.

This section then goes on to describe the opportunities already presented by the Local Electoral Act, the Local Government Act and the Resource Management Act for privileged Maori representation and participation in local government. This is followed by a section on 'Questions and Perspectives'. The first question is whether special Maori representation on councils should be 'guaranteed' ~ that is, whether it should be made compulsory, rather than, as now, merely an option which local ratepayers may ~ and often do ~ vote against. If Maori had their own special representation on local councils it would usually mean that Maori were over-represented; that in one way or another their vote gave them more influence around the council table than the vote of a non-Maori. This offends against our most deeply-held egalitarian instincts. But the paper makes absolutely no remarks, here or anywhere else, about the virtues of equality of voting power and representation. There is not a single remark that 'some commentators' might think that inequality of voting power is objectionable in principle. Clearly the Panel does not think it is.

The section then goes on to talk about 'other ways' of achieving Maori representation, mentioning in particular some Treaty settlements, and the restructuring of the new Auckland City Council. But nowhere does it even *consider* the possibility that Maori should just be like everyone else and vote just like

everyone else. The thought obviously never entered the Panel's head. Neutral? I think not.

III

3. And then there is the third section, *The Role of the Treaty of Waitangi.* Here things start to get really bad. This section, which claims to be a summary of the present situation so as 'to inform a conversation about the future', is subtitled 'The Treaty of Waitangi in Our Constitution'. This of itself is misleading. The Treaty is not part of our constitution. The panel claims that the Treaty has an 'accepted position as the founding document of New Zealand'. At a legal level, this is simply untrue. The Treaty, as every judge still says, has no legal status. It is, of itself, not part of our law. Yes, we may say that at a political level the Treaty marks the beginning of the establishment of the state of New Zealand, but it has no legal status. It was a mere preliminary political proceeding. Yet anyone reading this section would naturally assume from this description as our 'founding document' that it was the legal foundation of our state. Not to spell this out carefully is, putting the best interpretation upon it, negligent ~ and since it is impossible to believe that this document was not extremely carefully written, we must suspect that it is deceitful.

The section then goes on to give examples of how 'the Treaty influences the exercise of public power'. The examples it gives are (first) references to the principles of the Treaty in some statutes, (second) the Maori seats, (third) the Waitangi Tribunal and, (fourth), the explaining and application of the principles by the courts and the Tribunal. The impression given is that the Treaty is already well-established in our constitution. Now all of this dishonest. For a start, the third and fourth items are nothing more than a part of the first. The courts and the Tribunal refer to the principles of the Treaty because they are referred to in statutes. So items one, three and four are exactly the same. Cross numbers three and four off the list, then. Second, as already explained, the Maori seats have nothing whatever to do with the Treaty. So cross number two off. Third, and most important, when the courts and the Tribunal do consider Treaty principles, they do so not because of any place the Treaty has in our constitution, but because a particular act of parliament has authorised such consideration. (After all, it is the 'principles' of the Treaty, not the Treaty itself, that are being considered!) For an ordinary act of parliament to say that in certain cases decision makers must take the principles of the Treaty into account hardly makes the Treaty itself part of our constitution. An act of parliament might say that sustainable management of resources, say, is to be considered in decision making. Does that make sustainable management part of our constitution? I think not.

The next paragraph tells us that governments have 'acknowledged that the Treaty's guarantees have not been consistently honoured, and have taken responsibility for redressing breaches through the settlement process. They have also accepted that the principles of the Treaty must be considered when making decisions, if future breaches are to be avoided.'

There is no mention of previous full and final settlements. There is no acknowledgement that the current growing Maori grudge industry is the child just of the last two or three decades. There is no contemplation of any other possibility than that New Zealand's history has been nothing but one long heroic struggle of Maori to keep alive their mana while gallantly resisting the onslaught of the pakeha oppressor….

It certainly is true that more recent feeble governments have allowed the grievance settlement process to be opened all over again, and that even the Crown seems reluctant to mention earlier full and final settlements; but nevertheless, those settlements, and our past peaceful race relations, have to be known. They make an enormous difference.

Moreover, it is news to me that governments have officially accepted that Treaty principles must be considered in future decision-making. The Panel's statement suggests some sort of official declared policy, embedded now in law or at least government practice. But there is no law or generally-established principle to that effect, and since the 'principles of the Treaty' are so elastic it would be disastrous if there were. I notice that the Panel does not provide any footnote…..

The next heading in this section is 'International Context ~ Declaration on the Rights of Indigenous Peoples'. To be fair, the Panel does note that this United Nations Declaration is 'an aspirational document that does not bind the government'. Most of this section repeats not the Declaration itself but the National and Maori Party government's statement of support for it, which 'reaffirms the importance of the Treaty' and 'recognises that Maori have an interest in all policy and legislative matters'. Well they do, of course; but so does everybody else.

Then we have a section on the 'Treaty principles'. This begins with misrepresentations. It claims that there are 'differences between the two texts of the Treaty'. Now in one sense there is only one text of the Treaty, the Maori one, which is the one nearly all chiefs signed. The English version known to us is just a back-translation of that. But (apart from the obvious one that they are in different languages!) there is no difference between the English and Maori texts. Both recognise the sovereignty of the Crown, the status of Maori as British subjects ~ no less and no more ~ and continued Maori ownership of their property. The Panel claims that it was because of this difference, and 'the need to apply the Treaty to changing conditions' that 'attempts have been made to distil a set of principles from the Treaty'. The distillation of principles, however, occurred only because parliament has referred to them in various statutes. Parliament was in no way prompted by alleged differences between the texts. Parliament acted for entirely political reasons, not out of any 'need to apply the Treaty to changing conditions'. Indeed, a very strong case can be made that Parliament considered the mention of principles in section 9 of the State-Owned Enterprises Act to be nothing but meaningless lip-service. The 'need to apply the Treaty to changing conditions' could very fairly be described as an admission that the Treaty in its actual terms is now irrelevant, and has nothing further to say to a country where there is no doubt that the Queen is sovereign, and Maori are her subjects just like everyone else. Agitation for the 'development' of Treaty 'principles' is an admission that the agitators are unhappy with that situation of equality before the law.

The Panel accepts that the list of Treaty principles 'is not definitive'. It 'continues to evolve as the understanding of what it means to be a Treaty partner evolves'. Yes indeed. Every day someone tells us of some new obligation we have. This lack of definition 'provides flexibility for the Crown-Maori relationship to develop'. You can say that again. But it can be 'the cause of frustration for those who seek clarity and certainty of meaning'. Well again, I must agree. And should we not have clarity and certainty of meaning in a constitution? I would have thought so. I know 'some commentators' think so also. But the Panel does not appear to be aware of this basic axiom of common sense. It prefers a situation where we are tied to a blank cheque. Where our new constitutional arrangements will compel us to comply with 'Treaty principles' without knowing what they entail. The principles 'evolve' ~ at our cost, and to Maori benefit, for ever and ever.

Then there is a section on the principles in acts of parliament. Various statutes are mentioned, but for some reason, there is no mention of the number of statutes containing these references. The number is small, and would be easy to ascertain exactly. I am not 100% sure of the present figure myself, but it is a comparative handful, although including some quite important statutes. It would be reasonably interesting and relevant to know, perhaps? Why no figure…?

'Who decides what the Treaty principles are?' is the next section. It says that the Waitangi Tribunal is 'the body responsible for deciding what the Treaty means in a modern context'. This is only half true. The Tribunal is not that mighty and authoritative. It is empowered to hear complaints of breach of Treaty principles, certainly, and make recommendations based on its 'understanding' of the 'principles', but it has no wider authority to deliberate on what those principles are. It may only say what they are in the claims before it; where, as we all know ~ see the recommendations on radio waves, and, much more recently, water, to take but two examples ~ its interpretations are often absurd. Moreover, the courts also make decisions about Treaty principles, when a statute refers to them. The Panel then talks about judicial decisions on the principles, but does not explain how the courts are able to adjudicate on those principles if the Tribunal (as they have just said) is 'the body' responsible for defining the Treaty's 'modern meaning'. One might almost get the impression that the courts are bound by the mighty Tribunal ~ which is, thank heaven, still the opposite of the truth. For the time being, at least.

The final paragraph in this section mentions the Court of Appeal's 2003 decision in the *Ngati Apa* case, which began the whole foreshore and seabed controversy. That decision, some commentators believe, was disgraceful, and clearly improper according to the Court's own rules about abiding by earlier decisions, but there is no mention of that here. But on its face, anyway, the decision had nothing to do with 'Treaty principles'. So why is it mentioned here at all? This is interesting. Is there a Freudian slip here? Is it possible that the prominent people on the Panel understand that the real secret reason the Court of Appeal decided as it did was for the sake of respecting the principles of the Treaty ~ and to hell with any parliaments or parliaments' laws that got in their way?

Then there is a section on Treaty settlements. It quite rightly admits that a claim before the Tribunal is only one way of making a claim and obtaining a settlement. It is also possible to enter into direct negotiations with the Crown. I comment that any future abolition of the Tribunal could, of course, do nothing to stop such claims. There will always be this option for the redress of genuine grievances, even after that biased Maori lobby-group the Waitangi Tribunal is consigned to the museum.

But, as we all know, we are nearing the end of the current round of 'full and final settlements'. The Panel itself does note, although only in a footnote, that all historical Treaty claims had to be filed with the Tribunal by 2008. So what happens then? Ah, yes indeed! It would be dreadful if the end of historical claims were to mean an end of the Treaty industry. And so, unsurprisingly, under 'Questions and Perspectives', the next section, the question is asked ~ it has all been thought out, you see! ~ the question is asked, 'What will happen once all historical Treaty grievances are settled?' Not all that long ago we were being told by honourable important people like Sir Douglas Graham ~ I think he has managed to hang on to his knighthood despite his conviction ~ that once historic claims were over we would all be able to put the past behind us and move forward together happily into the future as one people. But the Panel clearly takes a different view. It instructs us that the Treaty 'will continue to impact the Crown actions'. The English is bad, I know. 'The principles of the Treaty must be considered when making decisions if future breaches are to be avoided.' 'Must'? Isn't the Panel supposed to be asking us, instead of telling us? But here it is once more lecturing us on what we 'must' do. What the Treaty actually says is that Maori are to be the Queen's subjects ~ to put it into modern parlance, they are to be New Zealanders ~ like everyone else. Genuine historic wrongs against them may be righted ~ but after that, we are, in Captain Hobson's words, to be one people. Yet here is an allegedly impartial panel, set up to seek our opinion, telling us that the 'principles' of the Treaty ~ by which they mean, a special place for Maori ~ 'must' be considered ~ and, it is clearly implied, 'must' be in our new constitutional arrangements.

This is a carefully coded but nevertheless openly racist political speech, clearly leading to a predetermined outcome. One would expect nothing more from some of the Panel's membership. From at least one other, it comes as something of a disappointment.

This section then quotes the recent report on the Wai262 claim (for flora, fauna, culture, &c) as being 'future-focussed' and 'set[ting] out building blocks for a constructive and positive post-Treaty relationship between Crown and Maori based on mutual respect'. Yeah yeah. Clearly, again, the Panel thinks this is the way to go. But you and I know perfectly well where we will end up.

Then finally in this section we have the question 'Should the Treaty be entrenched?' The answer begins by describing an ill-conceived 1985 suggestion by the then Minister of Justice in a draft bill of rights, which would 'recognise and affirm' the rights of 'the Maori people' under the Treaty, and provide that the Treaty 'shall be regarded as always speaking and shall be applied to circumstances as they arise so that effect may be given to its spirit and true intent'. It was further proposed that the courts would be able to strike down any acts of parliament which they considered to be 'inconsistent with the Treaty'. Well, we were lucky not to get that, but here is the Panel raising the suggestion for us again. The Panel alleges, somewhat illogically, that the reason this suggestion never appeared in the Bill of Rights Act was that Maori objected that the Treaty would be demeaned unless it was entrenched as higher law. As I recall, that was only one part of the reason. The other part was the fear of many of us that Treaty principles would be a blank cheque, and would authorise judges to embark on disastrous political adventures. But the Panel mentions only the one reason, objections by Maori themselves. That being so, it would follow that if Maori now had no objection to entrenching the Treaty as higher law, there would be no reason why it could not be done. Maori, are you listening?

IV

The 'Conversation' does have one final chapter, merely entitled 'Other Constitutional Matters'. This very title suggests that it is merely a ragbag of odds and ends. It mentions only two things. One is 'Bill of Rights issues'. As I am sure you recall, the New Zealand Bill of Rights Act 1990 sets out in extremely general terms various fundamental rights and freedoms which we usually ought to have. Time and space, mercifully, do not encourage me to go into the issues here, and the question is of course not one of the Panel's central preoccupations. But I note that the Panel lists the rights protected by the Bill of Rights Act, and includes in its list 'democratic and civil rights such as electoral rights…'. We might have thought that the Panel would dwell on those electoral rights a bit, given its keenness to give Maori special electoral privileges. How would those two things fit together, now? Would that be a matter requiring a little careful consideration? But the introduction of racial inequality in voting is not pursued any further. Our country's intellectual and political elite have now moved to the stage where racial privilege, which we thought we never had, is now back as the only morally and intellectually accepted position. It requires no justification; it is self-evident. It is just that Maori will be holding the whip.

The other issue in the ragbag is 'Written Constitution'. (I do not know where the indefinite article went.) Most of this section is pretty fair. But string these quotations together:

Page 70: A constitution's preamble 'may talk about why the constitution has been developed, what kind of government it is establishing and the values it promotes. A preamble can be inspirational and aspirational. Preambles are not generally enforceable by courts, but can give a context for interpretation of other sections of the constitution.'

Page 71: ‘Some countries have autonomous territories, generally where a minority ethnic group exercises some powers of self-governance independently from the national government.’

Page 72: ‘Many constitutions also provide for group or community rights, particularly the rights of minority and indigenous groups. Mechanisms for implementing these rights may include:
~ A requirement to consult these groups about decisions that affect them
~ Providing for effective participation in decision-making and elected bodies through, for example, guaranteed representation in federal or central parliaments.’

On page 75, the ‘[i]ssues that might arise’ ~ that ‘might’ is a charming touch ~ ‘in developing a written constitution’ include, at the very top of the list ~ ‘How would a written constitution reflect the Treaty of Waitangi and the future position of Maori iwi and hapu?’

I am detecting a pattern here.

v

A lady recently sent me a news item reporting that Peter Sharples, the leader of the Maori Party and Minister of Maori Affairs, wanted to see more teaching of ‘Maori history’ in schools. The lady commented ‘They never stop pushing, do they?’ No, they never do stop pushing, and that is why they are succeeding. That is why we are on the back foot ~ because we sit quietly and comfortably at home while the rabble-rousers are imbuing their following ~ both the no-hopers and the young flash ones who are doing very well ~ with a sense of perpetual grievance. Their respectable friends of various races have engineered a committee a group of radical Maori and sickly white liberals ~ that phrase is not just abuse, but actually a very accurate description ~ to make recommendations about how ‘Maori’ should be more in charge in future. That is all this is. And it is so frighteningly easy to imagine the headlines just a year or two down the track. A committee of prominent New Zealanders from all sides of the political spectrum has recommended that greater respect be paid to the principles of the Treaty in a new written constitution for Aotearoa/New Zealand. (‘New Zealand’ will ultimately be phased out, but that will take some time. The atlases….) Then, an announcement after a close general election, when neither Labour nor National would be able to form a government by itself, and the Mana or Maori Parties hold the balance of power, that laws along these lines are being drafted for consideration the following year….A big hikoi of the disaffected and the weeping and wailing classes to Wellington when the select committee is sitting ~ a bit of muscle, perhaps, the odd threat of rebellious impatient young Maori anger, a bit of aggro, the fortuitous discovery of an arms cache in the bush somewhere….~ and politicians, practically all of them, end up as unscrupulous cowards, I’m sorry my friends ~ either that, or you don’t get anywhere ~ what would our politicians, any of them, do? Three guesses. So statesmanlike! Now is a time for healing. Then the hongis, the karakias, the little old ladies, the pompous orators with their big carved walking sticks, the indbaggery… And then the deluge.

I can see no evidence that this advisory panel will be any more than the spokesman for their brownish bandit bros.

And so, if I may jumble a few transport metaphors together ~ I can see no evidence that this advisory panel will be any more than the spokesman for their brownish bandit bros. They are the squeaky wheels that get all the grease. They are the bandwagon. We are the poor old horse. We are the camel, and the straw that breaks our back ~ or our patience ~ is already in the wind. The light is already appearing at the end of the tunnel, but alas, it is the light of the oncoming train.

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Independent Constitutional Review Panel established

Dr Muriel Newman, 22 October 2012

Last week the Waitangi Tribunal released a report proposing that more money should be given to the kohanga reo movement. In spite of over $1,000,000,000 of taxpayers' money being spent on the movement over the past 20 years, the Tribunal alleged there had been wide-ranging breaches of the Treaty of Waitangi and called on the government to apologise for not doing more. They have also recommended that the legal costs incurred by the Kohanga Reo National Trust in taking this claim against the government, should be paid for by taxpayers.

This new report by the Waitangi Tribunal follows hard on the heels of their report on the Maori Council's claim for fresh water. Even though the Tribunal has no jurisdiction to hear new historic claims lodged after 1st September 2008, they took the case and unsurprisingly found that Maori had some proprietary ownership rights to a public good resource that is owned by no-one!

The fact is that the Waitangi Tribunal plays a central role in the Treaty of Waitangi grievance industry. This insatiable gravy train, with its increasing demands for separatism - power, money and public resources - is being driven by the iwi elite, their lawyers and consultants.

With the support of National, the Maori Party's aim is to cement separatism in place, by replacing our present constitutional arrangements with a new written constitution based on the Treaty of Waitangi as supreme law. Such a move would replace parliamentary sovereignty with a legal document to limit what our elected Parliament can and can't do - transferring supreme power into the hands of unelected judges, who cannot be dismissed.

In other words, love them or hate them, under our present constitutional arrangements, if we don't like what our supreme lawmakers – our democratically elected Members of Parliament – are doing, we can vote them out! That's because under New Zealand's present constitutional arrangements, our Parliament is supreme. It can make laws concerning anything - although any law that it does make, cannot bind a future parliament. That's why it is a well-established convention, that major constitutional change requires a mandate of voters through a binding public referendum process. Any major constitutional change, that does not gain the approval of citizens through a binding referendum, should be deemed illegitimate.

With that in mind, the process for implementing constitutional changes that result from the Maori Party's review, has set alarm bells ringing. During the launch in December 2010, the Deputy Prime Minister Bill English explained, "Of course, we will keep in mind that enduring constitutional changes generally require a broad base of support. *Significant change will not be undertaken lightly and will require either broad cross-party agreement or the majority support of voters at a referendum.*"

These weasel words mean that they are not planning to hold a referendum on any constitutional change recommendations at all. If they were, they would be shouting it from the rooftops, because making major policy decisions through a public referendum process is a popular thing for any government to do.

Instead, they are planning to garner the support of vested interest parliamentary parties, and impose constitutional change onto the country through a vote in parliament.

The reason is practical. Any government that tried to impose a Treaty based constitution onto the country through a public referendum would face defeat. New Zealanders do not want to

live in a separatist nation. We want to live in a country where our future is determined, not by the colour of our skin or the accident of our birth, but by the contribution we make as individuals.

As a result, we need to take a stand against any plan to replace our constitution without the express approval of the public through a referendum process - anything less is completely and utterly unacceptable!

These concerns and more led the New Zealand Centre for Political Research to launch the Independent Constitutional Review - an alternative people's review to counter the Maori Party's $4 million taxpayer-funded "consideration of constitutional issues". Their sham review is being conducted by a stacked Advisory Panel, which will put forward a pre-determined recommendation to the government next September, for a new written Treaty-based constitution.

The majority of New Zealanders – Maori and non-Maori alike – are overwhelmingly opposed to a race-based future. That's why we are fighting back.

The Independent Constitutional Review website at ConstitutionalReview.org will be the focal point for our campaign. It contains a wide range of background information - on the constitution, the plans by the iwi elite to gain constitutional status, the government's deceitful review process, and what it all means for our future. The website outlines numerous ways that supporters can get involved and help, including how to donate to the campaign and how to volunteer and assist.

We launched the Declaration of Equality, to create a movement for change. Our vision is a country where all New Zealanders are equal in the eyes of the law, with special treatment based on need, not race. There would be no race-based seats and no race-based laws. The Waitangi Tribunal, which has outlived its useful life, would be abolished. And the Treaty of Waitangi - which is part of our past, not our present, nor our future – would be returned to the archives of history.

As part of our "people's review" - and to counter the Maori Party's biased Advisory Panel - we would like to announce that we have now established an Independent Constitutional Review Panel (ICRP). Made up of a group of New Zealanders of diverse political backgrounds, we share a common concern that an out-of-control Treaty industry has become a serious threat to New Zealand's prosperity and integrity as a viable nation.

Our panel is led by David Round, a constitutional law and Treaty expert from Canterbury University. He is joined by Associate Professor Elizabeth Rata from Auckland University, Professor Martin Devlin from Massey University, Professor James Allan from Queensland University, journalist and author Mike Butler, and myself - Dr Muriel Newman former MP and founder of the NZCPR think tank. Other members will be added to our Panel over the next few months.

The ICRP Chairman David Round has now issued our first press release. Responding to the Waitangi Tribunal's kohanga reo report, he has called for the Tribunal to be abolished: "The Waitangi Tribunal's report on kohanga reo makes it clear why the Tribunal should be abolished. The Tribunal is now clearly nothing more than a grandly-named Maori lobby group. Its recommendations are pure politics. Governments have poured over a billion dollars into kohanga reo over the last two decades, and that was only a part of wider taxpayer support for the Maori language. We might reasonably expect a word of thanks for this generosity. But instead the Tribunal …demands, not just more funding, but an apology for not doing enough. To demand an apology for not being more generous is not just ungracious and ungrateful, but downright arrogant. The tribunal is behaving like a greedy bully." The full release can be seen HERE.

More details on the ICRP membership can be seen HERE, and their articles, produced for our constitutional review campaign, can be viewed HERE.

This week's NZCPR Guest Commentator is ICRP member James Allan, the Garrick Professor of Law at the University of Queensland. I met Professor Allan a decade or so ago when I was a Member of Parliament and he was teaching constitutional law at Otago University. In light of the Maori Party's plan to replace our present constitutional arrangements with a new written constitution enshrining the Treaty of Waitangi, I invited him to share his views:

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

In his article Professor Allan explains that introducing a written constitution would radically weaken our democracy: "That's the point of a written constitution. It trumps parliament. It overrides parliamentary sovereignty. It enervates democracy. Now that may be a good thing if you reckon you can get a more favourable deal out of a committee of ex-lawyer judges in Wellington than you can out of the democratic process. But for democrats like me it is an appalling prospect."

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

If you haven't supported our campaign as yet - by signing the Declaration of Equality, donating, volunteering to help, informing your contacts about what is going on - then please make a start. Four years ago when we saw the Maori Party's radical coalition proposal for iwi control of the foreshore and seabed - through the repeal of public ownership - we thought the National Party would come to its senses and never let it happen. We were wrong. The law was passed under the radar of public opinion, with most New Zealanders kept in the dark.

The same strategy – keeping it all under the radar of public opinion – is being used for the Maori Party's plan for constitutional change. But the ramifications are so serious that they threaten to divide our country forever. Please do what you can to spread the word. It should be the Declaration of Equality that the government adopts, not a Treaty-based constitution.

I will leave the final word on the Maori Party's plan, to Professor Allan: "So in my opinion, expressed from over here in Australia, this is a terrible idea. It needs to be knocked back. And I have my fingers crossed that you can all achieve that outcome."

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A Written Constitution for NZ?

Prof James Allan, 22 October 2012

I spent 11 wonderful years in Dunedin before moving over to Brisbane, Australia eight years ago. In both places I worked in a university law school, and one of the subjects I taught (and teach) is public or constitutional law. Now New Zealand currently has an unwritten constitution, where Australia has a written constitution.

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

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

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

But the fact is that in most places with written constitutions, these calls (in whole or in part) are made by unelected judges.

Even in Australia, where things are as democratically good as they get with a written constitution, judges have used the written constitution, decades after it was brought into being, to 'discover' that some of the words of that text mean something completely and totally different to what any of the drafters, framers or ratifiers intended or would have agreed to at the time it was adopted.

And therein lies the difficulty with written constitutions. People

New Zealand has 'parliamentary sovereignty'.
A written constitution trumps parliament.
It overrides parliamentary sovereignty.
It enervates democracy.

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

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

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

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

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

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

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

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

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

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

Now that may be a good thing if you reckon you can get a more

favourable deal out of a committee of ex-lawyer judges in Wellington than you can out of the democratic process. But for democrats like me it is an appalling prospect.

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

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

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

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

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

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

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

I think it would be a disaster for New Zealand to move to a written constitution… And I would run a mile from incorporating or entrenching the Treaty into any such instrument.

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Open Letter to the Prime Minister

Dr Muriel Newman, 24 September 2012

Dear Prime Minister,

New Zealand has reached a defining moment in race relations.

On one hand, the aggressive demands of iwi for ownership rights to water, wind, and other natural elements that are public good resources, are not only without foundation, but are now preventing you from governing according to your electoral mandate.

And on the other hand, the promoters of Maori sovereignty – which includes members of the Maori Party - are pushing ahead with their plan to replace New Zealand's constitution with one based on the Treaty of Waitangi as supreme law. As you will be aware, this move would give un-elected Judges superior powers over our elected Members of Parliament.

The approach they are using is cunning. A review of our constitutional arrangements was demanded by the Maori Party as a condition of their confidence and supply agreement with your Party – even though a recent Parliamentary Select Committee investigation had found there was no constitutional 'crisis' in New Zealand needing to be addressed. They then hand-picked the members of the review panel, in order to control the review process and ensure the final recommendations to be submitted to your Government in September of next year will include a new 'written' Treaty-based constitution.

They will then insist that the proposal to replace our present arrangements with a written constitution that enshrines the Treaty of Waitangi, be passed by Parliament, rather than being put to the public for their approval through a binding referendum – even though a binding referendum is the preferred process used by governments for implementing major constitutional change. With the Maori Party holding 'king-maker' power within our MMP Parliament, they are confident that politicians will act in their own best interests and support the passage of their Treaty-based constitution into law – even if the public are overwhelmingly opposed and the consequences for the future of New Zealand dire.

Prime Minister, since you have delegated the leadership of the constitutional review to your Deputy Prime Minister, Bill English, and the Minister of Maori Affairs, Pita Sharples, you are now reliant on others to keep you informed about these crucial matters. That is why, on behalf of those New Zealanders who are extremely concerned about this major threat to Parliamentary sovereignty and race relations, I am writing to you to draw your attention to the fact that the constitutional review process has already been captured by those who seek to entrench iwi in a position of unassailable racial, legal, cultural and economic superiority over all other New Zealanders.

Because the review has now been tainted by those with a predetermined agenda, we ask you Prime Minister, to call off the review before it causes any lasting damage to our democracy. In order to ensure this sort of opportunistic attack on the sovereignty of Parliament does not happen in the future, we further ask you to stand up for New Zealand by abolishing special treatment based on race and restoring equal rights for all citizens.

Prime Minister, as you know, New Zealand's constitutional arrangements are based on those of the UK. They can be found in many of our Acts of Parliament, in the principles of common law, and in the long-standing conventions that we use. The sovereignty of our Parliament is inherited from the common law of England. As it stands, Parliament has the power to abolish racial privilege and restore the equality of citizens for the common good.

It is the sovereignty of Parliament that the extremists - who are now in control of the constitutional review process - are seeking to change. They plan to convince the country that we *need* a new 'written' constitution that *recognises* the Treaty of Waitangi as our 'founding document'. If they succeed in introducing a written constitution into New Zealand with the 'principles of the Treaty' as a higher law, then Parliament will *no longer* be supreme. That means, if any future Parliament was to attempt to restore true racial equality in New Zealand, their laws would be struck down by judges on the basis that they were in breach of 'Treaty principles' that guaranteed special status for those of Maori descent.

In other words, Prime Minister, if you allow a Treaty based constitution to go through on your watch the consequences for the country – in terms of a deepening racial divide and increasing bitterness - will be irreversible. For all of its faults, as a democratically elected body, Parliament is our final check against tyranny. It is your duty as the Prime Minister of New Zealand, to protect and uphold Parliamentary sovereignty at all costs. That's why we are appealing to you to call off the constitutional review before any real damage is done.

The seeds of this plan to re-write our constitution were sown in 2008, when you signed the confidence and supply agreement with the Maori Party: "Both parties agree to the establishment (including its composition and terms of reference)… of a group to consider constitutional issues including Maori representation. The Maori Party will be consulted on membership and the choice of Chairperson, and will be represented on the group". You reaffirmed the arrangement in your 2011 confidence and supply agreement: "to progress the review of New Zealand's constitutional arrangements and the advisory panel established to lead public discussion on relevant issues. The advisory panel is to deliver its recommendations to the Government in September 2013."

Emeritus Professor Martin Devlin of Massey University, who has a background in research in business, management, entrepreneurship, and governance has been investigating the establishment and operation of the Constitutional Advisory Panel. You can read his full report HERE. He has concluded that the panel is biased, that the review process is flawed, and that the outcome is pre-determined: "In fact, the 'strategy' is not a strategy at all, but a carefully-crafted, pre-determined action plan with clear goals, prescribed processes and expected outcomes. This is not high-level stuff, it is an agenda for ensuring an intended outcome is realised, in this case, the enshrinement of the Treaty as supreme law."

The constitutional review is being controlled by members of the Constitutional Advisory Panel, who are political appointees, not representatives of the wider population. Professor Devlin has analysed the ethnic makeup of New Zealand's population from the 2006 census and compared it to that of panel members (shown in brackets). He found that, "New Zealand's population comprised NZ European and 'New Zealanders' 78.7 percent (Panel: 41.6 percent), Maori 14.6 percent (Panel: 41.6 percent), Asian 9.2 percent (Panel: 8.3 percent) and Pasifika 6.9 percent (Panel: 8.3%). The figures indicate that European New Zealanders are seriously under-represented on this panel and Maori over-represented. Why? The responsible ministers dodged this question by claiming that 'the Panel is representative of wider New Zealand society and is able to relate to a wide range of New Zealanders'!"

Prime Minister, the bias of the panel is deliberate. It has undermined the integrity of the whole constitutional review process. With a biased panel of political appointees with their own fixed agenda leading the review, the public can have no confidence that the review is anything more than a political jack up.

The Advisory Panel's published strategy for engaging with the public is not genuine either. A genuine consultation process would involve well advertised open public meetings held up and down the country, at convenient times to enable people from all walks of life and of all races to attend and freely discuss the issues outlined in the review's terms of reference. A proper review process would ensure that no meetings are held in secret and that all minutes of all meetings are recorded in full by the Panel and published as a matter of public record. With a massive $4 million of taxpayers' money allocated to this exercise, the least the public could expect is full accountability for the expenditure of this funding.

Instead, the panel has already signalled that it intends holding *segregated* – yes *segregated* - meetings that are *not* open to the public! Professor Devlin describes it in this way: "Next, the goals of the engagement process. These include 'hearing the views of a wide range of New Zealanders' and separately, 'hearing the views of a wide range of Maori groups and citizens'. Are not Maori also New Zealanders? Does this separate goal suggest the panel is expecting or suggesting separate and different outcomes just for Maori? It is evident that there are two different processes at work here, confirmed later in the revelation that two separate budgets are set for engaging with the two separate communities, each of $2 million. It could be concluded that Maori are set to be much better informed than the rest of the population as a consequence. It could also signal that the ground is being prepared for a special place for Maori and the Treaty in any ongoing constitutional arrangements, and that this exercise will produce some sort of evidence to justify the objective."

A set of questions has been developed by the Panel to 'guide' the discussion of constitutional issues. Again, Professor Devlin provides an analysis: "The Treaty features prominently in these 'guiding' questions so once again, the panel cannot claim that the process will be neutral and essentially self-evolving. For example, in several questions, reference is made to 'what opportunities does the Treaty offer our country'? Any balanced approach to surveying people on this issue needs to include the words 'or threats' in this question, surely? No mention at all of what problems the Treaty is already causing, such as limiting economic development, according special status and privileges to an ethnic minority, and practically negating traditional democratic processes such as the creation of non-elected Maori wards in local authorities. To ask such a leading question negates any claim the panel might make to neutrality or non-bias. This is fundamental survey methodology, which several panel members are aware of - but obviously choose to ignore."

In summary, Prime Minister, the constitutional review has been captured by political forces that are seeking to replace New Zealand's constitutional arrangements with a *new* written constitution based on the Treaty of Waitangi as supreme law. A biased constitutional advisory panel of political appointees has been appointed that is not representative of the public at large. The process they have developed uses secret meetings and a segregated approach that is designed to produce a pre-determined outcome.

The public can have no confidence in this process nor the panel, and we call on you, as Prime Minister of New Zealand to stand up for all citizens and our democracy by calling off the Maori Party's constitutional review before more of the $4 million that you have assigned to this project is wasted.

Yours sincerely,
Dr Muriel Newman
New Zealand Centre for Political Research

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Constitutional Advisory Panel

Prof Martin Devlin, 24 September 2012

In any mature society, the issue of having, abiding by or amending, a country's constitution is of national significance and importance. This facet of national life determines not only how political power will be exercised but also how it will be kept in check - matters of profound significance and therefore to be exercised with great diligence and care. A constitution is the source of ultimate or supreme law of a country, to which all other legislation is subservient. In New Zealand's case, Parliament is our supreme lawmaker, able to make and unmake all laws, and is the source of authority for anyone else it may choose to delegate a law-making power. In other countries which have constitutions, attempts to alter elements of the constitution in most cases, only occur by public referendum or by violent revolution.

The absolute power of Parliament to make or rescind law in New Zealand is not subject to any check or balance, except the three-yearly electoral cycle. In an MMP environment, where the balance of power can be held by a minority party such as the Greens or the Maori Party, one can immediately see how such "unbridled" power could be extremely dangerous - as pointed out by Geoffrey Palmer in his book "Unbridled Power". In many countries today, civil unrest or, worse, violent revolution, results from a breakdown or failure or unlawful usurpation of constitutional arrangements. And, usually, after horrendous violence, comes a negotiated peace based on a renewed set of constitutional guidelines. One need only to look at Syria, Egypt, Libya, Iran and Iraq to see what happens when the rule of law and a failure of the constitution occurs. It follows, therefore that any non-violent attempt to change a country's constitutional structure requires a very sound set of reasons and a very careful, neutral and utterly transparent process which has the support and interest of the people at large.

Why, then, is it necessary to conduct a review of New Zealand's constitutional arrangements currently being undertaken by a panel of political appointees, operating away from public scrutiny, answerable only to the "responsible ministers" (Deputy Prime Minister and Minister of Maori Affairs) and involving a cross-party reference group of other political parties (except NZ First)? Has there been a constitutional crisis requiring such a review? Is New Zealand's constitution not functioning? Is there a prospect of violent revolution which needs to be averted?

Well no, not yet we hope. The answer is a non-mandated political arrangement between the National and Maori parties, agreed to after the 2008 election as part of a confidence and supply agreement (which National did not need to enter into, to govern). No mention was made of this demand from the Maori Party in the 2011 election campaign. This private political "arrangement" has now morphed into a detailed "strategy" (actually a detailed action plan) which, in the author's opinion, is ultimately designed to ensure that the Treaty of Waitangi (the Treaty) is permanently and prominently enshrined in the New Zealand constitution. At present the Treaty has NO independent legal status in our law. But to have it put into a written constitution would not only ensure that it has formal legal status, but would also render it virtually unassailable from a legal point of view, because it would then be "supreme" law from which all other legislation flows.

Enshrining the Treaty in a New Zealand constitution would not be such a problem if it were limited to the specific PROVISIONS of the Treaty. The Treaty provided for Maori to assign sovereignty to the Queen and in return the Queen would guarantee Maori her protection, from usurpation by a foreign power and also, arguably, from the internecine horrors of the musket wars. Maori signatories were also guaranteed undisturbed retention and

control of their land, forests, fisheries and other "taonga" and Maori would enjoy equal status as British subjects. But, since 1975 with the establishment of the Waitangi Tribunal, the PROVISIONS of the Treaty have been totally and in the author's view, duplicitously supplanted by the PRINCIPLES of the Treaty. These "principles" are nowhere defined, but research by the author has revealed that there exist at least 13 or more distinct lists of "Treaty principles", ranging from two "principles" to over twenty "principles", revealed somehow (perhaps by divine revelation or superior intellectual deduction?) to various individuals, superior academics and organisations with vested interests. No two lists are the same.

New Zealanders are now required by their own government to accept that the Treaty DOES NOT MEAN WHAT IT SAYS, but what a post-1975 cabal of politicians, academics, jurists, bureaucrats and activists SAY it means. For example, Mathew Palmer, quoting the Broadcasting Assets case, where Maori laid claim to the entire radio spectrum, summarises references to Treaty principles in a range of current legislation thus "the principles which underlie the Treaty have become much more important than its precise terms". This post-1975 approach to the Treaty - that is, the incorporation of references to Treaty "principles" in various legislation, as opposed to the Treaty's terms or provisions as agreed to in 1840 - is now widely-accepted and firmly established in the political and legal systems of New Zealand and underpins a never-ending range of claims against the Crown. That is quite a turnaround. No matter, too, that New Zealand's history has, as a result, recently been completely rewritten and that the Waitangi Tribunal's version of history (described by at least one academic, Byrnes (2004) as "seriously flawed" history and severely criticised by former Tribunal member Professor Bill Oliver) is now the "official" version of events.

The political outcome from this prevarication has contributed significantly to a new political order. The commonly-understood concept of majoritarian Westminster democracy is no longer acceptable to Maori because it consigns Maori to a permanent minority status. Majoritarian democracy has been supplanted by another form of "democracy" known as "identity politics". Masquerading under the term "representative" democracy and focused solely on minority groups, this approach to democracy epitomises the MMP system New Zealanders recently re-endorsed. The Helen Clark-led Labour government made an art form of the aggregation of minorities into a political majority, successfully countering the National opposition's repeated references to "the mainstream". Identity politics now dominate our political landscape.

Since 1975, then, successive governments have followed a policy of Maori appeasement, based on a flawed re-writing of our history and a requirement by the courts to deal only with the principles of the Treaty - not its terms. Our "democratic" government is increasingly unable to govern without first acquiring permission from Maori to act! Enshrining the Treaty in a constitution simply cements that situation in place. One need only consider the current shambles over partial asset sales and Maori claims to ownership of fresh water resources in New Zealand to get the point. Add to this the furore over the foreshore and seabed claims, the claims of intellectual property rights over New Zealand flora and fauna; claims to ownership of the radio spectrum; and opposition to mineral exploration and extraction industries and one can see where this is heading. Who in their right minds would ever consider the New Zealand government as a reliable business partner, given this shambles? Do New Zealanders seriously believe that their government actually governs?

But, back to the constitution. Why has this suddenly (and ever so quietly) risen again? The answer is that is has been there all along but has never been publicly acknowledged by successive governments or the media.

In 2000, a national conference on "Building the Constitution" took place at Parliament, which the author attended in an official capacity. This conference was quickly and neatly captured by Maori interests, led by Paul Reeves and from day one became focused on the place of the Treaty in the constitution. Whereas Whatarangi Winiata, later the foundation president of the Maori Party, was promoting an equal sharing of political power between Maori and the rest of New Zealand, based on his successful attempt to achieve a similar outcome in the Anglican Church 3-tikanga model, his colleague Judge Eddie Durie thought the Treaty might receive just an "honourable mention" in a constitutional framework. Recent comments however (DomPost 12 August 2012) by Durie, now retired, but Co-chair of the Maori Council pushing the freshwater ownership case, suggest he may have changed his views.

By 2005, the intention to enshrine the Treaty in a New Zealand constitution reached a significant point with the publication of a comprehensive report by the Constitutional Arrangements Committee of the House of Representatives. Some 170 pages long, it had been commissioned by the House (National in opposition did not participate) as a "review" - that duplicitous governmental technique for diverting attention from contentious issues and restricting openness and discussion by limiting the terms of reference. It was to identify and describe New Zealand's constitutional development since 1840; key constitutional elements; sources of the constitution; what other countries have done; and significant processes to be followed in the New Zealand environment. It remains a very comprehensive treatment of constitutional issues and provides specific recommendations, but obviously nothing changed as a result. Just another review? Nothing too contentious there?

Its recommendations included a list of generic principles to be applied when discussing constitutional matters, such as fostering widespread understanding; providing accurate, neutral and accessible public information via non-partisan mechanisms; adequate time; and, surprise, surprise, specific processes to facilitate discussions within Maori communities. The ACT member (Stephen Franks) to his great credit, quite correctly dissented to the obvious glaring contradiction inherent in these recommendations that promoting different , specific processes for Maori (or any minority, for that matter) immediately breaches the principles of neutrality and non-partisan processes. In other words, special provisions for Maori only, are clearly at odds with the lofty claims of a level playing field, even though there may have been a cultural argument justifying a different approach. But then, following this reasoning, one could also justify a different approach to satisfy other cultural and minority groups as well. Identity politics again?

Of particular importance in the 2005 report is section 5 chapter 1, at page 7 - "New Zealand's constitution is not in crisis". No less a person than Cooke.J, he of the "Lands" case fame, whose personal opinions on the importance of the Treaty are quoted ad nauseam, says" given acknowledgement that checks and balances are always necessary to rule out absolute power, it would seem that by and large the present New Zealand constitutional arrangements work reasonably well" (p.8), judicial-speak for leave it alone. However, in contrast, a Maori organisation, the Treaty Tribes Coalition submitted "the greatest shortcoming of New Zealand's constitutional arrangements is their failure to fully recognise the fundamental significance of the Treaty" and "the review should consider as a key issue, HOW - not WHETHER - the guarantees enshrined in the Treaty can be given greater legal and constitutional protection".

The issues then are very clear - there is no fundamental reason why we should be reviewing the New Zealand constitution again at this time, except that the Maori party is demanding that we do so. The afore-mentioned examples of partial asset sales and claims to ownership of New Zealand's fresh water and other natural resources clearly indicate that Maori intend to take every opportunity to hold the New Zealand government (and the New

Zealand population) to ransom in pursuing their claims, justified or not. Due legal process is obviously not certain enough in its outcomes, though it has certainly been of substantial benefit so far. Enshrining the Treaty constitutionally will cement in place the ability of an ethnic minority to require the New Zealand government to acquiesce to its demands. No other ethnic minority in New Zealand has either the intent or the ability to make similar demands. Arguably, this ability probably does not exist anywhere else in the world.

The report significantly notes at section 10, p.8, "Moreover we note that the process of embarking on a discussion of possible constitutional change may itself irretrievably unsettle the status quo without any widely agreed resolution being achievable. This point was also made by a number of submitters."

Clearly, there needs to be a very good reason to embark on this journey, before opening a big can of worms. Which raises the obvious question, again, of just why are we doing this at all, at this time? It is clear that demands for constitutional reform to include the Treaty continue to emanate from the Maori minority, in the absence of any significant reason or crisis within government (except, perhaps, their political vulnerability) nor the community at large, for such reform. The provisions of the Treaty are already adequately catered for in various constitutional components, particularly within the New Zealand Human Rights Act 1993 and other legislation.

Which brings us to the present.

A Constitutional Advisory Panel was established in August 2011. The appointees were selected by the National and Maori parties. (NZ First was not yet in parliament and subsequently rejected both the panel and participating in it). Cabinet decided on the make-up and size of the panel and appointed the members. The ethnic origins of the panel of 12 members includes 5 of whom are Maori, 5 of whom are New Zealanders of European descent, 1 of whom is of Asian Chinese descent and 1 of Pacific ("Pasifika") descent. When asked whether the ethnic makeup of the panel was intended to reflect the supposed post-1975 Treaty relationship (or so called "partnership") between the Crown and Maori, ie equal numbers of Maori and New Zealanders of European descent, the responsible ministers replied, inter alia, that "We considered that the members of the panel should be well-placed to seek out and understand the perspectives of Maori on these important issues. The makeup of the panel reflects this".

So, how representative of the ethnic makeup of New Zealand's population is this? Note - figures in parentheses reflect the proportion of ethnicities represented on the panel. The 2006 census found that New Zealand's population comprised NZ European and "New Zealanders" 78.7% (Panel: 41.6%), Maori 14.6% (Panel: 41.6%), Asian 9.2% (Panel: 8.3%) and Pasifika 6.9% (Panel: 8.3%). The figures indicate that European New Zealanders are seriously under-represented on this panel and Maori over-represented. Why? The responsible ministers dodged this question by claiming that "the Panel is representative of wider New Zealand society(!) and is able to relate to a wide range of New Zealanders(!)".

When asked what particular Constitutional skills and experience these individuals might bring to the review, the responsible ministers again dodged the question by responding that the review is not an exercise in "technical reform" so panellists do not need any background in constitutional matters. Pardon me? Not a constitutional expert in sight? No Geoffrey or Mathew Palmer? No Mai Chen? For the record, the biographies of the panellists can be found at http://www.beehive.govt.nz/release/constitutional-advisory-panel-named. None appear to have any particular skills or experience in constitutional matters or in conducting large-scale public education and information projects.

When asked if the responsible ministers would be publicly releasing any findings or outcomes produced by the panel, the responsible ministers replied that the panel is independent of government and so this is not a decision for the ministers to make! You mean it is entirely up to this panel to decide if and

Next, the goals of the engagement process. These include" hearing the views of a wide range of New Zealanders" and separately, "hearing the views of a wide range of Maori groups and citizens". Are not Maori also New Zealanders?

what they deign to advise the public about? Really?

When asked why a review now, the responsible ministers responded that it followed the political arrangement between the National and Maori parties in the 2011 Confidence and Supply Agreement. At least that bit is honest.

When asked if the terms of reference may limit New Zealanders opportunity to participate in a review of the constitution, the responsible ministers replied that they were confident that the Panel's approach to an engagement strategy provides scope for broad engagement with New Zealanders.

The first document produced by the Panel has now been released - if you know where to look.

Entitled "Engagement Strategy For The Consideration of Constitutional Issues", it makes interesting reading. It commences with a list of Maori "principles" which will guide the engagement. These are translated into English as including: provision of information to people to allow them to participate; building relationships; inform and be informed by others; engage "chief to chief"(?); and inclusiveness. No mention here of strict neutrality, transparency or non-partisan processes. No mention of a level playing field and/or the equality of all citizens, nor any mention of the recommendations to Parliament of the 2005 report.

Does this separate goal suggest the panel is expecting or suggesting separate and different outcomes just for Maori? It is evident that there are two different processes at work here, confirmed later in the revelation that two separate budgets are set for engaging with the two separate communities, each of $2 million. It could be concluded that Maori are set to be much better informed than the rest of the population as a consequence. It could also signal that the ground is being prepared for a special place for Maori and the Treaty in any ongoing constitutional arrangements, and that this exercise will produce some sort of evidence to justify the objective.

Other elements of the engagement strategy include widespread use of a proposed website and social media to inform New Zealanders. But, do all New Zealanders have access to such sources?

The strategy differentiates between those who are "passionately Interested" - a group which the Panel is keen to make contact with - and people who are connected to active networks who may or may not be interested. Using the aforementioned Maori "principles", the panel will develop an iterative process where comments from various sources are summarised, interpreted and then fed back in to various fora for further discussion. The inherent danger in this process is the potential for manipulation of information, such that the end game could be designed to produce desired outcomes. Clearly we are totally reliant on the integrity, neutrality and good faith of the panellists and the non-partisanship of the processes they use throughout the engagement exercise, but we will not be made aware of any outcomes until after the event. Having signalled already that

there are to be two distinct approaches, how neutral can the panel really be and how non-partisan can the engagement processes be? Given the well-known and widely-publicised biases of several panel members, the public can have very little confidence that this will be a fair and totally neutral exercise.

Also, Maori and other ethnic minorities are rich in one area which the wider population is not - and that is in SOCIAL CAPITAL. Social Capital is the aggregated strengths of kinship, family ties, ethnic and cultural values, family employment and increasingly, state paternalism or government assistance. Social capital is considered by some researchers to be a performance inhibitor, by others an advantage over other, more individualistic, approaches to business. It could be argued that because of their already high level of social capital, Maori and other ethnic groups (Asian, Pasifika) will have a significant advantage under the Panel's proposed engagement strategy. In contrast, Western culture tends to be more individualistic with limited extended family ties so engaging with the wider community is going to be much harder. Perhaps it is the "pakeha" population which should be accorded a higher degree of resource funding, based upon their relatively low level of social capital and their much higher proportion of the general population. That seems only fair and equitable, does it not?

The panel goes on to propose a set of questions to "guide" the discussion, having previously said it will be "guided by the public" in what issues are raised. Surely this is self-contradictory? The Treaty features prominently in these "guiding" questions so once again, the panel cannot claim that the process will be neutral and essentially self-evolving. For example, in several questions, reference is made to "what opportunities does the Treaty offer our country"? Any balanced approach to surveying people on this issue needs to include the words "or threats" in this question, surely? No mention at all of what problems the Treaty is already causing, such as limiting economic development, according special status and privileges to an ethnic minority and practically negating traditional democratic processes such as the creation of non-elected Maori wards in local authorities. To ask such a leading question negates any claim the panel might make to neutrality or non-bias. This is fundamental survey methodology, which several panel members are aware of - but obviously choose to ignore.

The panel will "ensure that iwi and Maori are 'key' participants". Does this mean that others are somehow not quite so important

The "strategy" is not a strategy at all, but a carefully-crafted, pre-determined action plan with clear goals, prescribed processes and expected outcomes. This is not high-level stuff, it is an agenda for ensuring an intended outcome is realised, in this case, the enshrinement of the Treaty as supreme law.

in this process? How bloody arrogant.

The engagement "strategy" morphs quickly into a detailed action plan by the Panel's own admission. Academics(!), commentators(?), iwi, Maori and community leaders are to be engaged (hired?) to assist in framing workshops, and a mysterious group called "networkers" will initiate conversations and run "study circles". Hmmmm. One wonders who these people will be? And how are they to be identified and selected? Will these "networker" appointments be widely advertised and contestable? Will public meetings be widely publicised? Will these clandestine "study circles" and planned workshops be closed or open?

Given the biases in Treaty matters repeatedly shown by many academic historians, for example, it is highly unlikely that the process and outcomes could possibly be neutral. In fact, the "strategy" is not a strategy at all, but a carefully-crafted, pre-

determined action plan with clear goals, prescribed processes and expected outcomes. This is not high-level stuff, it is an agenda for ensuring an intended outcome is realised, in this case, the enshrinement of the Treaty as supreme law. This is Business 101!

Perhaps the most telling element which reveals and reflects the overt biases which permeate this whole exercise, is the risk management section at the end of the report. The risks include: the possibility of not hearing the views of a wide range of people; that the engagement process becomes a narrow range of perspectives; responses maybe polarised and divisive, rather than collective; the process is perceived to be not genuine, with the government or panel seen as having its own fixed agenda; and that the whole exercise is perceived as being controlled by Wellington. If one was to put together a Risk Management assessment, the panel would score ten out of ten for getting these absolutely correct. It will take some doing to convince an already sceptical public that politicians, whom they hold in especially low regard, are capable of mitigating any of these risks. The mere fact that the panel thought it necessary to identify and highlight these risks demonstrates their concerns that this exercise will be seen for what it is - a political jack-up.

Summing up, this engagement strategy appears to be a detailed, carefully contrived action plan to ensure a pre-determined outcome and one should not be surprised if the end result is a tightly- limited, formulated set of questions which New Zealanders will be asked to vote upon at an appropriate point in time. After all, the government can then, with hand on heart, say that what has been produced was the outcome of full, free and frank discussions conducted by an independent panel of experts, free from government influence and interference and representative of all New Zealanders, taking particular note of the needs of Maori and the role of the Treaty, "so all we are doing is asking you to confirm what you have already told us". Sound familiar? Yeah, right! Are we supposed to forget that this is a party-political deal in which only politicians were involved? Well, yes and no, actually. If the government wishes to ensure that the people of New Zealand are well-informed and committed to a process of changing the New Zealand constitution, this "strategy" fails on almost every count. Starting with a good reason to engage in such a process, appeasing a minority political party is not sufficient, even if it means political oblivion. At least the integrity of the government might be partially restored.

Next, revisit the range of universal principles which arose out of the 2005 report such as transparency, neutrality, non-partisan processes, etc, to guide the process. The UN Convention on Civil and Political Rights would be a good place to start. Then there is the question of equality - which Treatyists are obviously eager to pass over in their scramble for special rights for some. In any fair and equitable constitution, in a truly democratic society, it is inconceivable that some members of society should enjoy a special status or different rights than others, regardless of who arrived in New Zealand first. To do otherwise will be to condemn any constitution to the rubbish bin, treaty or no treaty. The Treaty of Waitangi is the first, and an important, milestone on New Zealand's journey towards nationhood, but was superseded by the Constitution Act of 1852 and other evolutionary, constitutional and legislative arrangements which followed. Its provisions or terms, as written and agreed to in 1840, should of course be honoured, as Judge Durie initially proposed in 2000. To now, some 172 years later, try and incorporate a series of undefined, unagreed-to, and in many cases, opportunist "principles" into a constitutional form is a recipe for disaster because there will never be agreement amongst the population as to which or whose principles should be included and which excluded. We must not make this up as we go along, with some being involved and others simply presented with a fait-accompli. The result does not bear thinking about.

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Stand up for New Zealand!

Dr Muriel Newman, 17 September 2012

The absurd Treaty of Waitangi claims being made by iwi leaders for the ownership of pubic good resources that are the foundation of life itself are driving New Zealand towards a race relations tipping point.

In spite of the general goodwill of the public towards finally settling all genuine Treaty claims, naïve and self-interested politicians have instead taken the country down the path of appeasement. Appeasement is based on making concessions, but the problem is that over time demands incrementally become more unreasonable.

Last week's Treaty settlement deal with Tuhoe is a case in point. At $170 million, it equals the largest settlements ever made to Ngai Tahu, Tainui, and for commercial fisheries. In addition, while "Cabinet policy has been that conservation land is not readily available for use in Treaty settlements, but *small* sites of high significance to iwi can be transferred", in this deal, it is the *half a million acre* Urewera National Park that will be sacrificed. Presently *owned* by all New Zealanders, once the park is *co-governed* by Tuhoe, it will lose its National Park status.

As if giving away our National Park is not enough, Tuhoe will also gain "Mana Motuhake" or *independence*. TV3 described this as a "monumental" change because it opens up the potential establishment of an independent nation state.[1] Through this deal, Tuhoe will take over the management and delivery of taxpayer funded social service in what amounts to the privatisation of government agencies in the area. While Treaty Negotiations Minister Chris Finlayson has denied this will lead to a Tuhoe "nation within a nation", this is clearly a step towards the creation of their own self-governing entity. Tama Iti may have his own private army after all!

The problem for New Zealand - as this Tuhoe case shows - is that appeasement simply encourages further claims. According to a report prepared for former Prime Minister David Lange in 1989 by Richard Hill of the Ministry of Justice - *Settlements of Major Maori Claims in the 1940s: a Preliminary Investigation* - Walter Nash's Labour Government made a full and final settlement of £100,000 to Tuhoe in 1958 for "claims relating to the Urewera".[2] One only has to browse the pages of this report to see that all of the work that went into gaining agreement from tribal leaders for their "full and final settlements" in the early part of last century, has effectively been trashed by this generation of iwi corporations who have come back to demand more. Does anyone honestly think that this will not continue on and on into the future - ad nauseam - unless the system is changed?

Already Chris Finlayson's generosity in settling claims is coming back to bite us. This new $170 million deal with Tuhoe will trigger the relativity clauses in the Tainui and Ngai Tahu settlements. That means that they will receive 17 percent and 16.1 percent respectively of the value of all settlements in excess of the $1 billion fiscal cap – calculated in 1994 dollar terms. The trigger point is estimated to be around $1.54 billion. With settlements expected to reach a total of $1.79 billion, Tianui and Ngai Tahu business leaders are anticipating a generous taxpayer-funded windfall gain.

While New Zealanders are largely indifferent or disinterested when it comes to politics and political decisions, they do not like being taken advantage of - nor ripped off. Yet that is what is happening right now with claims for water and wind. Those making these demands are not only trampling on the fundamental right of New Zealanders to live freely in their own country, but they are severely compromising the ability of our democratically elected government to govern.

We have clearly reached another crossroad in defining who we

are as New Zealanders. What sort of country do we want in the future: one governed by the iwi elite, or one where all New Zealanders - regardless of when they or their ancestors arrived - are treated equally in the eyes of the law and have equal rights and access over all of our public good resources?

This week's NZCPR Guest Commentator David Round, a constitutional law and Treaty expert at Canterbury University, expresses a deep frustration at the dire state of race relations. He looks at iwi claims for water and wind, and in his forthright manner condemns the actions of the politicians who have brought New Zealand to this point:

"The claim is just for a commercial use of wind, but if it should be the case that Maori do have some right to the air then that right would not, in principle, be just to commercial use of the air, but to all uses. And we all use the air, to stay alive. Maori now are claiming then, that they have a right to the very air which we breathe and which sustains life itself. That being so, we would be under an obligation to pay them a rental just for the right to remain alive. Put like that, the claim sounds absurd; but it is really no more than the logical continuation of the pathetic backside-licking by which our craven political class ~ Labour, National, the whole pack of useless cowardly swine, our smiling members of parliament, lovely people every last one of them, always ready with a smile and a kind word ~ has sold us down the river for a generation. Down with them all."

The problem is, of course, that under MMP, the appeasement of radical groups and the gaining of the Treasury benches have become entwined. Both National and Labour embrace the political arm of the Maori sovereignty movement - the Maori Party - knowing that they may have the few critical votes that keep or put them into power. But the effect of this political convenience is that we New Zealanders can no longer sit on the fence and expect our politicians to do the right thing – under MMP, politics no longer works like that.

We also need to properly hold politicians to account for the election promises that they make. It is not good enough that they can promise to abolish the Maori seats, for example, during an election campaign – maybe even gaining office because of it - then shrug their shoulders and do a deal with a coalition partner that postpones such a policy for the duration of their period as government … which is the only time when they are actually in a position to change the law!

David Round is intensely critical of the unprincipled actions of politicians and explains that for the sake of the future, it is time for New Zealanders to step up:

"You may think these words excessively harsh. I'm sorry, but they are not. If you think they are excessively harsh ~ and if you do not tell your MPs, of all parties, in fact ~ what you think of their stupidity, dishonesty and racism, then you ~ yes, you, my friend ~ are part of the problem. We get the government we deserve. I could practically guarantee that if every one of you, reading this column, and agreeing with me, were to phone your MP regularly, and tell him or her precisely what you thought, we would make a difference. We read these columns, we moan to each other, but we don't moan to the people who matter. It is very nice of you to e-mail me, or telephone me, as some of you do ~ and I do appreciate it! ~ but do not do it any more. Telephone your Members of Parliament. Make appointments to see them. (Don't bother joining their parties and 'radicalising from within'; ordinary rank and file members of all political parties are just unpaid fundraisers and cheerleaders, whose views receive very little respect.) Tell them exactly what you think of them and their policies. Don't just do this once. Make their lives a misery. That is what they are doing to ours, after all. They are running our country into the ground. And, after all, Maori are making their lives a misery. That is actually why Maori are succeeding, because they are actually out there complaining, while we just sit at home and get angry in private. So ~ get up, and do something. Don't be daunted; don't put up with you MP's

condescension and racism. STOP BEING NICE. We are at war. At present ~ long may it continue ~ words are our weapons. For heaven's sake, use them. Muriel & I and the handful of other people who write and do things cannot do it all by ourselves. If you ~ yes, you ~ do not act, then you have only yourself to blame for the consequences." To read David's full article, click HERE

Democracy is a long way from being perfect - but it is a system that allows the public will to prevail peacefully. It only works, however, when people find their voice.

The time has come for New Zealanders to speak out against the motives of a powerful minority that has influence across government and the country's major institutions. We need our politicians to find the spine to stand up to aggressive minorities. Through the force of our collective public voice, we need to persuade them to be the inspirational leaders each may have imagined they could be. We want our politicians to represent our views and aspirations, speaking up for ordinary New Zealanders - the silent majority who voted them into office.

People power is a force that politicians cannot ignore. It just takes one voice – your voice - but when combined with the voices of your family and friends, your neighbours and concerned fellow citizens, it becomes an unstoppable force for change.

As a country, we are now at the point where we can either move forward together as one nation, or become even more deeply divided as two. It's not about ignoring or disrespecting the rights of Maori – it's about recognising what's best for the future of all New Zealanders. It's a choice – two nations divided, or one nation that is strong.

Through the government's Constitutional Review, we are being given the opportunity over the next twelve months to decide on the sort of a future we want. We already know what the Maori Party have planned - they want *Maori law* to be sovereign. If you aspire to a future of equality with all citizens pulling together for New Zealand, then you must act.

Tell your MPs what you think and what you want them to do. Tell them often and hold them to account. They are your MPs and they are required to represent your views in Parliament. We need to remind them that's what a Parliamentary democracy is. The contact details of all MPs can be found in a convenient format on our website HERE

Encourage people to sign the **DECLARATION OF EQUALITY** – one law for all New Zealanders with no special treatment based on race. Help us create a movement for change. By the end of the week more than 20,000 will have signed the Declaration. With twelve months to go before the government begins considering the options for constitutional reform, why not help us reach out to half a million New Zealanders - half a million New Zealanders committed to equality is a force to be reckoned with! Sign HERE

We have now started a fighting fund for a nation-wide public information campaign. The government has given the Maori Party $4 million to spend on convincing New Zealanders that a Treaty based constitution is in the best interests of the country. We need to counter that - to let people know the dangers that lie in a Treaty based constitution, and to remind the country that a future where all citizens are equal is far brighter than one mired in racial division. To donate to the fighting fund, please click HERE

FOONOTES:
1.TV3, Tuhoe deal "monumental"
2.Richard Hill, Settlements of Major Maori Claims in the 1940s

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We get the government we deserve

David Round, 17 September 2012

As well as the better-known physical earthquakes, Canterbury received another sort of shake-up in 2010, when Parliament made the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010. ('Environment Canterbury' is the name under which the Canterbury Regional Council publicly operates. How I loathe these public relations names! The very name 'Canterbury Regional Council' gives us a fair idea of its status and scope. But 'Environment Canterbury' could be anything ~ a drain-cleaning company, or one for sewage collection or plantation forestry or selling heat pumps or…*anything*. The National Roads Board ~ we all knew at once what that did. But 'Transit New Zealand' might easily be a private trucking or bus or haulage or rail company. 'New Zealand On Air'….But I digress.) It was under this 2010 Act, anyway, that the government dismissed the elected councillors of the Canterbury Regional Council and replaced them with temporary commissioners. The government has just announced an extension to the term of office of those appointed commissioners; elections will not be held for Regional Councillors until 2016 at the earliest.

A good case can be made out that the real reason the elected councillors were dismissed was not that the Council was 'dysfunctional', as alleged, but that its approach to water issues, in particular, was not pleasing to the government and some of its influential supporters. Certainly the Act does a great deal more than just allow for the dismissal of councillors ~ indeed, councillors could be dismissed under other legislation, it was not necessary to make a new Act just to do *that*. A great deal of the Act deals with water and makes specific rules for Canterbury which are different from those prevailing everywhere else in the country. I will concede that the new more co-operative approach to water allocation does seem to be something of an improvement, and I certainly understand that Environment Canterbury staff find their relationships with the commissioners generally better than past relationships with elected councillors. But at the same time water conservation orders, for example ~ and their revocation! ~ are to be dealt with under rules much less sympathetic to conservation than is the ordinary law.

Now we must admit that for most of us, living in cities and not involved in irrigation or various other outdoor activities, regional councils do not usually impinge all that much upon our day to day lives. In Christchurch's case, also, the earthquakes have tended to demand most of our attention, and cause all other matters to be put to one side. All the same, regional councils can affect our lives in many ways, and it has to be a matter of concern when a government decrees that for some years henceforth ~ and who knows how long it will end up being? ~ democracy in any part of our structure of government is no longer in operation, and government nominees will run a public body with extensive public powers. There has been some comment in the *Press* on the just-announced further postponement of elections, but not a great deal; and that is worrying. How much do we value democracy? I am sorry to say that I sometimes wonder if many of our countrymen value it much at all. They might well consider that a warm bed and food on the table are much more pressing concerns; although in the long run, and even in the short-term, decisions made by governments can have very far-reaching effects on our own domestic lives.

Sometimes institutions are overthrown by force. At other times, though, they just fade away because no-one, or not enough people anyway, seem to care. Democratic rights can go that way. It has often been observed that at various times in history the popular right to attend assemblies has been regarded not as a precious right to be carefully guarded, but as a burdensome duty which men would very often avoid if they could. Every New Zealand election, now, a significant and increasing number of

voters cannot be bothered, just once every three years, getting off their lazy backsides to travel (in most cases) five minutes at the most, in order to exercise a right which our ancestors dreamt of and struggled for for centuries. I despair, sometimes, of the apathy of our countrymen. Part of the reason may be the loss of our sense of community, as we become much more isolated individuals, all in our own homes being fed the same diet of thought-suppressing television entertainment, sitting in front of computers; driving to work in our own motorcars; part of the reason also is that, as we say of a child who refuses to eat the good food put in front of it, we are 'too well fed'; our lives are still so comfortable (and discontents are so easily numbed by the mindless distractions of television, the pathetic religion of professional sport, and the rest) that we are just too comfortable to care. But whatever the reason, our apathy is worrying. People, it is said, get the governments they deserve. The appalling dictatorships of less fortunate countries are not just accidents; they inevitably have their foundations in the character of those societies ~ in their bitter divisions, selfishness and shortsightedness and lack of self-control, and in traditions of absolute rule. In Russia or Nazi Germany, Mali or the Middle East, the appalling governments we behold are, in a very rough and ready way, the natural expression of the peoples they rule. Well, the rule is true of us also; and as we ourselves change, so our system of government changes also. As we soften, so we will be more put upon.

The liberal democratic regime which we take for granted is a plant of very slow growth. It is also a plant that, like all others, must be tended, and which without tending may wither and die. This, perhaps, is another reason for our apathy; we assume that, having attained a pretty high standard of good government, we can leave it to carry on without further attention. But no ~ the rule applies to us as much as to anyone else that 'the price of liberty is eternal vigilance'. Just as much as does the United States of America, we believe in our own 'exceptionalism'. We assume that we are somehow exempt from the laws of history; that nothing can ever go wrong here; that our own 'innocence' (and that too is a myth; we are human beings like everyone else ~ even Maori ~ and not exempt from the usual human flaws) will always protect us. So we venture carelessly on, following any casual impulse or fad. We justify our attitude by saying that we are 'the social laboratory of the world'. We forget that not all laboratory experiments succeed. The failures and disasters, of course, are equally instructive.

We get the governments we deserve. Our political class is unimpressive. On Treaty matters they are all either spineless appeasers (National, Labour, United Future, Greens) insincere opportunists (New Zealand First) or greedy bullies (Maori, Mana). As for John Banks…well, dear me. But on no other matters are they any or much better. Our prosperity and our economic prospects have been going down the gurgler since the 1970s, and no party has any idea what to do about it. National, Labour, Greens ~ do you ~ do they themselves ~ seriously believe for a second that they have any answer? They are unimpressive; and yet, they do no more than represent an increasingly unimpressive and hopeless people.

Do I have the answer? Well, it would be a strange thing if I did where no-one else has any idea, but I suggest that the answer has to arise out of our own character and attitudes as a nation. Our crisis is one of character. We are in the situation we are in because of the sort of people we are. Any solution must spring out of our own energy and faith in ourselves, out of a shared understanding of the world and of our hopes for the future, and out of a sense of brotherhood and sisterhood which impels us to care for each other but which also impels those who are cared for to desire that they pull their weight in striving for the common good. 'Without vision the people perish.' Most of all, we must have faith in ourselves. We must not believe that the world owes us a living, and that a saviour lurks somewhere ready to help us, be that saviour an over-mighty state, an ideology of capitalism or communism, or rescue from overseas, be it by

overseas 'investment and asset sales or just continued immigration. We must rely on ourselves, and we must stop snarling at each other, and get up and do something. This is more easily said than done, of course. I remember an observation that 'the trouble with saying 'you've just got to snap out of it' is that the sort of people you say it to are the sort of people who can't'! But there is no other way.

The Treaty and race debates which have been tearing this country apart for a generation, which have been promoted by the dimwits in the bureaucracy and intelligentsia, and the hapless mainstream churches desperate to prove their own relevance, and which politicians have been too stupid or unprincipled to resist ~ these debates have not only promoted immensely harmful divisions but have been among the greatest of diversions from this great task. Indeed, the official philosophy, not just of racial agitators but of the bureaucratic class itself, seems to involve the assumption that accepting radical Maori claims will not only automatically be for the benefit of the country but that it will actually solve our problems, and set us on a sure path to brotherhood and prosperity. Really, they should review their medication.

As you will know by now, a Nga Puhi sub-tribe is now making a Waitangi Tribunal claim for Maori to earn a dividend for the use of wind for commercial electricity generation.' The reasoning behind this, according to the news reports, is merely that the wind, like water, is a 'resource' and therefore Maori must have a 'dividend'; there is, so far, not even lip-service paid to the sham of Treaty 'principles', although doubtless the claim will be officially adorned in that dress when officially presented to the Tribunal. Bear in mind, of course, that all windfarms are erected with the full consent of landowners ~ the situation is not one where landowners have windfarms imposed on them without compensation, but one where windfarms have been built on private land with the full consent of those private landowners, to whom rent is paid. A Maori columnist in the Christchurch *Press* suggests that the wind claim may not actually be serious, and that it is unlikely that it will be taken seriously by the Tribunal. Possibly so; and in fairness we must certainly agree that the Tribunal has only received the claim, not heard it and found in its favour. But I would not stake my entire fortune on the Tribunal's rejection of the claim. The Tribunal, after all, based its 'finding' that Maori were entitled to radio waves, part of the electromagnetic spectrum, on the fact that Maori navigated by the light of the stars, which were also part of the spectrum! You navigate by the light of the stars, therefore you are entitled to radio waves. I do not see that it is any more absurd to argue that you sailed by the power of the wind, therefore you are entitled to a share in windfarms.

The Treaty and race debates have been tearing this country apart for a generation. Indeed, the official philosophy of the bureaucratic class itself, seems to involve the assumption that accepting radical Maori claims will not only automatically be for the benefit of the country but that it will actually solve our problems, and set us on a sure path to brotherhood and prosperity. Really, they should review their medication.

In any case, there is a certain appropriateness about the claim for the wind. The claim is just for a commercial use of wind, but if it should be the case that Maori do have some right to the air then that right would not, in principle, be just to commercial use of the air, but to all uses. And we all use the air, to stay alive. Maori now are claiming then, that they have a right to the very air which we breathe and which sustains life itself. That being so, we would be under an obligation to pay them a rental just for the right to remain alive. Put like that, the claim sounds absurd; but it is really no more than the logical continuation of the pathetic arse-licking by which our craven political class ~ Labour,

National, the whole pack of useless cowardly swine, our smiling members of parliament, lovely people every last one of them, always ready with a smile and a kind word ~ has sold us down the river for a generation. Down with them all.

Yes, they may be nice people, most of them, superficially at any rate. You have to be to succeed as a politician. But we do not put them there to be nice, we put them there to fulfil their promises and act on our wishes. And do they do that? No. And why would they change their ways unless we make it quite clear that we

Put like that, the claim sounds absurd; but it is really no more than the logical continuation of the pathetic arse-licking by which our craven political class ~ Labour, National, the whole pack of useless cowardly swine, our smiling members of parliament, lovely people every last one of them, always ready with a smile and a kind word ~ has sold us down the river for a generation.

have had enough of their lies and treachery? Until just a little while ago, water ownership was not an issue in New Zealand; and the law was clear (as it still is) that water is owned by the Crown. But the lovely people in the National Party have with singular ineptitude managed to engineer another enormous division, a completely new source of bitterness in our increasingly divided society. It is deeply ironic that John Key is now being praised for standing up to Maori, because it was John Key who created this whole fiasco in the first place. National's stupidity has ended up by uniting Maori ~ a rare thing indeed, and a dangerous one ~ and by convincing Maori that they own water. That is what the Maori king has just said at his recent national hui ~ and so from now on attempts to assert public ownership of water for the common good will be interpreted by increasing numbers of Maori as the theft of something that is already theirs. Who is to blame for this? Every single National Party M.P. These are the same MPs who, believe it or not, campaigned at the last election on a promise to end racial separatism. Well, either they are liars or they are fools, because it is not happening.

You may think these words excessively harsh. I'm sorry, but they are not. If you think they are excessively harsh ~ and if you do not tell your MPs, of all parties, in fact ~ what you think of their stupidity, dishonesty and racism, then you ~ yes, you, my friend ~ are part of the problem. We get the government we deserve. I could practically guarantee that if every one of you, reading this column, and agreeing with me, were to phone your MP regularly, and tell him or her precisely what you thought, we would make a difference. We read these columns, we moan to each other, but we don't moan to the people who matter. It is very nice of you to e-mail me, or telephone me, as some of you do ~ and I do appreciate it! ~ but do not do it any more. Telephone your Members of Parliament. Make appointments to see them. (Don't bother joining their parties and 'radicalising from within'; ordinary rank and file members of all political parties are just unpaid fundraisers and cheerleaders, whose views receive very little respect.) Tell them exactly what you think of them and their policies. Don't just do this once. Make their lives a misery. That is what they are doing to ours, after all. They are running our country into the ground. And, after all, Maori are making their lives a misery. That is actually why Maori are succeeding, because they are actually out there complaining, while we just sit at home and get angry in private. So ~ get up, and do something. Don't be daunted; don't put up with you M.P.'s condescension and racism. STOP BEING NICE. We are at war. At present ~ long may it continue ~ words are our weapons. For heaven's sake, use them. Muriel & I and the handful of other people who write and do things cannot do it all by ourselves. If you ~ yes, you ~ do not act, then you have only yourself to blame for the consequences. *Back to Table of Contents…*

Time to challenge claims and claimants

Dr Muriel Newman, 9 September 2012

Last week it was water. This week it is wind. Having successfully taken ownership of the foreshore and seabed from the Crown - and with the embedding of the Treaty of Waitangi into a new New Zealand constitution well under way - Maori leaders are casting around for new public resources to claim as their own.

In his press release, the champion of the new opportunistic claim for wind, Ngapuhi leader David Rankin, says their plan is to establish a pan-tribal body that has the authority to manage shares in commercial wind-generators and make decisions on where wind turbines can be located. He argues that the entitlement Maori have to the wind is justified under article two of the Treaty of Waitangi. He says, "Traditionally, the wind was regarded as a deity in Maori society, and Maori do not consider the Crown have the right to use it without Maori consent." He acknowledges that this claim has come about because of the Tribunal's finding in favour of iwi ownership of water, and he believes that "the claim to wind will lead on to other areas of property rights such as aerospace".

Aerospace!

At the heart of these demands by tribal leaders for public resources and political power is their re-interpretation of the Treaty of Waitangi.

To set the record straight, in 1922 the great Maori leader Sir Apirana Ngata explained the meaning of the Maori version of the Treaty of Waitangi in a booklet published by the Department of Maori Affairs that was used extensively to educate people about the true meaning of the Treaty. In *The Treaty of Waitangi*, he explained that at the time when the Treaty was signed, there was widespread lawlessness - "cannibal times" and "illiterate days" when "Maori tribes were fighting fiercely among themselves" - and that the Queen "was desirous to establish a Government with a view to avert the evil consequences to the Maori people and to the Europeans living under no laws".

He then went on to explain that under Article One of the Treaty, Maori Chiefs "do absolutely cede to the Queen of England forever the Government of their lands", under Article Two, "the Queen of England confirms and guarantees to the Chiefs and Tribes and to all the people of New Zealand *the full possession of their lands, their homes and all their possessions*", and under Article Three, "Maori and Pakeha are equal before the Law, that is, they are to share the rights and privileges of British subjects".

In other words, it was the common understanding that the Treaty was an agreement that established the Queen as our sovereign so we could all live as British subjects, it established private property rights and guaranteed that they would be protected, and it ensured equality under the law for all citizens. Nothing more, nothing less. There were no special rights and no special partnerships.

However, not content with what the Treaty actually said, tribal leaders over recent years have re-interpreted it. They have claimed it gave them additional rights, elevating their status to that of an elite group in a special partnership arrangement with the Crown. They have further maintained that Article 2 of the Treaty guaranteed them the undisturbed possession of their *taonga*, which they have re-defined to cover *anything* that they want to claim as a treasure - whether it is property, language, or public resources such as water and wind.

While the Maori version of Article 2 of the Treaty of Waitangi uses the term *taonga,* the English version translated it to mean *lands and estates, forests, fisheries and other properties*. In

other words, in 1840 *taonga* meant no more than *property* or *possessions* - as explained by Sir Apirana Ngata in his booklet. It has no other meaning - in spite of the claims by modern-day opportunists who seek to re-interpret it so they can acquire public property for their own personal and private gain.

With the Waitangi Tribunal as their cheerleader, activist judges assisting their path through the courts, and naive politicians, the Maori sovereignty movement has had considerable success in persuading politicians, public officials, academia, and the media that not only do they have a right to rule, but that they also deserve economic rewards for the public's use of *their taonga* - compensation, royalties, shares, seats on boards, a say in management decisions, and so on.

Today New Zealand is at another crossroad on the pathway of race relations. The public can either choose to remain silent and acquiesce to these increasingly outrageous demands for racial privileges or they can stand up publicly and say enough is enough.

If you want to take a stand and haven't yet signed the **DECALARATION OF EQUALITY**, you can do so HERE. If you want to support a nation-wide public information campaign to build opposition to this madness, you can do so HERE. And if you want to let our Members of Parliament know how you feel, you can do so HERE.

What is surprising about these new claims for public resources is that they are based on an historic right being claimed under Article 2 of the Treaty, and as such appear to breach the 2006 law change that *prohibits* any new historic Treaty of Waitangi claim being lodged after the 1st of September 2008. This is in contrast with the dozens of historic claims that are presently being progressed through the Treaty settlement process, all of which were all lodged well before the cut-off date.

Subsection (1) of Section 6AA of the Treaty of Waitangi Act 1975 states: *"after 1 September 2008 no Maori may submit a claim to the Tribunal that is, or includes, a historical Treaty claim".*

And Subsection (4) states: *"To avoid doubt, if a claim is submitted to the Tribunal contrary to subsection (1), it must be treated for all purposes as not having been submitted."*

But it is not only the veracity of these claims to public resources that is being questioned. In this week's NZCPR Guest Commentary, *An Argument against Iwi Claims to Constitutional Recognition and Public Resources*, Associate Professor Elizabeth Rata of Auckland University, challenges the underlying arguments being used by iwi to support their lofty economic and political ambitions.

She firstly contends that modern day iwi are not traditional tribal groups that should have access to historic inheritance rights, but instead are private economic corporations that are entitled to no such rights: "This means that contemporary iwi have the same rights and responsibilities as other groups in society; neither more nor less."

She questions why it is that successive governments have given political power to private business corporations – in breach of the normal separation that usually exists within a society between politics and business: "The development of iwi corporations, like any other business, is to be welcomed for the contribution to New Zealand's economy. But to give political power to a business is to subvert one of the basic conditions of democracy – the separation of the political and economic spheres where the economic is placed under the control of the political. The rapidly growing practice by successive governments of giving public resources to private corporations is both bizarre and bewildering. That it has happened is testament to the political skill of iwi and to the failure of New Zealanders to say no."

In her commentary, Dr Rata covers many of the clever strategies have been employed by leaders of the Maori sovereignty movement to influence public opinion - none more so than the use of phraseology and legalese that are not well understood: "A strategy that has proved invaluable for iwi success is the hugely effective use of legal language and procedures. This has served to embed the idea that iwi ambitions are true and just. It makes good use of New Zealanders' right and proper respect for the law. However that respect has a less healthy side. It can produce an uncritical acceptance of ideas that use the weight of legalese." To read this remarkable article, click HERE.

The Maori sovereignty movement is riding high because their political arm - the Maori Party - has secured a strong leverage position within the National Coalition Government. With former iwi claims negotiator Chris Finlayson, the Minister of Treaty Settlements, as a champion for their cause, the sovereignty movement not only has the ear of government but a mouth piece as well.

Just last weekend, Mr Finlayson signed a settlement with 13 tribal groups over the co-governance of 14 volcanic cones in the Auckland region and four islands in the Hauraki Gulf. Not satisfied, the Tamaki Collective has already signalled that they want more – now they want control of the massive Manukau and Waitemata harbours as well.

The Waikato River Authority, set up in 2010 in a co-governance arrangement with Tainui over the Waikato River, was heralded as a model for the future. While the $300 million deal was meant to signal the end of Tainui's claims, the co-chair of the Waikato River Authority, Tuku Morgan, is now arguing that they should be given the right to *allocate* water - instead of local councils. Of course the right to allocate the water of the Waikato River would come with the right to collect fees – but next will come a claim for the *ownership* of the water … just you wait and see.

While Chris Finlayson has championed co-governance arrangements as a triumph of Treaty negotiations, there is a fundamental flaw in such arrangements. By giving private business corporations co-governance rights alongside government representatives - whether it's over the management of rivers and parks, resource consent applications under the Resource Management Act, or seats on statutory boards – business representatives put the self interest of their corporations first and the public good second. This has lead to a massive conflict of interest and the development of a growing culture of corruption.

It's time for all of this to end. John Key must understand that it has all gone too far. It is dividing our society and impeding our progress as a nation. It is time he stepped up to put the past behind us so we can all move on together. Does he have the backbone to do so?

I will leave the last word to Dr Elizabeth Rata: "Iwi have been extremely effective in obtaining considerable public resources and political recognition. Like all successful groups, they want more. But their success will come at a huge cost to New Zealand, not least to our democratic system and liberal way of life. It is time for New Zealanders to interrogate the assumptions under which the iwi case is built and then decide whether the iwi case really does stand up to scrutiny. If it does not, as I argue, then there should be an end to claims for public resources and an end to political recognition and institutional inclusion."

This week's poll asks: Do you believe the growing trend to give iwi co-governance rights over public resources such as rivers, mountains, parks and reserves is in the best interest of the country?

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An argument against iwi claims to constitutional recognition

Dr Elizabeth Rata, 9 September 2012

In recent years iwi have been extremely successful in pursuing their demands for public resources and political power. The intriguing question is how to explain such total success given that many New Zealanders, both Maori and non-Maori, are increasingly concerned about the run-away juggernaut of iwi ambitions.

Iwi success is based on the unquestioned belief that there is a direct continuity between the traditional tribe and contemporary iwi. This alleged continuity is used to justify iwi claims for the inheritance of resources and for various levels of governance. The Treaty is promoted as the document of inheritance and the claims are also supported by references to Common Law. But is it the case that today's iwi corporations are the same entities as the tribes of the past and therefore entitled to inherit the past?

Just because iwi claim that they are the revived traditional tribe in modern form does not make it so. It is a belief that should be challenged and there are two sound reasons for such a challenge. Each reason is sufficient on its own to dispute iwi claims for public resources and for a stake in governance.

The first reason concerns the fundamental difference between traditional and modern societies. All traditional societies are based on kinship social relations and on one's birth status in the kin-group. You were born into the group and that defined your identity and how you lived your life. In contrast, modern societies are based on the 'social contract'. Social groups, even those with long traditions like religions, are associations of individuals. Their members are free to join, to leave, and to decide how strongly they wish to identify with the group.

The shift from status to contract is at the heart of the great tradition-modern divide. It is a shift that has changed all social groups fundamentally and this includes iwi in New Zealand today. The change is to do with the relationship between the individual and society. While traditional groupings are non-divisible, present-day iwi, like all modern groups, are associations of individuals. This means that contemporary iwi have the same rights and responsibilities as other groups in society; neither more nor less.

The second reason to challenge iwi claims to inherit the past is a different one but equally important. It concerns the relationship between the political and economic dimensions of our society. Traditional societies do not have a separation between the political and economic spheres. Modern democratic societies like New Zealand's do. This is to ensure that all individuals, according to their status as citizens and regardless of their unequal economic position, have an equal say in politics. Contemporary iwi are private economic corporations claiming public political status. An economic corporation claiming political rights eats at the heart of the political – economic separation that is essential for democracy.

How have iwi persuaded so many that there is a continuity between the traditional tribe and the modern iwi corporation? How have they persuaded us that, on the basis of this alleged continuity, they should inherit from the past? The answer is that there does appear to be a continuity. All of us living today are descended from traditional people and we maintain a number of values, beliefs and practices that come from the past. But that is a superficial continuity. The fundamental difference is a structural one. Modern society is based on the individual as the bearer of political rights and on the separation of the political sphere from the economic sphere.

The skill of the iwi case lies in the use of two extremely

successful strategies. One is the creation of a new interpretation of the Treaty of Waitangi as New Zealand's founding document and as a 'partnership' between the government and iwi. The second is the appeal to Common Law. I will deal with the Treaty interpretation strategy first.

The re-interpretation of the Treaty of Waitangi as a 'partnership' between two political entities dates from a Court of Appeal decision in the late 1980s stating that the Treaty established a relationship 'akin to a partnership'. It is now accepted as true by many people. But the partnership idea is neither true nor logical. I have referred in other writing to David Round's comment about Treaty partnership and will repeat it here because it captures brilliantly the illogic of the idea. 'If there were to be a partnership of Maori and the Crown, then by definition Maori could not be subjects of the Crown. One cannot be a partner and a subject at the same time (Round, 2011).

Similarly the idea that the Treaty is New Zealand's founding document is at best premature. A nation's founding document is of great symbolic importance to New Zealand. Like the campaign for a new national flag it requires widespread and ongoing discussion, possibly over several generations. Whether a single document is selected for this symbolic honour or whether a number of historical documents and events are regarded as significant and given a special status is in itself an historic task. It is one made difficult by the removal of specific history topics from the national curriculum. In order to decide what is historically significant, one must know New Zealand's history and what choices are possible. Currently, individual teachers and schools are now able to decide which history topics are of significance. This can lead to selections based on teacher preference, student interest, or some other arbitrary reason.

A national discussion about what is significant and the criteria for deciding significance is needed. It should be led by historians of New Zealand's past, who may or may not be based in this country and fully engage politicians, the media, and the people. To put the Treaty forward as the founding document without this discussion is to pre-empt the outcome. However, the iwi focus on the Treaty is not actually about its symbolic value to the nation. Iwi use the Treaty as a document of inheritance for their own strategic reasons. It symbolises the idea of a continuity to the traditional tribe despite the fact that there can be no real continuity between the traditional world and the modern world for the reasons I outline above.

The new interpretation of the Treaty is also supported by the iwi focus on Article Two. It has led to the second article about resource possession driving the meaning of the first and third articles. The effect of the isolated method of interpretation is to lose the integrated meaning of the articles. The concepts of sovereignty in Article One, of resource possession in Article Two, and citizenship in Article Three, tend not to be considered in totality, that is, with the meaning of one Article being dependent upon the meaning of the others. This has enabled Article Two to achieve an undeserved dominance.

The second strategy that has proved invaluable for iwi success is the hugely effective use of legal language and procedures. This has served to embed the idea that iwi ambitions are true and just. It makes good use of New Zealanders' right and proper respect for the law. However that respect has a less healthy side. It can produce a uncritical acceptance of ideas that use the weight of legalese. Some words have gained an unearned respect and their use can stop people identifying and criticising the political interests that are promoted in legal arguments using those words. 'Common Law', 'Customary Law', and 'English Common Law' are regularly used by iwi for this reason. It pulls the wool over our eyes.

However iwi are in a long tradition of elites using this legal

antiquity strategy for their political ends. In the 18th Century Edmund Burke referred to the 'powerful prepossession towards antiquity, [in] the minds of all our lawyers and legislators and all of the people whom they wish to influence'. (Burke, cited in Hampsher-Monk, 1992, p.267).

'The English Common law argument - used politically since the early seventeenth century – states that since precedent has always prevailed in English legal practice, our law, including our constitutional law, must be immemorial, or at least derived from ever more ancient models.' It is 'not the fact that the English constitution, as it now stands, actually is as old as is claimed, that is the point; it may not even be true. The important point is the propensity of the English to claim their rights by appealing – rightly or wrongly – to past practice. We justify our rights not on abstract principles "as the rights of men", but as the rights of Englishmen, and as a patrimony derived from their forefathers. Justification through appeals to antiquity – whether historically tenable or not – are part of English political culture.' (Hampsher-Monk, 1992, p. 266).

We New Zealanders do the same. The following quotation from Eddie Durie provides an excellent example of this appeal to antiquity to justify present-day political interests. (The quotation also shows his advocacy for judicial activism and a corresponding disdain for Parliament's supremacy.) In encouraging 'judge-made constitutional development', Durie argues that 'the concepts of domestic dependent nations, aboriginal autonomy, aboriginal rights and treaty partnership are all from the bench over a period of about 170 years. They turn in effect to principles tracing back to the 15th century' (E. Durie, 2005).

Indeed, Edmund Burke's reference to the continuity and inheritance strategies of the English could equally apply to the iwi elite, their lawyers, and the politicised judges who support iwi ambitions.

But in New Zealand, Parliament is supreme and precedents from law, distinguished as they may be by their claims to antiquity, are not grounds for political decisions that New Zealanders do not want. Be wary of elevating legal arguments to an almost mythological status that may serve to hide political intent. To do so puts the law beyond criticism. The law may serve contemporary New Zealand society or it may not. That is for the people, through Parliament to decide. Judges may tell us what the law is. Parliament will tell us whether we want it.

If you are not convinced by my cautionary note regarding iwi use of legal antiquity to support their economic and political ambitions, you may be interested in another argument that also casts doubt on the iwi strategy. This argument accepts Common Law as a given but disputes to whom it applies.

According to the nineteenth century legal historian, F W. Maitland, the foundational group or tribe or clan is not, and has never been, part of the English constitution, even in Anglo-Saxon times. Maitland found that individualism, not foundational grouping, was the distinguishing characteristic of Anglo-Saxon legal, economic, and political relations. This means that English Common Law did not apply to foundational groups.

'Maitland had shown that not all civilisations had started in a world where individuals were embedded within the community, where contract was entirely subordinate to status, and where hierarchy and patriarchy were universal.' (Macfarlane, 2002, p. 83). Individuals and associations of individuals were recognised in various forms of contract at the beginning of the development of English common law. It is the individual (in these various forms of contractual trusts and associations), not the indivisible kin-group, which is the basis of that law. If Maitland is right, then iwi insistence of continuity to the traditional tribe may not be such a good idea after all.

Iwi wish the new post-1970s' interpretation of the Treaty of Waitangi to be included in a new New Zealand Constitution. This interpretation is promoted as the true' one, a view that uses constant references to the law to support that impression. But that new interpretation, like the original Treaty, is the result of political forces at a particular historical moment and needs to be understood not as the truth but as a political strategy serving the interests of those promoting it. This is quite a reasonable cause of action. Democracy is after all a system for groups to promote their diverse and conflicting interests without war breaking out. However, democracy also requires constant vigilance over such promotion. We need to constantly check who is asking for what and why. We also need to make the judgement - should they have it?

It is time for New Zealanders to interrogate the assumptions under which the iwi case is built and then decide whether the iwi case really does stand up to scrutiny

Iwi claims for public resources and constitutional recognition have not received the criticism they deserve. Contributing to this has been the strategy of cloaking those claims in legal justification. But whatever the law might say about the meaning of the Treaty, the final decision about its place in our society is a political one. Its usefulness to New Zealand must therefore be decided in the political sphere, not in courts by judges and lawyers, but by us, the people.

The development of iwi corporations, like any other business, is to be welcomed for the contribution to New Zealand's economy. But to give political power to a business is to subvert one of the basic conditions of democracy – the separation of the political and economic spheres where the economic is placed under the control of the political. The rapidly growing practice by successive governments of giving public resources to a private corporations is both bizarre and bewildering. That it has happened is testament to the political skill of iwi and to the failure of New Zealanders to say no.

To recognise a traditional kinship group as the same entity as a modern social group is to subvert a second basic condition of democracy – the principle of contractual social relations and the political status of the individual as a citizen, regardless of that person's racial origin and cultural affiliation. That we have confused the two is testament to the skill of culturalist intellectuals in capturing public discussion and to the failure of the media to engage fully with the ideas.

Iwi have been extremely effective in obtaining considerable public resources and political recognition. Like all successful groups, they want more. But their success will come at a huge cost to New Zealand, not least to our democratic system and liberal way of life. It is time for New Zealanders to interrogate the assumptions under which the iwi case is built and then decide whether the iwi case really does stand up to scrutiny.

If it does not, as I argue, then there should be an end to claims for public resources and an end to political recognition and institutional inclusion.

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A Declaration of Equality

Dr Muriel Newman, 19 August 2012

On Friday the Waitangi Tribunal is expected to report back on the Maori Council's claim for the ownership of New Zealand's fresh water. This deadline was requested by the government to prevent a delay in their asset sales programme and a potential loss of value for New Zealand taxpayers.

*The co-*chairman of the Maori Council, Sir Eddie Durie, was interviewed by TVNZ on their Q+A programme on Sunday in an attempt to better understand the reasoning behind their water claim. He explained that "Maori law" is different from "*pakeha law" and that under the "Maori legal system"*, Maori had customary rights to water that should continue indefinitely. Where Maori still live near water, he argued, they should receive a royalty on all water taken by other groups; if they have moved away they should be eligible to draw *f*rom a compensation fund. He implied that compensation should be available for water used without payment over the last 150 years.

In the interview he explained, "property rights are to be determined according to the customs and traditions of Maori. That's a long established principle in New Zealand and internationally, and we're saying that that right which was established in that way, through customary use, should continue to be recognised to the extent that it is still feasible to do so."

Essentially, he is saying 'Maori law', not the New Zealand legal system, should be used to determine the future of Maori interests in New Zealand.

Sir Eddie, a former High Court Judge and Law Commissioner, spent more than 20 years as Chairman of the Waitangi Tribunal. With such radical views, it is little wonder that the decisions produced by the Tribunal over the years have been so outrageously biased towards tribal claimants. To expect the Tribunal to deliver anything but a biased decision is simply fanciful. The Government is right to ignore the decisions of the Tribunal, but it should go further and abolish the Tribunal entirely. That would be a more honest response than pretending it is anything but a vehicle and gravy train for radical iwi.

It is also no wonder that National's foreshore and seabed legislation *removed* public ownership, with the Attorney-General Chris Finlayson appointing Sir Eddie Durie to chair the Ministerial Taskforce on the law change!

Ever since former Prime Minister Helen Clark changed the law to close off historic Treaty claims to the Waitangi Tribunal in 2008, the tribal elite have been inventing new ways to perpetuate the Treaty claims industry. John Key strengthened their cause when he signed New Zealand up to the United Nations Declaration on the Rights of Indigenous Peoples, as part of a back-room coalition deal with the Maori Party.

Article 25 of that Declaration states that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, *waters* and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."

Article 32 then suggests that governments have a duty to undertake special consultation with such groups "prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, *water* or other resources." It then goes on to assert that "effective mechanisms for just and fair *redress*" must be provided.

It is utterly contemptible that John Key and his National Government could sell their principles to appease the separatist

Maori Party.
The bigger issue here however, is that New Zealanders are being treated like fools by the iwi elite. For decades foolish politicians have pranced and danced to their tune, willingly donating endless taxpayer resources into the coffers of these private corporations - and allowing radicals to exert influence from within their own ranks.

We can now clearly see the result of that track record of appeasement - and a glaring lack of political courage – in the rise of radical tribal activists, the rise of corporate iwi pursuing more and bigger claims, in rackets and rorts, and in an increasingly divided country where people are progressively separated by laws on the basis of their race.

First it was the Treaty claims with politicians turning a blind eye to the fact that all of the remotely genuine claims had already been settled multiple times by earlier governments.

Now claims are becoming more demanding and absurd. For example, Tuhoe demanded ownership of the entire half a million acres (2,127 sq km) of the Urewera National Park - in spite of the long established convention that the conservation estate would not be used for Treaty settlements. What's worse is that the Treaty Settlement Minister Chris Finlayson agreed to the deal! It was only the intervention of the Prime Minister - when he realised how strong public opposition was to the plan to give away the National Park to a tribal group - that he pulled the plug. Whether the Urewera National Park will be part of the new settlement agreement with Tuhoe remains to be seen.

But the tribal elite don't stop at land. With the assistance of the Waitangi Tribunal, iwi are claiming ownership of New Zealand's flora and fauna – our plants and wildlife including their genetic material. That claim has been presented to the government and is awaiting their response. New claims for Mataitai, or customary fishing areas, are now coming through, which give local tribes the right to seize control of areas for themselves, locking everyone else, including local fishers, out - all under the guise of environmental concerns, fishing stock regeneration, sustainability or some other worthy excuse.

New claims are being lodged by tribal corporations for ownership of the mineral-rich coastline – thanks to National's appalling Marine and Coastal Area Act. And let's not forget their successful claim to the electromagnetic spectrum.

The tribal elite's next claim is for the very governance of New Zealand.

The Maori Council and the other elite tribal groups will be carefully watching the progress of the Maori Party's $4 million constitutional review. If they succeed in persuading New Zealanders that the time is right for the introduction of a new *written* constitution that enshrines the principles of the Treaty of Waitangi as superior law, "Maori law" and privilege will become entrenched and non-Maori New Zealanders will become second-class citizens in their own land.

What's worse is that any attempt by any future government to change such an arrangement would be struck down as unconstitutional. David Round, a constitutional law expert at Canterbury University and this week's NZCPR Guest Commentator, says that if the Treaty gets into a new constitution in any way at all, New Zealand would be "irrevocably stuffed".

David explains, "The present proposed constitutional review is not just another crime against the common good in this sorry catalogue. It is far worse; it would be the death-blow to our country. So far, everything that has been done can be undone. A 'constitution' is simply the rules by which something is constituted and organised. We have a constitution now. At present, though, our constitution is not found in any one

document which can be labelled 'The Constitution', but in principles of the common law and in long-standing customs and practices (much, although not all, originally inherited from England), and in many Acts of Parliament.

"The fundamental principle of our constitution is (at present) the ancient one we inherited from the common law of England that Parliament is supreme. That principle is not found in any Act of Parliament, it is simply ancient law. It is also, of course, a principle consistent with democratic government. As things stand at present, then, any Parliament could abolish racial privilege and restore the equality of citizens and government for the common good. But if the Maori Party has its way ~ if we come to be saddled with an over-riding written constitution which controlled what Parliament may and may not do, and which declared that the 'principles of the Treaty' were a higher law which always prevailed ~ then Parliament would not be supreme in future. If future Parliaments were to attempt to establish and restore true racial equality, then, its laws could be struck down by judges who considered that those laws breached a 'Treaty principle' of eternal special status for those of Maori descent." To read David's *Charter* article, please click here>>>

As you will be aware, ever since the New Zealand Centre for Political Research was first established in 2005, we have been fighting against racial privilege. We firmly believe that all New Zealanders should be equal in the eyes of the law. There should be no special treatment based on race. With the Maori Party spending $4 million to convince New Zealanders that a new "written" constitution based on the Treaty as supreme law, is in the best interest of the country, we are taking a stand.

Legal and official racism has gone too far in this country. The public is being betrayed by politicians who do not have the fortitude to protect the public interest and call an end to the grievance industry. Treaty sympathisers in the public service and Judiciary are complicit, with race based preference now infiltrating every crevice within our public institutions.

In the words of David Round: "We, New Zealanders, having founded our society in the equality of comradeship, and living here at home in the land we have made, utterly oppose any laws which establish or promote racial distinction or division. There shall be one law for all. We have had enough of official and legal racism. We do not request the following items, we demand them:

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

And we pledge ourselves to oppose and resist all those of whatever rank or degree who, whether by force or the devious processes of the law, attempt to impose the fetters of racial inequality on the free citizens of New Zealand."

To support this pledge, please sign the **DECLARATION OF EQUALITY** on our new **Independent Constitutional Review** website. By signing up to the **DECLARATION OF EQUALITY**, you too will be putting a stake in the ground, demanding one law for all New Zealanders with no special treatment based on race. The **Independent Constitutional Review** website can be found at www.ConstitutionalReview.org. Please tell everyone who shares our concerns to visit the website and sign the Declaration of Equality *HERE*.

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Charter

David Round, 19 August 2012

New Zealand was conceived in innocence. Her foundation on these green islands was a work in optimism and faith, in the hope that men and women might live here decently and fairly and strive together in communities of good citizenship. Our forebears sought with plain labour and virtues of heart and hand to establish a new country built on the old world's hard-gathered wisdom, but freed of that world's oppressions and imperfections and hierarchies. Committed to the equality of our common humanity, we hoped here to create in our very lives and state a modest yet noble monument to fairness and human happiness. We sincerely believed we could be God's own country. Since the Treaty of Waitangi was signed and Maori became the Queen's subjects, equal with Britons under the law and entitled to all the rights and privileges of subjects, we have striven to be one people. Our inheritance from our ancestors enriched the new way of life which together we have slowly nurtured here. We have taken root. We are New Zealanders.

We would never be perfect, for perfection is not for this world. But for a while we grew into a little country to be proud of, a land of strong communities and honest government in the people's service. In the bonds of love we met. Opportunity, it seemed, existed for everyone; for all there were the means of livelihood and from all was a commitment of energy and comradeship to our new nation. By growing bonds of sacrifice, love and marriage, labour and interest, Maori and European have indeed long been becoming one people.

That country did not exist only in our imaginations. If now it seems so remote and impossible, that is only a sad measure of how far we have fallen from our national ideal and our past achievements. Some of our misfortunes have not been of our own making. The world changes, and nations rise and fall. For all its grief, much of our past fell in one of our people's happier times. We grew to maturity in the shelter of an empire we had ourselves helped to create, and by which much good had come into the world. We are weaned now, and a harder world has new masters and new dangers. In such challenging new times it is more important than ever that we stand together as one people, not as a divided land of warring tribes. But recently, by slow degrees and almost without noticing it, we have started to become a different nation. Many things have changed, but most of all we have lost our innocence, and the virtues by which we made ourselves.

We have come to be divided by a new racial bitterness that will soon be incurable. A vocal racial minority continues to make increasingly extreme demands upon what remains of our national resources and possessions, and even the appeasement of those demands does not satisfy the appetites of those who see every act of generosity as a sign of weakness, and who then demand yet more. To continue in these courses is very short-sighted, for that path leads inevitably and all too swiftly to an apartheid nation, national bankruptcy and civil strife. The law of nature has never decreed that terrible things will never happen in New Zealand. If they have not already, it is because we have been lucky and we have been good. We have been an innocent and a generous nation, always ready to right a wrong and undo an injustice. But being good does not require us to be gullible, to believe without question everything we are told of our own wrongs and racial debts and to grant without question every preposterous demand made on our generosity.

We are already mired in a strife unlike any other we have known, and one that could easily be fatal. Battle-lines are being drawn. We seem to take this new enmity of Maori and Pakeha as having been eternal and inevitable, but nevertheless as something that will never harm us. As things deteriorate we nevertheless continue to delude ourselves that we are somehow exempt from the laws of history, and that somehow things will never really go

wrong. But hatreds grow with a life of their own, and the best of nations can come to tear themselves apart. Good intentions are no safeguard; indeed, they can pave the way to hell. We are fast becoming two peoples, increasingly suspicious of each other, the leaders of one people making never-ending demands of the other, and having those demands satisfied only to return for more. Not so long ago we were regularly told that upon the settlement of the latest round of Treaty claims all acrimony would disappear, we would lay the past to rest and march forward in brotherhood again. (Prominent among those who told us so was a since-convicted Minister of Treaty Settlements who has had a part in ruining the lives of many hard-working and provident citizens. What a pity that honourable knight of the realm, so concerned about the 'honour of the Crown', did not think a little more about his own. What a pity his concern for Maori did not extend to other New Zealanders.) But that claim, that this most recent round of Treaty settlements (for there have been many earlier 'full and final' settlements) would be an end of racial acrimony, has turned out to be a lie. Already we are told that there will be another round of claims in the next generation, and in the meantime there have been more things to demand as a 'Treaty right'.

Most recently, at the behest of the Maori Party ~ a party which by its very name announces its racist agenda ~ the government has appointed a panel to 'advise' it on possible changes to our constitution. The document appointing the panel speaks of an already existing 'Treaty relationship' and the 'partnership model', and assumes the very thing the panel is set up to investigate. The terms of the Treaty of Waitangi declare the equality of all before the law and the status of Maori as the Queen's subjects like everyone else. But Maori, and not just Maori but even our very own government, now regularly refer not to the terms of the Treaty ~ what it actually said ~ but to the 'principles' of the Treaty. These principles are recent political inventions, which, by their talk of 'partnership' between Maori and the Crown ~ a notion which is the very opposite of what the Treaty actually says ~ are already used every day to argue for Maori privilege and special status at the expense of all other citizens. Thanks to the disgraceful political activism of judges who put their own politics before their judicial oaths, these 'principles' already have a shadowy legal status. We fear that the noisy agitation of a minority of malcontents may lead to these 'principles' being given a definite legal

The Declaration of Equality

We, New Zealanders, utterly oppose any laws which establish or promote racial distinction or division. There shall be one law for all:

- *We refuse to accept any reference to the Treaty of Waitangi in any constitutional document.*
- *We require that such references be removed from all existing legislation.*
- *We require that race-based Parliamentary seats be abolished.*
- *We require that race-based representation on local bodies be abolished.*
- *We require that the Waitangi Tribunal be abolished.*

Sign HERE

status in a new constitution, where they would thereafter be interpreted, and reinterpreted, and extended, indefinitely so as to render all non-Maori New Zealanders as second-class citizens in their own country. This must not happen.

We cannot return to the past, but we must change our present path, which is a deadly descent towards a poisoned apartheid state and civil strife. For too long, and in vain, have we hoped that those to whom we have given authority would serve our and the state's best interests. But we find ourselves betrayed by the very people we have set over ourselves. We are sacrificed to the interests and ambitions of legislators increasingly contemptuous of the common good and their own promises. Individually, our elected representatives may be decent people. But as Members of Parliament and of political parties they become part of a machine which leads them to break their solemn promises. The National Party, the centre of our present government, pledged itself to end racial separatism. It is now doing the very opposite. Does it understand what the word 'promise' means? Or 'honour', or 'integrity'? (To be fair to National, we must add that Labour does not even seem to know what it stands for, and the Greens' avowed policy is of Maori racial privilege. It could be more accurately called the Brown Party.)

Public officials who should serve the common good instead seek to reshape the people they are supposed to serve in their own racist politically-correct image. Certain eminent judges betray their oaths of office, ignore elementary justice and overturn longstanding law in the establishment of Maori privilege.

All these people have abandoned their duty, and we can have no respect for them nor faith in them.

The present proposed constitutional review is not just another crime against the common good in this sorry catalogue. It is far worse; it would be the death-blow to our country. So far, everything that has been done can be undone. A 'constitution' is simply the rules by which something is constituted and organised. We have a constitution now. At present, though, our constitution is not found in any one document which can be labelled 'The Constitution', but in principles of the common law and in long-standing customs and practices (much, although not all, originally inherited from England), and in many Acts of Parliament touching on the subject. The fundamental principle of our constitution is (at present) the ancient one we inherited from the common law of England that Parliament is supreme. That principle is not found in any Act of Parliament, it is simply ancient law. It is also, of course, a principle consistent with democratic government. As things stand at present, then, any Parliament could abolish racial privilege and restore the equality of citizens and government for the common good. But if the Maori Party has its way ~ if we come to be saddled with an over-riding written constitution which controlled what Parliament may and may not do, and which declared that the 'principles of the Treaty' were a higher law which always prevailed ~ then Parliament would not be supreme in future. If future Parliaments were to attempt to establish and restore true racial equality, then, its laws could be struck down by judges who considered that those laws breached a 'Treaty principle' of eternal special status for those of Maori descent. This is no idle fantasy. Our present Chief Justice ~ who, with her colleagues in the Court of Appeal, overturned long-established law about the foreshore and seabed in a blatant political decision in 2003, and so created the appalling argument over that matter which is not settled yet ~ that judge, who is sworn to administer justice according to law, has already, and more than once, stated publicly that she considers herself entitled right now to strike down Acts of Parliament if they happen to clash with her interpretation of 'Treaty principles'. If a new constitution were officially to give her the opportunity to do that we may be sure that she would take it.

The Maori Party's avowed aim in this constitutional review is to put the 'principles of the Treaty', as they and their judicial friends

will understand them, into our constitution. Thereafter the special status and privilege of those of Maori descent will be guaranteed for ever. It would be impossible to undo such an arrangement, for any attempt by Parliament or anyone else to do so would thereafter be 'unconstitutional'. If the Treaty gets into our constitution, therefore ~ if there is *any* mention of it which an unscrupulous judge can use ~ then the majority of the people of New Zealand will become second-class citizens in their own country. This must not happen. If it does happen, then our increasingly unhappy, impoverished and divided country will be irrevocably stuffed.

There may well be room for debate on other aspects of our constitution. Members of Parliament no longer seem to consider themselves properly responsible to the people they serve, and we may want to think of ways in which that responsibility could be restored ~ by making citizens-initiated referenda binding, for example, or creating some mechanism whereby the voice of the people recalls unpopular legislation and requires Parliament to reconsider it. No-one would want to see judges subject to political influence, but some judges have obviously forgotten that their independence is part of a bargain, and that the price of their remaining free from outside interference is that they for their part stick to deciding legal disputes and do not indulge in political adventures themselves. Incredibly, it is judges themselves who are failing to observe this separation of powers; and once judges ~ who are, after all, just unelected officials ~ start to behave as politicians, they must expect to be treated as such. To expect anything else would be pure hypocrisy on their part.

On such matters, and others, we can have legitimate debates. But it is utterly out of the question that our constitution should recognise and enforce racial distinction and condemn our country to racial division, with all that that entails, for ever. But if the Treaty gets into our constitution in any way, that is what will happen.

If you feel strongly about this ~ and we believe that you should, and that most New Zealanders do ~ then we ask you to sign this declaration, and to get your family and friends to sign it also. We must stop the separatists entrenching their hold over our country. We must change New Zealand's course. It is now or never.

We, New Zealanders, having founded our society in the equality of comradeship, and living here at home in the land we have made, utterly oppose any laws which establish or promote racial distinction or division. There shall be one law for all. We have had enough of official and legal racism. We do not request the following items, we demand them:

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And we pledge ourselves to oppose and resist all those of whatever rank or degree who, whether by force or the devious processes of the law, attempt to impose the fetters of racial inequality on the free citizens of New Zealand.

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Are we one or two?

Dr Muriel Newman, 22 July 2012

Our society is populated with its fair share of charlatans. They come in many different guises. Some use the mantle of environmentalism. Greenpeace has been campaigning against asset sales on the basis that profits might go offshore. Yet their annual report shows that last year they sent almost a quarter of the $8 million they collected from the donations of New Zealanders *offshore* to their international body!

Others have used the cloak of tribalism to persuade successive governments to transfer, for their own private purposes, enormous wealth and power from the public of New Zealand. Masquerading as servants of their peoples, an elite group of tribal leaders, assisted by advocates in many different areas of public life - politics, the media, the state service, academia - have persuaded governments to give them public riches they do not deserve. Today they are claiming the ownership of New Zealand's water. Last year they were given the right to make secret deals for the ownership of our mineral-rich foreshore and seabed. Before that, the Clark Government gave them a slice of the electromagnetic spectrum – hardly something that tribal leaders could claim they "owned" at the time of the signing of the Treaty.

This current claim for water is nothing but an extortionate claim for free shares in the about-to-be floated state owned enterprises. It follows hard on the heels of demands for the ownership of New Zealand's plants and animals, including their genetic codes. The Wai 262 Flora and Fauna claim is still awaiting the government's response.

If we look ahead, judging by the present tribal protest action over exploration rights for minerals, and oil and gas, corporate iwi are no doubt readying themselves for new claims. This time it will be for the ownership of all of New Zealand's minerals, along with another attempt to gain control of the country's reserves of oil and gas.

And let's not forget what could be regarded as one of the tribal elite's greatest victories - the Maori Party's success in persuading John Key's government that secretly signing New Zealand up to the United Nations' Declaration on the Rights of Indigenous Peoples to potentially give self-defined "indigenous" groups special governance powers and rights above those of every other citizen, was in the best interest of New Zealand. To her credit, then Prime Minister Helen Clark stood her ground and rejected all such advances a few years earlier. She could see the inevitable consequences.

It is not beyond the bounds of comprehension that there will be a claim for the ownership of the air we all breathe, and perhaps there will even be a proposed levy on all citizens who cannot claim Maori heritage - for the privilege of living in "their" country.

Are such things as claims for the air we breathe fanciful? Not if politicians continue to put the interests of an ill-defined racial group ahead of the rights of all New Zealanders. The fact is that if the wider public continues to sheepishly accept these outrageous race-based deals by the ruling party, then our rights as New Zealand citizens will continue to be trampled by self-serving deal-making politicians.

It appears that the New Zealand public has been somewhat conditioned into acquiescence by the tactics of the iwi elite. Firstly they use the publicly funded and outrageously biased Waitangi Tribunal to deliver favourable decisions based on their fabricated versions of history - complete, as we are now hearing, with evidence based on taniwhas and other forms of pagan spiritualty. If the government refuses to accept the Tribunal's resolutions – which, fortunately, are not binding – the demands are then transferred into the court system using legal aid to fight

any opposition to the highest level. In doing this they rely on eventually striking activist Judges who support the elevation of Maori rights. Going by past history, there now seems to be no lack of such advocates.

The public of course, find such tactics bewildering. It is difficult to understand some judicial decisions, let alone have the confidence to criticise them. Those that do speak out against Maori rights arguments are usually accused of racism. As a result, the public has been increasingly cowed into silence and opposition to outrageous developments is now muted.

But the problem is that unless New Zealanders step up and pressure the government through public opinion to recognise that that the only legitimate option is to act in the best interest of *all* citizens, we are heading towards a two-tiered society dominated by tribal influence and racial division. It is hardly the model of a modern democratic nation striving to succeed in a global world.

In considering iwi claims to water and all other public resources, the point that is largely overlooked is the fact that these claims can only have real legitimacy if tribal leaders can convince the government that they represent a group of citizens who are separate from all other New Zealanders. In spite of their desire to depict themselves as being separate, Maori clearly are not. They are as much a part of the general population as anyone else. Rapid intermarriage over the last 200 years means that tribal populations are no longer distinct – they are all of mixed race.

This week's NZCPR Guest Commentator is Dr Elizabeth Rata, an Associate Professor of Education at Auckland University, who has spent her career exposing how bicultural policies, aimed at better social justice outcomes for disadvantaged Maori, have subverted democracy and led to the formation of a powerful and wealthy elite within Maoridom. In her article she explains that the notion that there are two separate peoples in New Zealand is a political fabrication that should be rejected:

"To claim that there are two separate 'peoples' each with rights to 'public' resources under the control of separate political entities is the fundamental flaw in the iwi case. It deserves rebuttal. Despite the insistence on a primordial difference, Maori and non-Maori are not two distinctive peoples with that distinctiveness justifying separate political categories. At present 'New Zealand' is the political entity and its public are all the nation's citizens. This means that citizenship, not tribal membership, is the political category. All New Zealanders belong to this national category. Yet the iwi strategy of a separate people, aligned with the equally effective strategy of 'partnership', is powerful politics."

Dr Rata blames the politicians who foolishly gave political power to what is effectively an elite lobby group of Maori business corporations, for the predicament we are in today. Their unrelenting greed for money and power is now threatening the very future of New Zealand.

So what is the basis of the claim by tribal leaders that they are a separate group that deserve separate powers and rights above those of all other New Zealanders?

Another myth perpetrated by tribal leaders is that the first settlers 'owned' the whole county. This is totally illogical and a complete fabrication.

They use the first settler argument, of course, to claim that because they were early immigrants they should have special rights. So what? Every New Zealander has immigrant roots – in the early days our ancestors all arrived by sea; now it's mostly by air. New Zealand has no "indigenous" racial group in the way

that some countries have tribes that can trace their origins back to almost the beginning of mankind, with little outside intermarriage. There are no such 'first peoples' in New Zealand, just immigrants.

Another myth perpetrated by tribal leaders is that the first settlers 'owned' the whole county. This is totally illogical and a complete fabrication. New Zealand's small population did not "own" the whole country. In the days before private property rights were established by the rule of law, people "owned" what they could defend. Common areas like mountains and wilderness areas, the foreshore and seabed, rivers and lakes, were not "owned" by anyone but were used by all. The same goes for resources - minerals, the sea, the air, our water, wild animals and plants, and other common goods.

It is this reality that makes the Maori Council claim for water such a complete and utter farce - especially when the evidence of an ownership right is based on the existence of taniwha. The Herald reports that the Maori Council's lawyer Felix Geiringer told the Waitangi Tribunal that a belief that taniwha were the guardians of waterways is *evidence* that Maori believed they 'owned' the water: "People say 'in this resource is my taniwha, my guardian spirit. He protects me, he protects my water resource. He's not your taniwha so if you are going to use that resource without my permission, he will do terrible things to you'. It's not a joke, it's a very strong indication that hapu was telling the world that this was their water resource and it couldn't be used by anyone else without their permission. That is the very essence of a proprietary relationship.''

But such nonsense doesn't stop there. Why for example do Maori have to be specially consulted over every consent application under the Resource Management Act? Why do they have special rights over the gathering of seafood instead of being bound by the same rules as everyone else? Why do they have special rights to dead whales - which are hardly indigenous creatures - to the point of being able to prevent legitimate scientific analysis of the cause of stranding and death? Why do they have the exclusive right to greenstone?

While these are undoubtedly vexed issues, more troubling developments are now underway, that threaten the very foundation of New Zealand's democracy. Thanks to the Maori Party, a $4 million government-funded project is now being rolled out to replace our existing constitutional arrangements and the sovereignty of Parliament, with a new written constitution based on the Treaty of Waitangi as supreme law.

Dr Rata has been watching the progress of this review and believes "The threat of a race-based constitution in New Zealand is now very real". She ends her excellent article, *New Zealand Constitution: Why iwi have got it wrong,* with this: "There is still only one New Zealand public. There is still one New Zealand government, however compromised it has allowed itself to become. If the value of a single constituted New Zealand public is not understood and protected, it is possible that a new constitution will recognise a race-based polity with an, as yet, unknown degree of power. At that point the fundamental incompatibility of the racial tribe with democracy will be too obvious to ignore but too entrenched to resist. The loser will be democracy. It will also be New Zealand." To read the full article - which includes details of Dr Rata's new book, *The Politics of Knowledge in Education*, please click here>>>

There are not two separate people in New Zealand as the Maori elite try to claim. We are now a country of many different people of different backgrounds and beliefs united by the fact that we are New Zealanders first. If we are to forge a successful future, we must have a strong belief in ourselves and our country. It is time the politics of division - which the political class has imposed onto our country – is put behind us once and for all. We are all New Zealanders and that is all there is to it. Anyone who doesn't like that fact, should leave. *Back to Table of Contents…*

New Zealand Constitution - why iwi have got it wrong

Dr Elizabeth Rata, 22 July 2012

There is deep disquiet throughout the country about iwi claims for water rights.

However by focussing on the resource itself; previously the foreshore and seabed, this time water, next time airwaves, geothermal energy, and so on, we are in danger of overlooking the source of the issue, of overlooking why such claims can be made in the first place. To find the fundamental flaw in the tribes' case for the ownership of public resources such as water we need look not only at what is to be owned but at who is claiming ownership. The essence of the tribal claim is that iwi represent a separate 'public' – the Maori people - and are therefore entitled to own the resources of that 'public'.

The claim that iwi constitute a separate polity with its own public is ambitious politics. If it were indeed the case then New Zealand would not be one nation but two. It may well be that in the future New Zealand does break up into two separate nations, but at present 'New Zealand' is the political entity and its public are all the nation's citizens. This means that citizenship, not tribal membership, is the political category. All New Zealanders belong to this national category.

To claim that there are two separate 'peoples' each with rights to 'public' resources under the control of separate political entities is the fundamental flaw in the iwi case. It deserves rebuttal. Despite the insistence on a primordial difference, Maori and non-Maori are not two distinctive peoples with that distinctiveness justifying separate political categories. Yet the iwi strategy of a separate people, aligned with the equally effective strategy of 'partnership', is powerful politics.

If, as some retribalised individuals claim, Maori are a separate people with its own political interests, then the claim for public resources for that people does makes sense. All political entities require an economic infrastructure in order to support their 'people'. No wonder iwi intellectuals devote so much energy to making the case for a foundational difference established at the beginning of time and unamenable to change. Without a people to represent, iwi leaders would have no justification for their claims to political and constitutional power. Nor could the iwi claim to natural resources that are currently owned by the people of New Zealand be justified. This is why tribal leaders are determined to maintain the myth of a fundamental difference between Maori and non-Maori. It is the key to enormous but unjustified wealth and power.

The re-interpretation of the Treaty of Waitangi as a 'partnership' between two political entities since the late 1980s has played a crucial role in this highly effective strategy with the Treaty serving as the document of inheritance. Yet as David Round correctly argues in a paper published in the Otago Law Review in 2011, the concept of partnership is illogical. "If there were to be a partnership of Maori and the Crown, then by definition Maori could not be subjects of the Crown. One cannot be a partner and a subject at the same time".

It is difficult to understand the commitment by many New Zealanders to the idea that a racial division between two peoples should be built into our political and administrative arrangements. This has given iwi such instititutional power that current moves to extend that power to a constitutional separation of two polities, each with its own public, is scarcely surprising despite such a move being profoundly anti-democratic.

For several decades now I have analysed this inexplicable commitment by New Zealand's governing class to retribalisation. My recently published book, 'The Politics of Knowledge in Education' includes an analysis of the 'two peoples' myth within

the wider context of the re-racialisation of society and reactionary tribalism. Given that democracy was the great political movement of working people throughout the world to overcome the tyranny of traditional oppressive regimes it defies reason that we, Maori and non-Maori like, have so casually and timidly enabled, even welcomed, a return to tribalism.

How did this happen? How has, to use David Round's vivid but accurate phrase, this "colossal programme of confidence men" become the most effective political strategy of our time? While I was concerned for the purposes of the book to examine how education has been damaged in profound ways, the damage to democratic ways of organising our society goes deeper and wider.

In education it has meant considerable change to the type of knowledge that is taught at school. Rather than knowledge justified by its disciplinary base in the arts, humanities and social sciences, we now emphasise knowledge drawn from experience. Experiential knowledge can be used to separate one group of people from another, as happens with the Maori non-Maori 'two peoples' myth. Of course it is not surprising that disciplinary knowledge has come under attack from reactionary intellectuals given that it is the knowledge developed in the disciplines that has enabled the modern world's challenge to tradition. That objective, universal, scientific knowledge provides the rational concepts that enable us to think beyond our experience and to overcome the confines of culture.

My task in the book was to trace the shift from disciplinary knowledge to what I call 'social knowledge' or culture. I describe how it has affected what is taught at school and the 'emptying out' of content from our national curriculum. The knowledge shift is part of the larger breakdown in the commitment to universalism that enabled the rise of democracy in the modern period. The turn away from universalism to localised forms of identity based on ethnicity, race, culture, tradition or religion in many parts of the world allows growing inequalities and the rise of reactionary regimes. It suits the emergence of elites, who employ traditional beliefs about race, religion and history to justify their wealth and power. But for ordinary people the return to tribalism is the rejection of the modern world and the democratic freedoms it has given us.

To claim that there are two separate 'peoples' each with rights to 'public' resources under the control of separate political entities is the fundamental flaw in the iwi case. Despite the insistence on a primordial difference, Maori and non-Maori are not two distinctive peoples with that distinctiveness justifying separate political categories. Yet the iwi strategy of a separate people, aligned with the equally effective strategy of 'partnership', is powerful politics.

New Zealand is not alone in the profound changes currently occurring to how we organise our society. Nor is education alone as a site for the change. Health, social welfare and the justice system are among many areas of socio-political life affected by the belief that some of us should be within a political category on the basis of our racial origins while the rest of us are categorised as citizens – our racial ancestry playing no role in the categorisation.

Here I must emphasis that a political category of people classified according to racial origins is a different kettle of fish from the desire of individuals and families to identify in ethnic terms and to live accordingly. The issue for New Zealand is not that some people identify as Maori. It is the right of all citizens to value and practise identification with any number of cultural,

religious and lifestyle groups. The threat to democracy occurs when the group's identity takes on a political status as happened with the newly incorporated iwi in the late 1980s.

The threat of a race-based constitution in New Zealand is now very real. This would have bewildered many of the first biculturalists who believed that their commitment to 'honouring the treaty' was concerned with social justice.

The recognition of iwi as the legal owners of treaty settlements at that time enabled tribal leaders to acquire political status for what are in fact business corporations. This was the point at which the government weakened itself -perhaps irretrievably by allowing an economic entity to share its political status.

Separate political rights were claimed by iwi who drove the interpretations of treaty partnership and treaty principles. What are essentially political and social matters for all New Zealanders to discuss were moved to the courts in a brilliant strategy by iwi leaders to control political debate. What ordinary New Zealander feels competent to enter the fray when legal matters are tossed about by a small group of hugely influential lawyers in language few of us can understand? But the issue of how we organise our country is a political matter for all of us. It is not one to be decided in the courts.

The crux of the matter is should one group of New Zealanders have legal, even constitutional rights that are different from other citizens? This is a political not a legal issue. Its resolution requires the leadership that the government foolishly gave away in the late 1980s and 1990s to a self-interested collection of iwi leaders, compromised politicians, and skilful lawyers.

Do we allow that *de facto* political tribal entity to claim economic resources which rightfully belong to all New Zealanders? The tribal group is not like any other. The criteria for membership is set in the past – one must have an ancestor in order to belong. In contrast, the criteria for belonging to the New Zealand polity is not set in the past – it is theoretically open to all. So there are two crucial issues. One is the creation of a separate political category within the nation that now claims its own 'public'. The second is that the political category is defined according to racial criteria.

The threat of a race-based constitution in New Zealand is now very real. This would have bewildered many of the first biculturalists who believed that their commitment to 'honouring the treaty' was concerned with social justice. In resisting the iwi claim to New Zealand's public resources, such as the foreshore and seabed, water, geothermal energy, oil, minerals, and the airwaves it is necessary to first resist the source of the claim; that of a race-based division between two peoples each constituting a separate public with their own polity.

There is still only one New Zealand public. There is still one New Zealand government, however compromised it has allowed itself to become. If the value of a single constituted New Zealand public is not understood and protected, it is possible that a new constitution will recognise a race-based polity with an, as yet, unknown degree of power. At that point the fundamental incompatibility of the racial tribe with democracy will be too obvious to ignore but too entrenched to resist. The loser will be democracy. It will also be New Zealand.

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Equality for all

Dr Muriel Newman, 1 July 2012

Next week the Waitangi Tribunal will be hearing the Maori Council's claim for the ownership of New Zealand's freshwater. To most people, water, like air, is part of a natural cycle and is regarded as a 'common good' –managed by the Crown on behalf of us all, through Regional Councils.

Once we would have been surprised and somewhat scathing of an attempt by any group to claim the ownership of water. Not so now. This claim for water is the iwi elite's latest grab for public resources. It follows last year's success in opening up the coast for claims by tribal corporations through the repeal of Crown ownership of the foreshore and seabed.

However, these sorts of claims for public good resources trespass on the goodwill that some still have towards iwi. For decades, there has been a prevailing view that what's good for iwi is good for all New Zealanders. It has led to a more relaxed public attitude towards the current round of historic Treaty of Waitangi settlements - in spite of most people realising that many of the claims are repeats of previous 'full and final' settlements. This attitude has been shaped by a belief that the proceeds of the settlements were being used for the benefit of *all* tribal members. However, time has exposed the reality that the settlement process has delivered a two-tier Maori society. At the top are some immensely rich and powerful iwi elite controlling $37 billion worth of assets. The bulk of Maori however, have received no benefit from the lucrative settlement deals – with many remaining shamefully poor and disenfranchised.

Not even the 1992 fisheries settlement, worth $170 million, resulted in the jobs for Maori that were being promised by iwi leaders at the time. The jobs from iwi controlled fishing quota have instead been contracted out to foreign vessels with foreign crews and offshore processing.

This latest claim for public resources is of course orchestrated around iwi opposition to the partial privatisation of state owned assets. Maori Party MP Te Ureroa Flavell explained to Parliament, "Let me make it clear that we are strongly opposed to the removal of the four State Owned Enterprises from the SOE act and to the proposal to sell 49% of these important Crown assets until historical treaty settlements are concluded with all claimants who may wish to include these assets into their redress packages."

The reality is that race-based funding is a flawed concept. The rapid intermarriage that has always gone on within the New Zealand population has broken down racial barriers to the extent that ethnicity is no longer a defining characteristic of disadvantage. Instead it is family instability, poor parenting, long-term welfarism, substance abuse, educational failure, violence, crime and so on. While many people who identify as Maori are over-represented in negative social statistics, it is not because of their race, but because of these other factors. Race should not be used as an excuse.

In other words, the reason for their opposition is not that they want to preserve the assets for all New Zealanders, but that they want the assets for themselves, with tribal leaders standing to make massive gains from such settlements.

Self-interest too was clearly the central factor in the Maori

Party's opposition to the Crafar farm deal. In January, co-leader Pita Sharples, strongly criticised the government's approval of the sale to Chinese investors stating, "The Maori Party is absolutely against the sale of our land to overseas interests".[1]

In the next breath however, it was revealed they were asking the

The Maori Party's plan is well advanced. Their hand-picked Constitutional Review panel has already been selected. Incredibly the panel does not intend to hold open public meetings. Instead, they are intending to hold special Maori-only hui, and invitation-only meetings - a strategy that was extremely effective at minimising public scrutiny and awareness of the foreshore and seabed changes. Alarmingly, government Ministers have already indicated that any final changes to our constitution may be approved by Parliament rather than having to be approved by the public through a binding referendum.

government to bring in legislation that would give Maori the first right of refusal over any land sale to overseas interests: "Last August, we asked the Minister of Finance to introduce a regulation to direct the Overseas Investment Commission to check whether the seller had consulted with, and/or offered land to the appropriate iwi before offering it on the open market". In other words, their interest was for Maori privilege ahead of their concern for the national good.

Pita Sharples explained their opposition to the Chinese buyers: "Our view has always been that we must protect and preserve our land to keep it from falling into foreign ownership. We do not believe selling off our land to offshore investors such as Shanghai Pengxin is an act of good faith in iwi as Treaty partners. Land is not just an economic asset to be exploited for maximum profit. Papatuanuku is the nurturer of all life, and her care must rest with people who are committed to her for all time. Today a great wrong has been done to New Zealanders. Our land is not just a commodity, it is a living, breathing part of our history, our culture, and our people. We just sold a piece of ourselves."

Within a few months of making that statement Dr Sharples was ready to leave on a Maori-only junket to China. *Marae Investigates* asked him, "There's been a huge back lash about the purchasing of the Crafar farms by Chinese entities and yet you are going to China is there any kind of conflict in your mind about going?" Dr Sharples replied, "The Maori Party is against the selling of land to people who don't live here that's all and it's got nothing to do with Chinese or Americans or anything. If you want to buy land come and live here and work the land and be New Zealanders." (It's a shame Dr Sharples does not take the same view when it comes to Maori controlled fishing quota!)

On his return from China Dr Sharples changed his tune after the news that Shanghai Pengxin intended offering two of the Crafar farms to the same Maori trusts involved in the rival bid: "Any agreement is a matter between the parties, and the Government is not involved in negotiations. It is up to the parties to decide when and how they might release details of their agreement, and I will not be making any further comment." In other words, his opposition to land sales to foreigners evaporated once he thought that iwi would gain a slice of the action. He justified this self-serving about face by claiming that such a deal "will benefit not just Maori, but all New Zealanders".[2]

This is the same sloganeering that is used by the government to justify their *affirmative action* agenda, which allows them to

discriminate against other New Zealanders in favour of Maori. While Human Rights conventions require that all citizens must be treated equally under the law regardless of race, governments can use affirmative action programmes to justify special treatment based on race – as long as such programmes are being used to improve the circumstances of an underprivileged group, equal to the general population. Affirmative action programmes are meant to be a temporary, but typically, such government programmes that deliver special rights and privileges to one race of citizens at a cost to the rest of the population remain entrenched - unless they are challenged.

The reality is that race-based funding is a flawed concept. The rapid intermarriage that has always gone on within the New Zealand population has broken down racial barriers to the extent that ethnicity is no longer a defining characteristic of disadvantage. Instead it is family instability, poor parenting, long-term welfarism, substance abuse, educational failure, violence, crime and so on. While many people who identify as Maori are over-represented in these negative social statistics, it is not because of their race, but because of these other factors. Race should not be used as an excuse.

In the case of Maori, affirmative action programmes are not only deeply entrenched, but there remain serious concerns about whether such programmes with funding tied to disadvantage, can ever reduce disparity.

The reality is that race-based funding is a flawed concept. The rapid intermarriage that has always gone on within the New Zealand population has broken down racial barriers to the extent that ethnicity is no longer a defining characteristic of disadvantage. Instead it is family instability, poor parenting, long-term welfarism, substance abuse, educational failure, violence, crime and so on. While many people who identify as Maori are over-represented in these negative social statistics, it is not because of their race, but because of these other factors. Race should not be used as an excuse.

For the sake of the future of this country, it is time to put this fixation with race behind us. New Zealand should become a nation where equality before the law is a defining feature.

In his article *Turning around race-based policy*, this week's Guest Commentator NZCPR Research Associate Mike Butler writes, "Race-based policy has been a feature of governance in New Zealand as long as the nation has had a government, and race-based affirmative action has been with us since the 1980s."

Mike's analysis shows that with regard to Treaty of Waitangi settlements, "Total historical redress, whenever it is completed, may reach a grand total of around $3.9-billion. This may be calculated based on the number of likely settlements, which may reach 87; and the average financial redress amount so far, which is $44.75-million. Each tribal entity would have investments in land, buildings, forests, farming, aquaculture, and an array of businesses. Many assets that make up the financial redress quantum come with gold-plated leases to government departments, guaranteeing cash incomes far into the future. Each tribal entity would have the rights of first refusal to buy surplus state-owned assets for up to 172 years which gives tribal entities first dibs on any surplus government houses, land, commercial buildings, farm land, forest land, and aquaculture

resources in their area for the next three or four generations. Control of these assets, and generous management packages, would be concentrated in the few involved in running the businesses."

Mike concludes his article by asking, "What can be done to stop this on-going handover? The short answer is to: Abolish the Waitangi Tribunal; remove references to the treaty and its principles from legislation, and drop the principles for Crown action on the treaty; and abolish the Maori roll and separate Maori seats." To read the full article, please click here>>> *To download Mike's updated NZCPR Treaty Transparency Report, which outlines the detail of all Treaty settlements, click here>>>*

Many New Zealanders are deeply concerned that successive governments have turned their back on our right to live in a country free from racial discrimination and racial preference. The increasingly race-based path that we are going down is an anathema to a progressive democracy. So what should we be doing to turn the situation around?

Clearly, after 30 years, affirmative action programmes have shown they are not working and should be terminated. As Mike has suggested, a sensible plan for legislative change would involve:

● Abolishing the Waitangi Tribunal by repealing Sections 4-8 of the Treaty of Waitangi Act 1975, leaving any final historic settlements that are still in the pipeline to be negotiated directly with the Crown - since more and more iwi are choosing to do that anyway.

● Removing references to the Treaty and its principles from legislation, by examining modern-day statutes to identify and repeal the relevant clauses.

● Abolishing the Maori roll so all New Zealanders are on one electoral roll as equal citizens, by repealing Sections 76-79 of the Electoral Act 1993; and

● Abolishing the Parliamentary Maori seats by repealing Sections 45 and 269 of the Electoral Act 1993, and abolishing the local government Maori seats by repealing Sections 19Z-19ZH and 24A-24F of the Local Electoral Act 1991.

In other words, bringing about equality under New Zealand law would be a relatively straight forward legislative process, as things stand today. It is this fact that is no doubt a driving force behind the Maori Party's plan to entrench into law a new Treaty-based constitution. Such a constitution would provide special status and privilege to those of Maori descent, above all other New Zealanders.

The Maori Party's plan is well advanced. Their hand-picked Constitutional Review panel has already been selected. Incredibly the panel does not intend to hold open public meetings to hear the feedback of all New Zealanders. Instead, they are intending to hold special Maori-only hui, and invitation-only meetings - a strategy that was extremely effective at minimising public scrutiny and awareness of the foreshore and seabed changes. Alarmingly also, is the fact that government Ministers have already indicated that any final changes to our constitution may be approved by Parliament rather than having to be approved by the public through a binding referendum. The bottom line is that New Zealand will again be facing a fundamental constitutional shift in favour of Maori and a further advance towards the politics of racial privilege that the public will be largely unaware of.

FOOTNOTES:
1.Maori Party, Maori Party outraged at sale of Crafar farms
2.TVNZ, Maori may get two Crafar farms

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Turning around race-based policy

Mike Butler, 1 July 2012

Race-based policy has been a feature of governance in New Zealand as long as the nation has had a government, and race-based affirmative action has been with us since the 1980s. Where is this heading and can anything be done to stop it? This column seeks to describe what the likely costs will be: When historical redress is agreed to and paid; when co-management agreements are set up with all tribal entities; and when all tribes have social service agencies operating, including Whanau Ora. I also suggest what could be done to reverse the process.

Total historical redress, whenever it is completed, may reach a grand total of around $3.9-billion. This may be calculated based on the number of likely settlements, which may reach 87; and the average financial redress amount so far, which is $44.75-million.

Each tribal entity would have investments in land, buildings, forests, farming, aquaculture, and an array of businesses. Many assets that make up the financial redress quantum come with gold-plated leases to government departments, guaranteeing cash income far into the future. Each tribal entity would have the rights of first refusal to buy surplus state-owned assets for up to 172 years which gives tribal entities first dibs on any surplus government houses, land, commercial buildings, farm land, forest land, and aquaculture resources in their area for the next three or four generations.

Control of these assets, and generous management packages, would be concentrated in the few involved in running the businesses. Years ahead, most tribal entities would have parlayed this into a larger asset base although some could have lost it all, as Ngati Tama has done already.

Co-management became a part of settlement packages from 2000 and this brings a separate stream of funding. For instance, the Waikato River settlement will cost $400.8-million over the next 25 years. Five tribes shared in that agreement, giving an average amount of $80-million per tribe over the next 25 years. With 87 tribes, each probably claiming a river ancestor, the total amount over the next quarter century may be around $7-billion.

The unelected members of the Waitangi Tribunal have interpreted the Treaty of Waitangi in such a way that the chiefs who signed both ceded and did not cede sovereignty. By dropping the preamble and postscript to the treaty, the tribunal removed the treaty from its 1840 context and turned it into a living document, a kind of gospel that must be referred to in making any decision.

Numerous tribes have agencies that receive government funding to deliver social services. For instance, the Hastings-based Te Taiwhenua o Heretaunga is a charitable trust governed by representatives of each of the 13 marae in the area. The Taiwhenua, as it is known, had an operating revenue of $8.4-million in 2009, employed up to 150 people delivering medical, dental, and mental health services as well as help for unmarried teen mums, insulation for houses, exercise programmes, and other social services which includes a helper type of service that provides a car and a social worker who is able to find housing, arrange interviews, and provide a free taxi service.

If there were 87 such social service entities throughout New Zealand, the total annual spend would be $730-million. There are also a range of new helper agencies that came into existence

under the one-stop-shop Whanau Ora social services policy which will cost $39.6-million this financial year. Therefore, treaty settlements, co-governance, devolved social services, and Whanau Ora combined probably currently cost $1.167-billion a year.

What can be done to stop this on-going handover? The short answer is to: Abolish the Waitangi Tribunal; remove references to the treaty and its principles from legislation, and drop the principles for Crown action on the treaty; and abolish the Maori roll and separate Maori seats. More specifically, the hand-over may be stopped by reversing each step that created the hand-over process, and Geoffrey Palmer details that process in his book "New Zealand's Constitution in Crisis".

Palmer set up processes, procedures and principles upon which Maori policy decisions should be based. He said he did this because addressing Maori grievances was politically unpopular, and legislation to address grievances ran the risk of being outvoted. I contend that the grievance-redress policy should be put to a direct vote, maybe by way of binding referendum, which could either legitimise or dump the policy.

He ushered though retrospective powers for the tribunal through the Treaty of Waitangi Amendment Act passed in 1985. These retrospective powers have multiplied grievances from nine listed in 1882 to 2,034 in 2008. I suggest that the granting of retrospective powers to the tribunal was an epic blunder.

The president of the Court of Appeal, Justice Robin Cooke, conjured up the principles of the Treaty of Waitangi in1987, and these principles have largely superseded the treaty. The Principles for Crown Action on the Treaty of Waitangi, that were created on Palmer's watch, were adopted by the Cabinet he was a part of in 1989, and became the reference point for government policy. I suggest that both sets of principles should be dropped.

What can be done to stop this on-going handover? The short answer is to: Abolish the Waitangi Tribunal; remove references to the treaty and its principles from legislation, and drop the principles for Crown action on the treaty; and abolish the Maori roll and separate Maori seats. More specifically, the hand-over may be stopped by reversing each step that created the hand-over process, and Geoffrey Palmer details that process in his book "New Zealand's Constitution in Crisis".

The unelected members of the Waitangi Tribunal have interpreted the Treaty of Waitangi in such a way that the chiefs who signed both ceded and did not cede sovereignty. By dropping the preamble and postscript to the treaty, the tribunal removed the treaty from its 1840 context and turned it into a living document, a kind of gospel that must be referred to in making any decision.

Treaty policy is based on the Maori text of Te Tiriti and an English language version written by clerk James Freeman who added phrases (such as "estates, forests, fisheries") that do not appear in the Maori version. I suggest that the commercial fisheries settlement of 1992 and the Central North Island forestry settlement of 2008 were epic policy blunders that were made based on faulty interpretation of the two divergent treaty texts.

Current race-based policy makes little sense without the

underlying grievance-redress ideology combined with the drive for Maori control of all things Maori.

However, any close look at the confiscation grievances reveals that tribes who sustained land confiscation were those who fought against the colonial government in the 1860s and had land confiscated as a punishment. I suggest that most other grievances came into existence after 1985, when tribes were empowered to pick over the bones of history to create an argument to justify compensation. I also suggest that any analysis of the "Maori control of all things Maori" ideology shows that it stems from a gross misinterpretation of the treaty.

Where is race-based policy heading and how can it end? I suggest that race-based affirmative action is a special-interest-group agenda and part of a wider problem that can be seen in the existence of a range of government departments that exist solely to satisfy the demands of special-interest groups. Indulging such groups is costly, and all adds to our current government's Budget blow out.

What do people think about these issues?

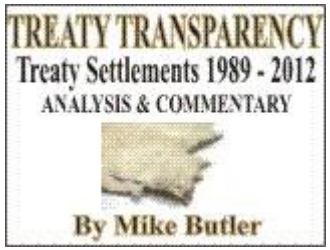
A Consumerlink/Colmar Brunton survey this year showed that of the 1031 people surveyed 67.81 percent favoured abolishing the Waitangi Tribunal, and 69.36 percent thought that Maori seats and the Maori electoral roll should be abolished.

The New Zealand Election Study of 2008 found of the 2700 voting-age New Zealanders surveyed, 37.4 percent wanted the treaty removed from New Zealand law, 19.7 percent were neutral and 36.8 percent wanted the treaty kept in law. A total 39.7 percent agreed Maori deserved compensation, 15.7 percent were neutral, but 41.2 percent thought that Maori did not deserve compensation.

Where is race-based policy heading and how can it end? I suggest that race-based affirmative action is a special-interest-group agenda and part of a wider problem that can be seen in the existence of a range of government departments that exist solely to satisfy the demands of special-interest groups. Indulging such groups is costly, and all adds to our current government's Budget blow out.

Race-based policy will end either when the money runs out, or be brought to a close when it is no longer politically viable to continue, or be left to carry on quietly without public scrutiny in the hope that the people paying for it will not notice. Unfortunately for the under-the radar types, the policy is under scrutiny, and it is unpopular.

Details of settlements to date can be found in the ***Treaty Transparency Report*** *HERE*



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Hijacking our constitution

Dr Muriel Newman, 6 May 2012

ACT is again in the political spotlight, but for all the wrong reasons. The controversy surrounding John Banks and his 2010 Auckland Mayoral campaign donations is not subsiding. Somewhat ironically, the future of John Banks, ACT and to a lesser degree the National government, hangs off the evidence that Mr Dotcom provides to the Police. It will be up to the Police to decide whether any local body electoral spending rules were broken and whether a prosecution is warranted.

John Banks has told the Prime Minister he has done no wrong. The PM has quite rightly taken him at his word. If however, John Banks is forced from Parliament and a bi-election held in the seat of Epsom, it is likely the electorate would return to National. While the new Conservative Party could emerge as a new potential partner to replace ACT, National may well accept the likely reality that Epsom voters have had enough of minor parties spilling their cups of tea. In addition, given the controversial nature of some of the law changes that are on the government's agenda - such as asset sales – National may see winning the seat back and gaining an additional MP as a pragmatic move for now.

While the Banskie distraction drags on, other more important concerns progress unnoticed under the radar. One of these, namely, the Constitutional Review, has the potential to fundamentally change the place New Zealanders occupy in their own country.

As I have detailed in previous columns, the Constitutional Review is the creation of a back-room deal between the Maori and National parties. Such is the influence the Maori Party has on the review that they have set the terms of reference, the way it will operate, and they have stacked the membership with Maori.

That in itself, should signal what lies ahead.

What is especially concerning is that they are doing this with the blessing of the National Party. The public meanwhile remains largely unaware of this looming threat.

The Maori Party's game plan was set in motion through their 2008 Confidence and Supply Agreements with National. It stated, "Both parties agree to the establishment (including its composition and terms of reference)… of a group to consider constitutional issues including Maori representation. The Maori Party will be consulted on membership and the choice of Chairperson, and will be represented on the group." Their 2011 agreement continues the process - "to progress the review of New Zealand's constitutional arrangements and the advisory panel established to lead public discussion on relevant issues. The advisory panel is to deliver its recommendations to the Government in September 2013."

At the launch of the Constitutional Review, Pita Sharples, indicated there will be a 'special' focus on working with Maori: "An important part of the review process will be consultation with Maori, particularly on the place of the Treaty of Waitangi in our constitution. The members of this group are well placed to seek out and understand the perspectives of Maori on these important issues."

The political nature of this Maori Party advisory panel is in sharp contract to the way in which a major constitutional review should normally have been implemented – through an independent Royal Commission of Inquiry headed by constitutional law experts. Instead we have ended up with a politically appointed panel, heavily weighted in favour of former politicians and Maori academics, but light on legal and constitutional expertise.

This week's Guest Commentator, NZCPR Research Associate Mike Butler is deeply concerned about the impact on our democracy of the dangerous bias that can be seen to underpin the constitutional review panel and process:

"One unchanging political reality is that review panels are set up to get the outcomes of the interested party. I suggest that the current constitutional advisory panel has been carefully set up with focussed terms of reference, and carefully vetted panel members, to achieve the Maori Party goal of ensuring that the review gives effect to the treaty, and entrenching separate Maori seats. Therefore, I did a search for quotes from each panellist."

Mike found, "Since one co-chair and five panellists are or were Maori studies academics with vehement anti-colonialist views and only two have legal backgrounds, it would appear that the focus will be on Maori issues, especially the treaty."

He also examined the report of the 2005 Select Committee convened to review New Zealand's Constitutional Arrangements. He concludes, "there was no constitutional crisis and the only people pushing for change were Maori interests. So, just seven years later, without any urgent constitutional matters arising demanding attention, there is a whole new constitutional advisory panel that was set up on the bidding of a special-interest political party - the Maori Party." To read Mike's article, click here>>>

As well as wanting to incorporate Treaty principles in a new constitution, the Maori Party also wants to entrench Maori seats at central and local government level.

Parliament's Maori seats were created in 1867, when the right to vote was based on being male and owning or renting freehold property: New Zealand's 'franchise' was awarded to any male British subject aged 21 years or older who owned freehold property worth £50 or more; or paid at least £10 a year to lease property; or lived in a house with an annual rental value of at least £10 (in a town) or £5 (outside a town).[1] With most Maori land being communally owned, Maori were not eligible to vote under the ordinary rules. The Maori seats were therefore established as a temporary measure for five years to give the Native Land Court time to convert communal Maori land tenure into Crown grants so that Maori men could be enfranchised under the standard property-ownership provisions. The problem was that the free-holding of Maori land took longer than expected and the four seats were retained for a further five years, and then indefinitely - even though universal suffrage was declared in 1893!

The 1986 Royal Commission of Inquiry that was set up to investigate the Electoral System recommended that the Maori seats should be abolished if MMP was adopted. They had reached the conclusion that the Maori seats were an anachronism and that separate representation had proved to be largely ineffective. Taking that into account, the original 1993 Electoral Act to introduce MMP had no provisions for Maori seats. But as a result of strong lobbying from Maori, the Select Committee re-inserted Maori seats into the legislation using a formula based on the Maori electoral option. That meant that the number of Maori seats increased from four to five in 1996, to six in 1999 and in 2002 to seven, where they presently remain.

With persons of Maori descent represented in all levels of decision making these days - on their own merits - the need for special race-based seats and a parallel electoral system that favours Maori, can no longer be justified. Further, the Treaty of Waitangi, which is often used by proponents as an excuse for special rights, actually guarantees Maori the *same* rights and duties of citizenship as the rest of us. That means that there is no justification at all for separate Maori electorates or separate Maori wards at central or local government level.

This view has been strongly reflected in two recent public polls, where a binding referendum on the establishment of Maori wards by the Waikato District Council was defeated by a resounding 80 percent of voters, and a Colmar Brunton survey which showed over 70 percent of the public were opposed to separate Maori representation. Full details can be found here>>>

Over the last couple of years, the Race Relations Commissioner Joris de Bres has been crossing the line from advocacy to activism by pressuring councils to introduce separate Maori seats - despite the vast majority of New Zealanders not wanting them. That led the Nelson City Council and the Waikato Regional Council to announce that they were going to introduce Maori seats at the 2013 local body elections. However, the Nelson decision was challenged by ratepayers, who used the provisions in the 2001 Local Electoral Act to gather signatures from 5 percent of Nelson electors and demand a binding poll on the issue. That poll, which is presently underway, closes on 19 May.

While the Waikato Regional Council's decision to establish 2 Maori Wards remains unchallenged at this stage, the Waikato District Council's referendum indicates that Maori Wards on the Regional Council would also be strongly rejected, should the Regional Council's decision be challenged. While the deadline for the next election has now passed, a successful challenge would lead to the removal of Maori Wards the election after next.

Maori representation on local bodies comes at a huge cost - as Auckland residents are finding out. The Auckland Statutory Board, with its unelected representatives with voting rights, was established under the legislation that gave rise to the Auckland super city - as an alternative to Maori Wards. While the Board costs ratepayers over $3 million a year to run, they are now demanding that $300 million should be spent on Maori initiatives over the next 10 years for such things as facilities for Maori, significant land and sites, strengthening the culture and environmental work. At present the Board is running a series of hui to determine other issues local Maori want the council to address. To date their list includes lifting incomes, education and workplace skills, health and representation on public bodies, the use of Te Reo Maori, high quality and affordable housing, and co-governance of natural resources.

If New Zealand ends up with a Constitution that enshrines Treaty rights, such demands are likely to escalate. There will be even more calls for special treatment for Maori at every level of New Zealand's governance arrangements, than there already are.

A great deal of work needs to be done to alert that public to the threat that this Constitutional Review process poses. That includes helping people to understand that New Zealand already has a constitution that works well. It consists of a collection of statutes, conventions and treaties. The advantage of our present flexible arrangement is that changes, such as removing the Maori seats, is a relatively simple process. All that is needed is to repeal the sections that deal with Maori representation in the relevant Acts of Parliament – the 1993 Electoral Act for the Parliamentary seats and the 2001 Local Electoral Act for local body seats. It is for this reason that the Maori Party wants to enshrine the seats within a new Constitution.

As the Select Committee of Parliament reviewing constitutional arrangements in 2005 concluded, there is no crisis and no need to change the general way our constitution works. What is now needed instead is the abolition of special Maori rights and privileges - not their entrenchment. If you would like to join our campaign to fight against the Maori Party's plan to hijack our Constitution, please support us here>>>

Footnote:
1.Elections NZ, The Right to Vote

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Treaty beliefs - in their own words

Mike Butler, 6 May 2012

One unchanging political reality is that review panels are set up to get the outcomes of the interested party. I suggest that the current constitutional advisory panel has been carefully set up with focussed terms of reference, and carefully vetted panel members, to achieve the Maori Party goal of ensuring that the review gives effect to the treaty, and entrenching separate Maori seats. Therefore, I did a search for quotes from each panellist.

The panel, launched on December 8, 2010, was a part of an agreement between National and the special-interest Maori Party in which the National Party agreed not to seek to remove Maori seats without Maori voter consent, while the Maori Party and the National Party agreed not to pursue entrenching the Maori seats during the current term.(1) Part of the Maori Party's 2011 election policy was to ensure the constitutional review gives effect to the treaty.

The panel is set up to consider: The size and length of terms of parliament; whether terms should be fixed; the size and number of electorates, including the method for calculating size; electoral integrity legislation; Crown-Maori relationship matters; the Maori electoral option, Maori electoral participation, and Maori seats in parliament and local government; the role of the Treaty of Waitangi within New Zealand's constitutional arrangements; whether New Zealand should have a written constitution; and Bill of Rights issues.

But since one co-chair and five panelists are or were Maori studies academics with vehement anti-colonialist views and only two have legal backgrounds, it would appear that the focus will be on Maori issues, especially the treaty. Here are their views

Co-chair Sir Tipene O'Regan:
"The Treaty is the foundation of our polity and of the political unit that is us."

"The economy has been built on taking and dispossessing of Maori assets, and after dispossession you are telling what the problem of the dispossessed is. I have devoted myself to regaining the dispossessed core capital."

"Letters to the editor often talk about Maori having special rights under Article 2, and the same rights as everyone else under Article 3. Yes, Maori get a "double lick", and they are entitled to it because that was the promise of the Treaty: to Pakeha, the right to be here and the power of the state, basically conveying cultural control." (2)

Deborah Coddington:
"In terms of financial wealth, Australia is financially better off, but they could learn something from us in terms of respecting tangata whenua. Yes, the English ripped off the Maori, too, when it came to getting them to sign the Treaty of Waitangi. Henry Williams deliberately mistranslated from Maori to English to protect his land holdings, and numerous other travesties were perpetrated." (3)

Hon Dr Michael Cullen:
"So if I am asked to say what is the place of the treaty in New Zealand today, in one sense my answer is a simple one. It is that it is a living document which provides an orderly framework for the settlement of historical grievances and the resolution of ongoing debates about the rights of the original inhabitants and owners of the land."

"On the issue of sovereignty I believe that it is pushing things too far to argue that the chiefs willingly transferred what the British at the time, and we today, would understand by the term

sovereignty. In a society based on tribal or sub-tribal groups, with no national political, administrative, or legal structures, it is hard to believe that could have been the case."

"... in the 19th century in particular, the treaty was breached with monotonous regularity by New Zealand governments." (4)

Dr Leonie Pihama:
"The treaty is "a crucial document which defines the relationship between Maori and the Crown in New Zealand" and which provides "a basis through which Maori may critically analyse relationships, challenge the status-quo, and affirm the Maori rights." (5)

"There has been an ongoing challenge to the States denial of Te Tiriti o Waitangi since its signing in 1840. There has been active challenge to existing constitutional arrangements and legal practices for generations. All of which have been denied and marginalised by successive governments."(6)

Professor Linda Tuhiwai Smith:
"Maori believe that the principles of the treaty have been co-opted by the government to suit the government's agenda. The defining of the terminology is central to our understanding of kaupapa Maori. Who controls the definition of kaupapa Maori principles? Let us rephrase the question - what are the principles, practices and procedures of kaupapa pakeha? By doing this we see the ethnocentricity of the question. This question rarely presents itself because pakeha do not analyse or question their own culture; it is considered the 'norm'. Historically Maori have been positioned as the other to pakeha. The questions are about naming, claiming and controlling. This is the story of colonisation." (7)

Emeritus Professor Ranginui Walker:
Walker is a treasure trove of quotes since he is a prolific writer. A clue to his beliefs may be seen in the titles of his books, which include *Perceptions and Attitudes of the New Generation of Maoris to Pakeha Domination*, *Liberating Maori from Educational Subjection*, and *Ka Whawhai Tonu Matou / Struggle Without End*, the last line of which reads "(Maori) know the sun has set on the empire that colonised them. They know too it will set on the coloniser even if it takes a thousand years. They will triumph in the end because they are tangata whenua."

Co-chair Prof John Burrows:
"Most people think the Treaty of Waitangi must have constitutional status." (8)

Peter Tennent:
"It is not going to be about 12 people sitting around a table, it is trying to reflect the views and the aspirations of New Zealanders." (9)

No quotes could be found from doctoral student and Maori language teacher Hinurewa Poutu, former Dunedin mayor and legal consultant Peter Chin, former National Party Cabinet Minister John Luxton, or broadcaster, former teacher and netball rep Bernice Mene.

New Zealand First leader Winston Peters refused to take part in the review, saying: "The Treaty of Waitangi will be the cornerstone of any constitution designed by these people and it means that every New Zealander will be subject to the irrational psycho-legal-babble that surrounds the treaty's mythical principles." (10)

I can confirm that I read much of this babble while searching for quotes. Of concern is the fact that these Maori Studies constitutional advisors claim to be speaking for Maori where only O'Regan appears to be elected to represent a branch of Ngai Tahu. Have they asked themselves whether the direction they have chosen is going to benefit or actually disadvantage the

people they claim to represent, who appear mostly to not care or have moved to the Gold Coast for a better life?

Enshrining the treaty, as currently interpreted by the Waitangi Tribunal, in law, will entrench a two-tier society with a privileged treaty class funded by every taxpayer. This would be a recipe for resentment of the sort that has led to armed conflict in other nations.

A review into constitutional arrangements conducted in 2005 recommended that parliament should designate a select committee to deal with changes with constitutional implications as they arise, provide accurate, neutral, and accessible public information, and allow a generous amount of time to consider any particular issue. That review concluded that there was no constitutional crisis and the only people pushing for change were Maori interests.

So, just seven years later, without any urgent constitutional matters arising demanding attention, there is a whole new constitutional advisory panel that was set up on the bidding of a special-interest political party -- the Maori Party.

I suggest that enshrining the treaty, as currently interpreted by the Waitangi Tribunal, in law, will entrench a two-tier society with a privileged treaty class funded by every taxpayer. This would be a recipe for resentment of the sort that has led to armed conflict in other nations. A more immediate problem is one the Key government will face when this advisory panel comes up with recommendations, which could be racially tilted, with a tough general election looming.

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Time to look forward

Dr Muriel Newman, 1 April 2012

There is a growing consensus amongst western leaders that policies and practices that divide citizens along ethnic and cultural lines are immensely damaging to societies and nations. British Prime Minister David Cameron, along with German Chancellor Angela Merkel, French President Nicolas Sarkozy, Dutch Prime Minister Mark Rutte, and former Prime Ministers - John Howard of Australia, Jose Aznar of Spain, and Yves Leterme of Belgium - have all condemned multiculturalism as a failed policy that undermines national identity, promoting separatism and extremism.

Multiculturalism is a doctrine based on the flawed notion that different cultures can co-exist side by side within communities, each retaining their own separate identity to create parallel societies. This contrasts with the traditional understanding that nations can only function cohesively if all the different groups within a society adapt to the cultural values of the society at large, to work together in the national interest. It has taken more than thirty years for elected leaders to realise that the increasing demands for separatist schools, medical facilities, legal systems, and political representation by different ethnic groups is creating divisions and unrest so deep that they have weakened the foundations of national identity and created a serious threat to national security.

In a speech to a security conference last year, British Prime Minister David Cameron declared that organisations that promoted separatism should not be tolerated. He made it clear that they should be denied access to public funds and barred from spreading their message in public institutions. "Let's properly judge these organisations", he said. "Do they believe in universal human rights? Do they believe in equality of all before the law? Do they believe in democracy? Do they encourage integration or separatism? These are the sorts of questions we need to ask. Fail these tests and the presumption should be not to engage with such organisations".

Western leaders are now making fundamental changes to promote community cohesion, shared values and a strong national identity. In line with such objectives, they are withdrawing state support from those who preach separatism, standing firm against accusations of intolerance and racism. Instead of encouraging difference and division, their new focus is on celebrating unity.

Here in New Zealand, the policies and practices that create deep divisions within our society are not so much related to multiculturalism as biculturalism. Biculturalism is a myth based on the faulty premise that a nation can be unified if two separate peoples of different cultures live side by side. The advocates of biculturalism are pushing for a separatist future - one land with two peoples and two laws. Their ultimate ambition is a nation of self-governing tribes.

Tragically for New Zealand there is even a chance that they may achieve this goal – if complacency allows them to. If the Maori Party can convince the National Party to support a new New Zealand Constitution based on the Treaty of Waitangi - as is likely to be recommended by the biased government constitutional review panel - such a constitution would create a new governing class, which would enable the separatist goal of iwi to become a reality.

And in response to those who say National would never do that, just remember, that's what we all said about the foreshore and seabed. We thought National would never repeal Crown ownership, yet they put politics and self-interest ahead of the national interest.

Underpinning the whole notion of biculturalism is the existence of a distinct race of people to claim that status. The problem for biculturalists is that rapid inter-marriage, has blurred the boundaries between races. Even the claim that Maori make up 15 percent of the population is a gross exaggeration. Statistics New Zealand explains that the way Maori statistics are reported was altered in the mid-seventies when government definitions were changed from being based on ancestry and blood quantum (someone had to be half-caste or more to be classified as Maori), to be based on ethnic affiliation and self-identification. Simon Chapple, a Senior Research Analyst with the Department of Labour, explains the implication in Maori socio-economic disparity: "In the 1996 census there were 273,693 New Zealanders who identified ethnically as Maori and Maori only. In addition to this, there were 250,338 New Zealanders who identified as members of another ethnic group, usually Pakeha/European, and also as Maori. Currently Statistics New Zealand's official policy is to arbitrarily classify mixed ethnicity individuals who have Maori as one of their ethnic groups as Maori and not as the other group or groups to which they also belong. This sole plus mixed group is the Maori ethnic group as officially measured. In addition the 1996 census reveals another 56,343 New Zealanders with Maori ancestry but who do not identify ethnically as Maori. Adding these ancestry-but-not ethnicity people gives around 580,374 Maori in 1996."

He suggested that a more accurate measure would be to retain half of those classified as Maori as part of the Maori ethnic group, with the rest allocated to a non-Maori groups using their other primary stated ethnicity. Using this approach, the 'Maori' population would reduce to just over 7 percent, less than the population of Asian New Zealanders and Pacific Island New Zealanders, highlighting the folly of the bicultural agenda.

Associate Professor of Education at Auckland University, Dr Elizabeth Rata, has long warned about the dangers of biculturalism explaining that it was driven by left wing activists who were seeking an alternative to traditional class politics in the seventies. As part of a group identity politics agenda - that also encompassed feminism and gay rights - she explains that many 'biculturalists' moved into positions of power and influence in the education and health professions, social services, and government circles, as public servants and politicians, bringing with them their commitment to identity politics: "Victimhood was subsequently understood as oppression by colonisation, the patriarchy, and 'Western' culture generally, an oppression experienced by ethnic groups, indigenous peoples, women, gays, and religious minorities' rather than the capitalist exploitation of working class people."

Their influence is without question. Policies promoting biculturalism have led to separate Maori education systems, separate Maori health funding and care, separate welfare through Whanau Ora, separate Maori housing schemes, separate Maori justice procedures, separate Maori government departments and tribunals, along with the maintenance of a separate Maori electoral roll and separate Maori seats in Parliament. In local government, there is separate Maori representation through a range of special reserved seats, liaison committees, and advisory groups.

Then there are special Maori-only consultation rights under the Resource Management Act, and special co-management rights for rivers, parks and parts of the coastline. There are even separate tax rates for Maori - in 2006 the Labour government changed the law to allow the commercial arm of Maori tribes to be granted charitable exemptions so they don't have to pay income tax on business profits. This is in addition to the long-standing special tax status of Maori authorities which pay 19.5 percent, a lower rate than other businesses, which pay 28 percent. This has tilted the playing field in favour of Maori business interests, which are estimated to have a combined asset base of $37 billion.

The point is that the push for more privilege is relentless. The Maori Party wants to restructure "the Justice System upon the basis of the Treaty of Waitangi and the foundation of partnership", and it intends introducing 'cultural competency' across the whole of the public sector. With its eye on the compulsory teaching of the Maori language, their drive for separate authority and influence is without end. It is just as Elizabeth Rata warned - the bicultural movement has been captured by Maori separatists who want nothing less than the incorporation of tribal authority into governance processes. "The bicultural movement in New Zealand has been a mistake, that is subverting democracy, erecting ethnic boundaries between Maori and non-Maori and promoting a cultural elite within Maoridom."

I asked the University of Canterbury's Constitutional Law Specialist David Round, this week's NZCPR Guest Commentator, to share with readers his views on New Zealand's culture and whether we are - or could ever be – a true multicultural or bicultural nation. In his insightful way, David explains that biculturalism is impossible:

"A society cannot be bicultural. If two cultures allegedly co-exist within it, then one will be the prevailing culture, and the other can be at best mere ornamentation and affectation. In the same way, no individual can have two cultures. One cannot live ~ which is what culture is ~ by two completely different set of rules and cultural values and attitudes. It is impossible. Certain Maori dream, obviously, of having the best of both worlds ~ of enjoying everything that the West has brought them while at the same time still somehow being authentically 'Maori'. That cannot be done. A man cannot serve two masters. A culture is all of a piece. A human being may live this way or that way, but he cannot live both ways at once. You cannot enjoy all the comforts of the West, reading and electricity and health care and television and motor-cars and a money economy, and at the same time be culturally Maori. Your Maoriness is shallow play-acting. It is dishonest. By all means revere your ancestors and treasure certain elements of their now-extinct way of life. But in all honesty, admit that you are now different."

David ends his commentary with a clear statement of fact: "We have only one prevailing culture here in New Zealand ~ a culture not 'European', not 'Maori', but our own, the consequence of these peoples, and now newer ones, living and growing together in this unique place. That is as it should be. While respecting genuine inherited difference, we should be striving to meld those differences into one greater national whole. That is the only way we will survive as a nation. A house divided against itself cannot stand." Read David's article *The Myth of Biculturalism*, HERE

So where to from here? While other Western Leaders have realised that their futures lie in national cohesion, unity of purpose and shared values and vision, our leaders seem intent on jumping to the tune of the biculturalists. With their façade of aggression and sharp tongues at the ready to call any critic a racist, for too long good people have remained silent.

Well the time has come when remaining silent is no longer an option. At present a minority group of influential mixed race New Zealanders are trying to dictate a race-based future for this country. It is time those who usually remain silent found their voice. As David Cameron said, it is time to withdraw state funding from institutions that divide us instead of uniting us. It is time to turn our backs on extremist groups. It is time to speak our mind and condemn people who seek to disrupt the unity of our great country. Change will not happen overnight, but happen it must. New Zealand needs a new direction where everyone can work towards a common purpose. We need to recapture the pride in being Kiwis that has eluded us for far too long. And while we are at it, we need to change our official Census Form so we can take pleasure in identifying ourselves as New Zealanders, irrespective of our background! We need to look forward to a new future as one people.

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The biculturalism myth

David Round, 1 April 2012

I have been thinking about 'culture', my friends, and am trying to get a handle on this most important matter. Culture is jolly important. We hear a lot about Maori culture, and hear all the time that we are a 'bicultural nation', although this is of course disputed by those who insist that we are actually multicultural. My old chum Nicky Wagner M.P. recently proudly announced that Christchurch was home to one hundred and sixty cultures. One hundred and sixty! Think of that! Is it actually possible to have one hundred and sixty cultures in one place? We'll think about that later. Nicky, anyway, considered this a matter for great rejoicing; I was almost surprised she had not sought recognition in the Guinness Book of Records. She did not specifically mention Somali culture, although her rejoicing did cover all one hundred and sixty, so presumably she is happy about Somali culture also. I daresay she is not thinking about clitorectomy and labial infibulation, piracy, deeply ingrained warlordism and violence, which all seem a vital part of life in that appalling part of the world. I would have thought that there is a good case for saying that even in Somalia Somali 'culture' is dysfunctional, but who knows, the true rejoicer in multiculturalism would presumably reply that it's all part of life's rich tapestry and we have to take the rough with the smooth.

I am being slightly unfair to Nicky, because all these 'new New Zealanders' have votes, and so politicians have to suck up to them ~ although possibly not quite as much as they actually do. And 'culture' ~ by which is generally meant not our, but other people's cultures, foreign cultures ~ is a sacred cow. You fail to embrace the delightfully exotic foreigner, so much better than we are, of course, at your moral peril. And, the Somalis aside, all these cultures *are* interesting, especially to the sophisticated jaded palate seeking half an hour's novel diversion ~ strange delicious foods, unusual clothes, language and customs ~ the sorts of things we pay good money to go overseas to see. It would be inhospitable and monstrous to be unkind to these strangers in our midst, especially when they're so nice to us, as they always are ~ the shy smiles, the greetings, the courtesies we never seem to observe ourselves…

So ~ culture! Gosh yes! Important! We even have a Ministry of Culture. So ~ what is it? Well, it seems, according to the dictionaries, anyway, to have two meanings. One meaning is simply 'the way we live'. I have made this point in the past ~ culture is the way we live ~ but it is the way we *actually* live. It is the language we actually speak, the food we actually eat, the places we live in, the work we do, the games we play, the entertainments we enjoy, the clothes we wear ~ it is not just the fancy dress we put on for special days and special places, when we go to the marae or to the opera. That is part of our culture, certainly ~ we are all enriched by our ancestral inheritance, and it is a great pity that our tender concerns for Maori culture have as their concomitant the ignoring and disparaging of our own immeasurably superior ~ yes, that was the phrase I used ~ European culture. This is another point I have made before ~ that multiculturalism does not actually mean many cultures living together. In practice, all too often, what it means is the replacement of our longstanding culture by another.

But since culture is how we actually live, it follows that there simply cannot be one hundred and sixty cultures in this country. Indeed, I would stick my neck out and say that there are, arguably, not even two. Here are two New Zealanders, one of British descent and the other of mixed Maori and British descent. They both speak the same language, English. (Indeed, if it is true, as alleged, that language is the vehicle of culture, then it simply must follow, surely, as night follows day, that a person of Maori descent who cannot speak Maori cannot inhabit the culture of the Maori….) They speak the same language. They wear the same ~ European ~ clothes. They live in similar houses, eat

similar foods, watch similar television programmes, have similar jobs, play similar sports, have similar interests….how are these two people of different cultures? Their culture is surely the same ~ the New Zealand culture which we simply do not recognise because it is like the air we breathe or the water that fish swim in. Certainly, they may have slightly different ancestral experiences and upbringings ~ but then, so do we all. My life, as a South Islander of long European descent, is different in some ways from that of one of Tame Iti's simple Tuhoe tribesmen. But by the same token, my way of life is different from that of a high-flying Aucklander. Indeed, I imagine my own simple rustic lifestyle is probably closer to the Tuhoe than to the Aucklander. Are the Aucklander and I of different cultures? Well, I suppose you could say that we are. But in that case, New Zealand does not just have two cultures, Maori and pakeha, but thousands. This is becoming absurd. It would surely be more sensible and more accurate to say that New Zealand has one culture, with the inevitable variations we find within that one culture.

This is, indeed, an inevitable conclusion, because cultures arise out of their circumstances, of time and place and history. Because our land is what it is ~ its soil, its climate, its plants and animals ~ we must inevitable live in certain ways and not in others. We have to grow sheep and potatoes, not bananas and water buffalo. We have to wear warm sensible clothes. Newcomers naturally want to hold on to something of the culture they came from. That is only natural. But those scraps of the way of life in their old home is not a 'culture' here; it is not a growing plant, only a hot-house cutting which may be kept alive for a while, but which simply will not take root and grow naturally in this new soil. Nor, we must add, do most immigrants necessarily *want* to maintain their old culture here. If they wanted their own culture so much, they would probably not have left home. They came here *because* things are different here, and they want new different lives here. One part of them, doubtless, is homesick, and quite understandably wants to preserve some of the memories of the old homeland, and that is fine and inevitable, but that does not mean that their whole 'culture' is different here, or that it can survive here ~ and it most certainly does not mean that we should actively support the (impossible) maintenance of exclusivity and a refusal to integrate into the wider New Zealand culture.

The biculturalism industry is fuelled not just by legitimate ancestral pride but by ignoble motives ~ on the part-Maori side, by desire for power and money, which the Treaty industry is providing in abundance to a small tribal elite, while throwing cultural sops to the rest, and on the New Zealand side by a loss of faith in our own civilisation, an ignorance of our own culture and our own history and by the moral cowardice and profound inferiority complex which, alas, characterises much of what passes here for intellectual life.

Cultures are the way we live, and arise out of the time and place we inhabit. It follows, therefore, that they cannot be consciously shaped by politicians or their appointed cultural commissars. It is much more the case that they *should* not be shaped by those people. Just at present there is much discussion over the proper role of local government ~ should ratepayers' money be spent promoting all sorts of vague social objectives which are, many maintain, more properly the role of central government? By the same token, some things are not properly even the role of central government. We elect our politicians, and pay for the Public Service, so that we may have schools and hospitals and state highways and armed forces. Governments have no

mandate to impose their own cultural vision on us; and, indeed, looking at the calibre of our cultural bureaucrats, their own vision is the last thing that I would want.

That is one meaning of culture ~ the way we actually live ~ and by that measure, New Zealand is pretty well not two cultures, not many cultures, but only one, with the natural and inevitable variations we would expect in any society. That is the fact ~ and it is also the way it should be, for a society can only live by one culture, one agreed way of doing and thinking about things.

The second meaning of 'culture' is what is sometimes also spoken of as 'high culture' ~ the cultivation of the nobler and more beautiful, in art and literature, music, philosophy ~ the improvement of ourselves, the seeking after reason and knowledge, truth and beauty. I leave it to you to estimate how much of that we can find anywhere in New Zealand life. I cannot see an enormous amount. Our pursuit of culture seems too often to seek the rough, ugly and sordid. Our cultural leaders all too often seem to have as their motto the old adolescent cry of 'Epater les bourgeois' ~ essentially, to shock and confront the respectable. Western civilisation is tired, worn out ~ we seek our culture elsewhere, among the primitives, the adolescents, the barbarians. Rugby is all very well for a wet winter's afternoon, but the 'muddied oafs', as Kipling called them, are heroes and role models. We worship the brainless but muscular. Such are always the tastes of civilisations in decline. We lose confidence in ourselves, and seek vitality elsewhere. But that is an error. We can, and must, draw on our own magnificent cultural traditions. Barbarism cannot save us, and by that token a culture of the Stone Age, whose highest achievements seem to involve no more than war dances in grass skirts with pointed sticks and indecent gestures, while doubtless worthy of our tolerance, does not have much to offer by way of advancing human life, let alone assisting in the more prosaic business of making a living in the modern world. A friend in Northland told me recently of eleven year old children at the local school, who can do splendid hakas, but who cannot even tell the time. What will be their future? What consolation will it be, in their lifelong poverty and ignorance, that they are 'secure in their own culture'? The cry for Maori culture all too easily becomes an excuse for ignorance and sloth. Maori will not need to know how to use a computer, because they are culturally secure. They will still demand our financial support, though….

Why is New Zealand in the grip of this biculturalism? What difference will it make for our country? We are still a free country, and so people may choose to try to develop what culture they please. No-one would dispute that. But the appearance of a completely distinct Maori culture, something independent of and utterly separate from ~ and indeed hostile to ~ New Zealand culture, is a conscious and deliberate recent development. It is not based on the authority of law ~ true, several activist judges have said loose things about 'taonga' ('property') under the Treaty, suggesting that the Crown has some obligation to protect the Maori language ~ but nothing in the law justifies the erection of a completely new separate and hostile Maori identity. The biculturalism industry is fuelled not just by legitimate ancestral pride (which should certainly be respected) but by ignoble motives ~ on the part-Maori side, by desire for power and money, which the Treaty industry is providing in abundance to a small tribal elite, while throwing cultural sops to the rest, and on the New Zealand side by a loss of faith in our own civilisation, an ignorance of our own culture and our own history and by the moral cowardice and profound inferiority complex which, alas, characterises much of what passes here for intellectual life. New Zealand's situation, it must be added, is only part of a similar weariness and loss of self-confidence affecting most of western civilisation, and which has as its prop the philosophy of 'post-modernism', which maintains that there is no objective truth, that one set of standards is as good as any other, and that there are therefore no better or worse cultures.

Except ours, of course, which somehow seems exempt from this rule, and may alone be condemned while all others are acquitted.

We have only one prevailing culture here in New Zealand ~ a culture not 'European', not 'Maori', but our own. That is as it should be. While respecting genuine inherited difference, we should be striving to meld those differences into one greater national whole. That is the only way we will survive as a nation. A house divided against itself cannot stand.

'Biculturalism' is impossible, because any coherent society can and must live by agreement on basic things. Ask yourself ~ could we still have a coherent New Zealand society if some of us were to be subject to sharia law? The Ministry of Ethnic Affairs, believe it or not, has actually recommended its introduction. I imagine even our liberal friends would draw the line here and say 'No, our culture believes in the equality of men and women, and so on, and we will tolerate no other arrangement'. I would hope that they would say that, although you never know. But to say that would be to acknowledge that multiculturalism is impossible ~ as indeed it is. There is no multiculturalism if only small picturesque differences are allowed, and not the big important differences like the oppression of women. In the same way, if those of Maori descent were to be subject to *their* own law, to have extra voting rights (as is happening in the form of special reserved Maori representation in local as well as national government), to hold a veto over developments they did not like (unless they were 'compensated', of course) and special rights over public property ~ these things are the basis of self-aggrandisement and division, of the growth of suspicion and racial hatred and the destruction of our nation. How can we have one nation if some of us believe in 'equality' as a fundamental value, and others believe in the superiority of, and special rights for, their own race or religion? It is one thing to have, or to try to have, ones own culture here ~ it is quite another to use that voluntarily assumed culture as an excuse for eternal privilege, financial, political or whatever.

As I say, a society cannot be bicultural. If two cultures allegedly co-exist within it, then one will be the prevailing culture, and the other can be at best mere ornamentation and affectation. In the same way, no *individual* can have two cultures. One cannot live ~ which is what culture is ~ by two completely different set of rules and cultural values and attitudes. It is impossible. Certain Maori dream, obviously, of having the best of both worlds ~ of enjoying everything that the West has brought them while at the same time still somehow being authentically 'Maori'.

That cannot be done. A man cannot serve two masters. A culture is all of a piece. A human being may live this way or that way, but he cannot live both ways at once. You cannot enjoy all the comforts of the West, reading and electricity and health care and television and motor-cars and a money economy, and at the same time be culturally Maori. Your Maoriness is shallow play-acting. It is dishonest. By all means revere your ancestors and treasure certain elements of their now-extinct way of life. But in all honesty, admit that you are now different.

We have only one prevailing culture here in New Zealand ~ a culture not 'European', not 'Maori', but our own, the consequence of these peoples, and now newer ones, living and growing together in this unique place. That is as it should be. While respecting genuine inherited difference, we should be striving to meld those differences into one greater national whole. That is the only way we will survive as a nation. A house divided against itself cannot stand.

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Radical forces plan to replace constitution

Dr Muriel Newman, 5 March 2012

By agreeing to the Maori Party's demand for a Constitutional Review, as part of their 2008 and 2011 Confidence and Supply Agreements, the National Party is advancing the agenda of radical forces determined to change our constitutional arrangements in their favour. Their goal is to elevate the Treaty of Waitangi into 'supreme' law to give tribal members superior rights and privileges that would forever be outside the reach of elected Members of Parliament who might want to change it in the future.

This week's NZCPR Guest Commentator Dr Elizabeth Rata, Associate Professor of Education at Auckland University, shares with us a paper she wrote in 2005."Marching through the institutions" describes how successive governments have played into the hands of an ambitious tribal elite that has spent decades infiltrating the public service, academia, churches, professions, and the media, planning for the moment when they can make their strike for constitutional status and power:

"For over two decades a group of neotribal leaders have controlled the shifting interpretation of the Treaty of Waitangi. That control has, through complex brokerage processes, led to the group's own emergence as a self-interested political elite. The elite's 'strategic march through the institutions' is now at the final constitutional stage."

Dr Rata explains that gaining full control of the government's Waitangi Tribunal has been "pivotal in establishing, then naturalising, the concepts of treaty partnership and principles", including "rewriting New Zealand's history". She points out the failure of politicians to protect the public interest by drawing attention to the "unprecedented way in which governments were losing control of policy formulation and execution in relation to the treaty. This is most clearly demonstrated by the way in which the treaty principles have been brokered into government legislation with enormous consequences for all sectors and levels of government activity."

In particular she highlights how "Simon Upton's description of the early 1990s National Government's incorporation of treaty principles into legislation through the highly influential 1991 Resource Management Act reveals an almost cavalier approach to this most far-reaching of government activities. 'I am quite sure that none of us knew what we meant when we signed up to that formula'. By 'formula', Upton referred to the requirement that local government, through the Resource Management Act, 'take account of the "principles" of the treaty'. The Labour Government also appeared not to have grasped the significance of the brokerage of treaty principles into legislation. In 2000, Helen Clark, acknowledged that 'there is no one in Cabinet actually co-ordinating the insertion of treaty clauses into new legislation'." To read this prophetic article, please click here>>>

Under our present constitutional arrangements, Parliament is supreme. It has the power to change any New Zealand law. But those who want to elevate their rights and privileges into a new constitution claim that New Zealanders are feeling uncomfortable that MPs have the power to change our constitutional arrangements. Instead, by replacing our present constitution with a new one based on the Treaty, they would be giving unelected Judges supreme power over our democratically elected Parliament. This would enable Judges to strike down attempts by future parliaments to change the constitution or remove racial privilege on the basis that it would be unconstitutional. Those unelected Judges would then have supreme power over our Parliament and over New Zealand citizens.

The Maori Party's attempt to change New Zealand's long established constitutional arrangements has come about as a result of the political decision made by National to support their

demand for a review of our constitution. Their 2008 Confidence and Supply Agreement stated, "Both parties agree to the establishment (including its composition and terms of reference)… of a group to consider constitutional issues including Maori representation. The Maori Party will be consulted on membership and the choice of Chairperson, and will be represented on the group."

The Constitutional Review was jointly launched in December 2010 by the Deputy Prime Minister Bill English and the Minister of Maori Affairs Pita Sharples. At the launch Bill English explained that they would be considering whether any aspects of New Zealand's constitutional arrangements "require change" and he noted, "Of course, we will keep in mind that enduring constitutional changes generally require a broad base of support. *Significant change will not be undertaken lightly and will require either broad cross-party agreement or the majority support of voters at a referendum.*"

This final comment should not be brushed off lightly, but should act as a warning. When other countries have contemplated constitutional change a commitment is usually made to citizens that change will only go ahead if there is widespread support through a public referendum. Here in New Zealand it appears that our fate might be decided by political parties, which under MMP, are increasingly anxious to nurture political allegiances, at a cost to the public good. One only has to look at the Parliamentary vote on the smacking bill to remember that while the public were overwhelmingly opposed to the law change, MPs were almost united in overwhelmingly supporting it. That is a situation that must not be repeated. New Zealanders must demand from the outset that constitutional change can only go ahead if there is majority support through a public referendum process.

Cabinet papers show that the purpose of the Constitutional Review is to stimulate public debate and awareness of New Zealand's constitutional arrangements, to seek the views of all New Zealanders, to understand New Zealanders' perspectives on our constitutional arrangements, and to recommend what further consideration of the issues, if any, is desirable. In addition, Cabinet agreed that the views of Maori must be sought "in ways that reflect the partnership model and are responsive to Maori consultation preferences" – see HERE. In other words, the review is already skewed towards a Maori viewpoint - instead of Maori being treated as equal citizens with regards to the review, special consideration has already been proposed.

The terms of reference for the Review cover three basic areas:

1. Electoral matters including the size of Parliament, the length of terms of Parliament, the size and number of electorates, and electoral integrity legislation;
2. Crown-Maori relationship matters including Maori representation - the Maori Electoral Option, Maori electoral participation, Maori seats in Parliament and local government – and the role of the Treaty of Waitangi within New Zealand's constitutional arrangements; and
3. Other matters such as Bill of Rights issues, and whether New Zealand should have a written constitution.

A cross party reference group of MPs set up at the time to advise on the Review consists of Amy Adams from the National Party, David Parker from the Labour Party, Hilary Calvert from ACT, Metiria Turei from the Greens, Peter Dunne from United, and Rahui Katene from the Maori Party.

On August 4 last year - just before the election - the 12 member Constitutional Advisory Panel to lead the public discussion and prepare a report for Ministers was announced. The joint chairmen are: Emeritus Professor John Burrows, QC and Law Commissioner, and Sir Tipene O'Regan, former Chairman of Ngai Tahu.

Panel members are: Peter Chin, lawyer and former Mayor of

Dunedin; Deborah Coddington, journalist and former ACT MP; Hon Dr Michael Cullen, former Labour Deputy Prime Minister and current principal Treaty Claims negotiator for Tuwharetoa iwi; Hon John Luxton, former National Cabinet Minister and co-Chair of the Waikato River Authority; Bernice Mene, former Silver Ferns representative and TV presenter; Dr Leonie Pihama, senior researcher in Maori and Indigenous education; Hinurewa Poutu, Kura Kaupapa teacher and Maori language media consultant; Professor Linda Tuhiwai Smith, Pro Vice-Chancellor (Maori)and Professor of Education and Maori Development at the University of Waikato; Peter Tennent, former Mayor of New Plymouth and hotelier; and Emeritus Professor Ranginui Walker, Maori academic and Member of the Waitangi Tribunal.

It is this 'independent' panel has will lead the public consultation process and report on any areas where there is a broad consensus. But having said that, it is clear that the panel is stacked towards Maori considerations as Pita Sharples reiterated: "An important part of the review process will be consultation with Maori, particularly on the place of the Treaty of Waitangi in our constitution. The members of this group are well placed to seek out and understand the perspectives of Maori on these important issues."

National's 2011 Confidence and Supply Agreement with the Maori Party agreed "to continue to progress the review of New Zealand's constitutional arrangements and the advisory panel established to lead public discussion on relevant issues. The advisory panel is to deliver its recommendations to the Government in September 2013. The National Party agrees it will not seek to remove the Maori seats without the consent of the Maori people. Accordingly the Maori Party and the National Party will not pursue the entrenchment of the Maori seats in the current Parliamentary term." Does this latter point not compromise the outcome of the whole Review process which has the future of the Maori seats as one of its key features?

In a Treaty Debate speech at Te Papa last month, Professor John Burrows, the co-chairman of the review panel explained that a constitution is a collection of rules that determine who exercises power in a country and how they exercise it, including the powers of Parliament, the Courts, and the Executive, as well as the safeguards to protect citizens against the abuse of power – listen HERE. Countries with a written constitution have all of their constitutional arrangements in one document, but in our case, like the UK, there is an array of major documents that constituted New Zealand. These include a collection of Statutes like the Constitution Act, the Bill of Rights Act, and the Electoral Act, some UK Statutes like the 1297 Magna Carta, a number of key court decisions, and a collection of constitutional conventions and long-standing practices - like the powers of the Prime Minister - that can be found in the Cabinet Manual. In addition there are other historical documents like the Treaty of Waitangi that played a part in constituting New Zealand.

Reform advocates say that a constitution needs to keep pace with the changing face of a county's culture, but amidst calls by various racial groups to have their special rights enshrined, it is more important than ever to prevent New Zealand being saddled with a constitution that forever divides us on the basis of race.

Please do not ignore the serious and long-lasting effects this review may deliver. If you haven't already signed up to our Constitutional Review campaign, please do so here>>>, so we can keep you well informed.

Despite what the Maori Party and their fellow travellers are saying, there is no constitutional crisis in New Zealand. We plan to vigorously oppose any attempt to foist on an unsuspecting public a new Constitution based on race, and we will forcefully protect the one we have, which has and is serving us well.

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Marching through the institutions

Dr Elizabeth Rata, 5 March 2012

In this paper, written in 2005, Dr Rata describes how successive governments have played into the hands of an ambitious tribal elite that has spent decades infiltrating the public service, academia, churches, professions, and the media, planning for the moment when they can make their strike for constitutional status and power. Following are extracts from each section – the full paper with footnotes and references, can be read ***HERE***

Introduction

The elite of neotribal capitalism have played a decisive and self-interested role in controlling shifts in the interpretation of the Treaty of Waitangi. In the identity politics of the 1970s 'honouring the treaty' initially referred to restitution for illegal land confiscations. From the late 1980s treaty interpretation shifted from its focus on reparations to the idea of a political partnership between the tribes and the government. In recent years that political partnership has been extended to ideas of a constitutional arrangement (TPK, 2001: 14; M. Durie, 2003; E. T. Durie, 1998; Wilson, 1998).

Control over the interpretation and symbolism of the Treaty of Waitangi was one of the most effective of the brokerage mechanisms used by the emergent neotribal elite. It enabled a strategic march through the institutions of a democratic society by non-democratic neotraditionalist forces. Elsewhere (Rata, 2003a) I examined the brokers or compradors (using the examples of Sir Tipene O'Regan, Sir Robert Mahuta and Professor Tamati Reedy), the brokerage mechanism, and the ideology of revived traditional leadership. This paper focuses specifically on the 'partnership' interpretation of the Treaty of Waitangi and its contribution to the success of the elite's brokerage strategy.

1. The Neotraditionalist Context

…The shift to the 'partnership' interpretation dates from the 1987 Court of Appeal decision that likened the relationship between the tribes and the government to a partnership (TPK, 2001: 78). During the 1990s the tribal leaders actively promoted the idea of two distinctive socio-political entities in partnership, – the 'neotribes' and the government (E. T. Durie, 1998). Successive governments' support for the idea of a treaty partnership during that decade enabled the leaders to use partnership and principles concepts as brokerage mechanisms for a strategic march through the institutions of government…

2. The neotribal elite

New Zealand biculturalism is a local version of the identity movements that replaced the universalist class-based politics of the prosperous post-war decades. Identity politics enabled the most vulnerable of the new professional class (its most recent entrants, such as women and ethnic minorities), to respond actively to global economic contraction and its accompanying ideological shifts. Local movements were built around identity politics to ensure that the gains women and minority groups had made in the prosperous fifties and sixties were maintained in sites of identity recognition. These sites include women's studies and Maori studies in academia along with government policies that targeted the marginalised groups…

3. The Brokerage of Treaty Principles

The development of treaty principles to express the putative partnership led to a major extension of the neotribal elite's control of treaty interpretation. The following description of the development and inclusion of Treaty principles in legislation provides a vivid account of what is probably one of the main brokerage 'events', - the brokerage of the principles of the treaty into New Zealand's democratic institutions….

E. T. Durie's long tenure as chair of the Waitangi Tribunal is a good example of an influential brokerage position within a pivotal government institution. The Tribunal played a major role in shifting the interpretation of the Treaty from its role as a grievance settlement mechanism to its role in justifying political, even constitutional, partnership. His strategic plan for the cultural change required for a constitutional 'arrangement' incorporating 'the Treaty as a basic tenet' demonstrates the political aspirations of a broker in an institutional position with real driving power.

4. Marching through the institutions

… Brokerage into specific institutions such as government ministries and statutory organisations led to institutional links between the government, the neotribalists and the courts. This enabled the march through the institutions to proceed with relative ease. For example the link between the political and judicial areas of government is made explicit in E. T. Durie's (1995: 3) suggestion of a political role for the judiciary in regard to indigenous issues. 'The courts may be called upon to play a larger role in such political issues, at least where statute law has left some openings. In New Zealand for example, where the Waitangi Tribunal may direct the transfer of state properties to Maori in reparation for historical losses, there is the question of whether the Tribunal should compensate to the fullest extent of proven loss, or should consider it necessary to restore the tribe to a reasonable equilibrium. The issue may be seen as political, but given the lack of statutory direction to the Tribunal, the issue may fall to be determined by the courts, in High Court proceedings that are now current.'…

5. The process of treaty re-interpretation

Neotraditionalist ideology naturalises ethnic division to create the belief the New Zealand society is divided into two political partners, the tribes and the government, characterised by fundamental ethnic and cultural differences that must be recognised in distinctive socio-political structures. Furthermore this relationship between the two 'partners' was agreed to in 1840 and is considered to be ongoing.

Conclusion

For over two decades a group of neotribal leaders have controlled the shifting interpretation of the Treaty of Waitangi. That control has, through complex brokerage processes, led to the group's own emergence as a self-interested political elite. The elite's 'strategic march through the institutions' is now at the final constitutional stage. Mason Durie's (2003: 105 - 116) recommendations for a new constitutional framework would create two separate socio-political organisations based upon race origins and justified according to culturalist beliefs that 'race causes culture' (Rata, 2004a)… *Read full paper HERE*

Treaty partnership has overtaken treaty settlements as the means by which the neotribal elite can continue and consolidate their march through the institutions. The final stage is that of neotribal brokerage into a constitutional arrangement.

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Leave our constitution alone

Dr Muriel Newman, 18 September 2011

A Maori academic who says that immigration by whites should be restricted because they pose a threat to race relations due to their "white supremacist" attitudes, is leading an Independent Maori Working Group on constitutional reform. According to Iwi Chairs Forum member Margaret Mutu the group will develop a constitution to be given to the Crown as a model for New Zealand. She claims that their working party has the blessing of not only the Maori Party leader Pita Sharples, but also National Party leader and Prime Minister John Key.[1]

Dr Mutu, a Professor of Maori Studies at Auckland University, is outspoken in her belief that New Zealand belongs to Maori and that all non-Maori are guests in this country. That someone with such extreme ideas is leading a constitutional review on behalf of Maori tribal authorities should serve as a warning to every New Zealander concerned about the future of this country that radical forces are driving the constitutional change process.

In effect, the Constitutional Review, a joint initiative of the Maori Party and National, represents the greatest threat to our democracy in recent times. If the promoters of the review get their way, the Treaty of Waitangi will become the foundation for a new constitutional framework. As a result, New Zealand will end up with a constitution that enshrines superior rights for Maori. That means that our fundamental democratic principle of equality under the law for all citizens will be lost.

And if you think such a notion is far-fetched and could not possibly happen here, think again. The Maori Party's desire to have the country's foreshore and seabed taken out of Crown ownership and privatised to the Maori tribal elite was seen by most New Zealanders as a fanciful demand driven by race-based greed. But all it took was a whisper in the ear of the Prime Minister for it to happen.

To make matters worse, when John Key realised the law change would gain little backing from non-iwi, he promised New Zealanders that it would not go ahead unless there was widespread public support. It soon became clear however, that this was a promise he had no intention of honouring. In spite of overwhelming public opposition John Key pushed the law change through anyway.

That our Prime Minister was prepared to put the covetous demands of his coalition partner ahead of his loyalty and commitment to the New Zealand public, does not bode well for our future. With Margaret Mutu and the other iwi leaders now having the ear of the Prime Minister, if the polls are correct and National wins the election, they will be putting the hard word on the Prime Minister that a new constitution enshrining the Treaty of Waitangi and the Maori seats is the price of the Maori Party's support. Given National's recent track record, it is highly likely they will agree - unless the public creates such an uproar that they are forced to back off. That means starting now - before the election - otherwise it could be a done deal, with a Treaty-based Constitution a disastrous inevitability.

The reality is that there is absolutely no reason for a change to our constitution. There is no constitutional crisis - New Zealand's constitution is working perfectly well. The only reason for change is that the Maori Party and the powerful iwi that they represent are lusting for considerably greater power and control.

The constitutional review was part of the confidence and supply agreement between the Maori Party and National. It states, "Both parties agree to the establishment (including its composition and terms of reference)… of a group to consider constitutional issues including Maori representation. The Maori Party will be consulted on membership and the choice of Chairperson, and will be represented on the group."

The Constitutional Review panel was announced last month. The co-chairs are Law Commissioner Professor John Burrows QC and former Ngai Tahu head Sir Tipene O'Regan. The other members include two former Mayors, Peter Chin from Dunedin and Peter Tennent from New Plymouth, a former Silver Ferns captain Bernice Mene, three former Members of Parliament, Deborah Coddington, John Luxton (a former Maori Affairs Minister), and Michael Cullen (Principal Treaty Claims Negotiator for Tūwharetoa iwi), a senior researcher in Maori education Leonie Pihama, a Maori teacher Hinurewa Poutu, the Waikato University Pro Vice-Chancellor for Maori Linda Smith, and a member of the Waitangi Tribunal Ranginui Walker. Put simply, the committee is stacked to benefit radical Maori.

The terms of reference for the constitutional review include a number of general issues such as the size of Parliament and the length of a Parliamentary term. But more importantly it focuses on the future of the Maori Electoral Option and the Maori seats – both in Parliament and in local government – as well as the role of the Treaty of Waitangi within New Zealand's constitutional arrangements.

Central to all of this of course is whether New Zealand actually needs a new constitution.

Over the last few years it has become quite popular to call for a new constitution as a means of rectifying some of the country's perceived wrongs. There is a somewhat romantic idea that a new constitution enshrining equal rights has to be better than our present system which is increasingly supporting Maori privilege. However, now that the country is formally considering constitutional reform, it is time to dispel the myths.

A new constitution would not be the panacea that many believe it could be. Essentially it would be a mechanism to pass law-making powers that currently rest with our elected Parliamentary representatives to unelected judges. Under a written constitution, judges are essentially given a free resign to not only administer the law, but to create it as well.

This should ring warning bells. New Zealand has already suffered immeasurably over the years from the damaging consequences of activist judges overstepping the mark by going further in a law-making capacity than Parliament ever intended. A recent highly controversial case was of course the Ngati Apa decision in 2003 where, under Chief Justice Dame Sian Elias, the Court of Appeal over-rode the 1963 Ninety Mile Beach Court of Appeal decision confirming Crown ownership of the foreshore and seabed. The consequences of this disgraceful example of judicial activism are well known. The decision has paved the way for the privatisation of New Zealand's coastline to any tribe that can persuade a friendly Minister in a secret discussion, that because someone of Maori ancestry allegedly had descendents who used the same spot for fishing since 1840, then they deserve to be given not only the ownership of that particular fishing spot but also the Territorial Sea out to the 12 nautical mile limit, as well as all of the seabed and the foreshore and the mineral wealth contained within! It remains such a ridiculous and bizarre outcome that I can only hope that each and every one of you reading this will mobilise yourselves to do whatever is necessary to ensure our Citizens Initiated Referendum petition succeeds, so that all New Zealanders can be given the chance to vote for Crown ownership of the foreshore and seabed to be restored!

This week's Guest Commentator is NZCPR Associate David Round, a constitutional law expert from Canterbury University, who is extremely concerned about the future of New Zealand if the constitutional changes demanded by the Maori Party and the iwi elite go ahead: "If what the Maori Party and its friends desire by way of constitutional change comes to pass, then this once lovely little country of ours will be irrevocably stuffed."

David believes that unless we protest loud and hard, our future

will be one of race-based hatred and division: "Our present situation is such, then, that unless poor old longsuffering New Zealanders kick up the most IMMENSE stink, the almost inevitable direction of any proposed constitutional change will be towards further racial division and Maori privilege. And once such privilege is in place, then our continued racial division, and our poverty and accelerated decline as a nation, is inevitable. Once power is transferred from those who have it at present, the newly powerful will not give it back. If our constitution is altered in the way in which it looks as though it may well be altered ~ that is to say, to give more power to one particular racial minority, and (by a written constitution, which will thereafter have to be interpreted by judges) to give power to unelected and unaccountable supporters of the Maori cause in the higher judiciary ~ then we are on an irrevocable slippery slope to ruin. I mean this seriously." To read David's article, click here >>>

When reflecting on the thinking that underpins this whole attempt to takeover our constitution, it is important to understand the driving force. Apart from wanting to enshrine the Maori seats and the Treaty of Waitangi in a new constitution, Radio New Zealand reported last month that Maori are keen to use the new constitution of Bolivia as a model for New Zealand: "The Independent Constitutional Working Group has been set up to consider how a constitution might be based upon Te Tiriti o Waitangi. The group's convenor, Margaret Mutu, says in Bolivia, the native people are the Government - *and that's become a model for Maori.* Dr Mutu says they have brought in a constitution that's shaped around their cultural values, and she's very interested in looking at it. The Independent Constitutional Working Group will discuss its review with tangata whenua next year, and report to the Iwi Chairs Forum the year after."

Maori Party co-leader Pita Sharples endorsed this view in a speech earlier this year by referring to the fact that Bolivia's "proudly indigenous President Evo Morales has overseen changes to their constitution that we are very interested in. Our constitutional review specifically includes the place of the Treaty of Waitangi, and Maori political representation. Maori have already made clear they want to see the foundations of our nation resting on indigenous values and tikanga as well".[2]

The new Constitution, introduced into Bolivia in January 2009, has been described as the most radical constitution in the world, by placing indigenous rights and beliefs at the heart of the country's governance arrangements.[3] It recognises 36 distinct nations within the country, which are in effect tribal entities, it sets up a distinct indigenous legal system to run parallel to the courts, and it essentially abolishes private property rights by ruling that unless land serves a "social function", it will be confiscated into State control for the purpose of redistribution. The Constitutional changes usher in an overarching ideology of living "well", rather than living "better", thereby enshrining communal values and equality of outcomes as driving forces in the "decolonisation" of Bolivia that the President is now committed to.

If you are opposed to radical changes to our New Zealand constitution, then I would urge you to sound out parties and candidates in the lead up to the election. Don't forget the email addresses of all MPs can be found on our NZCPR website here>>>. And if you oppose the establishment of a new constitution based on the Treaty, why don't you take action now by visiting our new NZCPR Constitutional Campaign site here>>> to register your opposition.

FOOTNOTES:
1.Radio NZ, Indigenous Constitutions: Bolivia today, Aotearoa tomorrow?
2.Pita Sharples, Sharing the Power of Indigenous Thought
3.Margaret Mutu, Land Claims Report February 2011

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A slippery slope to ruin

David Round, 18 September 2011

For some years I taught constitutional law at the University of Canterbury. I was also a debater, in those days when debating was a more popular activity than it is now ~ and it would happen, from time to time, when I appeared to speak in a debate, that the chairman, in introducing me, would tell the audience that I was a remarkable man, because (among other things) I lectured in constitutional law, and this in a country that did not possess a constitution! I would smile politely at this merry jest and pass on to the subject of my discourse.

But now I shall explain. New Zealand may not possess a single grand document like the document ~ actually the collection of documents ~ which the United States has, for example, and which can be pointed to and read as 'the Constitution'. But of course we have a constitution. Every organised state has one, and simply has to have one. Every incorporated society has one, and has to have one. Every group, incorporated or not, every sports club and trust and residents' association ~ every organisation has a constitution, and has to have one. That is what 'organisation' means. A constitution is simply the collection of rules by which a group is *organised* ~ the way in which it is *constituted* or made up. That is all. New Zealand's constitution is the body of rules which describe and prescribe how we run our affairs ~ how laws and executive decisions are made, how we are taxed and how taxes are spent, how we decide disputes, how we select and replace the people who do these things, and so on. In New Zealand, as in England, there is no one document that can be pointed to as 'the constitution', but that does not mean we do not have one. We cannot, unlike many other countries, draw a precise line between what is 'constitutional law' and what is just ordinary law ~ those laws which we think of as typically 'constitutional' are to be found in all sorts of places ~ but of course we have a constitution. If we did not, we would not have an organised society.

Sometimes people speak of 'written' constitutions (the United States sort) and 'unwritten' constitutions, such as our own. But this is a little misleading, because all our constitutional law is certain, and it is all written down somewhere. It may not be on one single piece of paper, but it is still written. It is to be found in Acts of Parliament, in the principles of the common law as declared over the centuries by judges, in the royal prerogative (part of the common law) and in the 'conventions' ~ the 'agreed understandings' of what is to be done. We do now have the rudimentary beginnings of a written constitution, however ~ in 1986, prompted by Mr (now Sir) Geoffrey Palmer, our Parliament made the Constitution Act, which collects together a number of very basic provisions. It is not controversial ~ it merely speaks of the Sovereign, the exercise of the royal prerogative by the Governor-General, Ministers of the Crown and Parliamentary under-secretaries, the House of Representatives and the Speaker, the full power of Parliament to make laws, the protection of judges from removal from office, and such like. In 1990 Parliament also made the New Zealand Bill of Rights Act ~ a somewhat stupid name, for reasons which, forgive me, I do not have time to explain at this very moment ~ which states certain rights which we all have, 'subject to such limits as are justified in a free and democratic society'. But neither of those Acts of Parliament is a 'higher law'. In the United States of America, as we are all aware, the Constitution is a higher law. It is 'entrenched' ~ that is to say, it cannot be altered as other laws are altered, but only in a special and complex and difficult way. And it is also the supreme law against which all other laws are to be judged and, if necessary, found wanting. The American courts have the power to declare laws invalid if they conflict with the constitution ~ if they conflict, to put it more accurately, with the judges' interpretation of what those eighteenth century documents prescribe. And judgments, therefore ~ especially of the higher courts, especially the Supreme Court ~ can often take on a highly political quality. The authors of the Constitution

nowhere mention, and never thought about, issues such as abortion, racial segregation and affirmative action, gay rights or donations to political candidates and parties. Such issues are, in any case, political and moral and philosophical issues, where judges have absolutely no special expertise qualifying them to make better decisions than anyone else. When judges decide arguments over fierce modern issues matters according to the words or intention of the constitution, they are in fact free to make law. This is why there is such great interest in the membership of the Supreme Court, and in its decisions ~ because many decisions are not narrowly 'legal' decisions, as we might think, but very political ones. It is for this reason also that nominees to the United States Supreme Court must undergo an examination by a committee of the Senate. When judges are able to some considerable extent to act as politicians, it is only reasonable that they be examined as to their political alignments as well as their more strictly judicial record.

Now by this point I am beginning to get ahead of myself, and so I must take a breath and tell you where I am going. At the end of last year the Deputy Prime Minister, Mr Bill English, and the Minister of Maori Affairs, Dr Peter Sharples, announced a far-reaching review of New Zealand's constitutional arrangements. I would not blame you if the announcement ~ and a later announcement, just a month ago, of the membership of the 'Independent Advisory Panel' ~ had slipped under your radar. I do not recall much, if any, publicity at the time. (Indeed, at morning tea this very week I mentioned the review to several of my colleagues in the Law School, and a couple of them had not heard of it either.) The review is, fortunately, to be a reasonably leisurely one ~ the advisory panel's final report is only due in September 2013, and final decisions will be made thereafter by Parliament ~ and so there will be plenty of time for us to think about the issues and make our views known. It is absolutely vital that we do. The issue of our constitutional arrangements is more important than anything else that we have argued about over the last twenty years. It is more important than any Treaty settlement, more important than the foreshore and seabed or the United Nations Declaration on the Rights of Indigenous Peoples, more important than *anything*. Constitutions deal with power, with who exercises it and according to what rules. Everything that has been done in the last twenty years by way of dealing with Maori issues has been done according to the constitutional rules we have grown up with, absorbed with our mothers' milk and know without even thinking about. The results, we might say, have been bad enough. But if our constitution is changed, then decisions will be made in different ways in future, and by different people. Past decisions may certainly be less than satisfactory, but that is our fault, for not having been firm enough ~ but past decisions will be nothing compared with future decisions which will be made under much more Maori influence. The almost inevitable consequence of any changes made by this review will be a transfer of power from those who have it now to other people. That will mean, in fact, a change from our present equality to a regime of inequality. (Bear in mind, also, that once these particular constitutional changes are made, it will be easier for the newly-empowered to push through further changes in future.)

At present, ultimately, power rests with the people, and all the people enjoy equal political rights. Parliament is supreme, and we elect parliaments. 'The English constitution,' a nineteenth century Englishman said, 'is a majority of one in the House of Commons'. With that majority ~ and we have only one house in this country ~ a parliament can make any laws it pleases, and support any Ministry it pleases. Occasionally, certainly, some people worry about this, and wonder if there should not be 'safeguards' of some sort to prevent parliaments from being too hasty or dictatorial. In principle there is something to be said for this, although the need has not been as pressing since MMP was introduced. But in our present situation, the remedy will be worse than the disease.

And what is our present situation? Well, we know it only too well,

but let me remind you. This review was promised to the Maori Party by the National Party as part of its coalition deal after the 2008 election. It is not prompted by any failings in our constitution (other than some perceived failing to give Maori more power than they possess now). It is prompted entirely by Maori ambitions, and Maori are already preparing their complaints and demands for new constitutional forms. What is more, the terms of reference of the Independent Advisory Panel are already declared to be to 'seek the views of all New Zealanders…*in ways that reflect the Treaty relationship'* and 'in ways that *reflect the partnership model* and are responsive to Maori consultation preferences'. One might almost conclude that the Panel's conclusions are already to be found in its instructions.

The Panel is of a remarkable racial composition. Its co-chairs are the respected former professor of law (and my old colleague) John Burrows, now a Law Commissioner, and Sir Tipene O'Regan. It has five European members, five Maori members, one New Zealander of Pacific Island extraction and one of Asian descent. Among the five Maori members are Professor Ranginui Walker, known to readers of this column, and certainly someone who will be very vigorously pursuing privileges for members of one of his ancestral races. I am afraid to say that several of the Panel's other Maori members seem to my perhaps jaundiced eye to be capable, at least, of being readier to pursue selfish racial interests than the common good. Forgive my presumption. Certainly, many of the people appearing before the Panel will be pressing for racial privilege in a new constitution. I do not envy John Burrows his task.

Our present situation is such, then, that unless poor old longsuffering New Zealanders kick up the most IMMENSE stink, the almost inevitable direction of any proposed constitutional change will be towards further racial division and Maori privilege. And once such privilege is in place, then our continued racial division, and our poverty and accelerated decline as a nation, is inevitable.

Once power is transferred from those who have it at present, the newly powerful will not give it back. If our constitution is altered in the way in which it looks as though it may well be altered ~ that is to say, to give more power to one particular racial minority, and (by a written constitution, which will thereafter have to be interpreted by judges) to give power to unelected and unaccountable supporters of the Maori cause in the higher judiciary ~ then we are on an irrevocable slippery slope to ruin. I mean this seriously. If what the Maori Party and its friends desire by way of constitutional change comes to pass, then this once lovely little country of ours will be irrevocably stuffed. More things will happen, of the sort that we have deplored over the last twenty years, and worse, and we will have less and less ability than we seem to have even now to stop them. Yes, it does seem strange that 'reform' should lead to a loss of power by the people, but that is what will inevitably happen. Our laws now recognise the equality of all citizens. Let me repeat, the forthcoming constitutional review is not prompted by any failure of our constitution, which is working perfectly well, and without any problems at all. (The only possible exception to that remark might be in relation to our voting system, where some might wish to replace the present MMP system with either the former first-past-the-post system or some entirely new one ~ but voting systems are not a part of the review, being dealt with by a referendum at the time of this year's general election and possibly another referendum later.) This review has been established, not because of any failure in our constitution, but simply because the National Party promised it to the Maori Party. It is entirely prompted by Maori demands ~ it has no other justification. Maori are already starting to agitate, to demand the 'justice' which our present constitutional arrangements evidently deny them. They seek greater power. They will not exercise it for the common good, but in their own interests. National's behaviour over the foreshore and seabed provides abundant evidence that the Party's senior figures are perfectly ready to sell their own fellow-citizens down the river for the sake of their own

short-term political advantage. They did it then, and there is no obvious reason why they will not do it again. Any change in our constitutional arrangements to grant more rights to Maori must inevitable be a change away from our present equality, and that must mean, inevitably, a change towards inequality. As Maori obtain more rights, so the rest of us must lose some.

Nor must you imagine that such changes will be opposed by many enlightened liberal defenders of the human spirit. For a generation, at least, much of New Zealand's liberal 'intelligentsia' has been profoundly illiberal. Democracy is very much yesterday's idea. The majority of the people are ~ so *ordinary*, my dear ~ simply *so* unexciting~ so dull ~ so worthy of nothing more than being completely ignored, while we pursue the latest new fashions in ethnic and multicultural *chic*. Darling, David Round is just so *mediaeval*. I have given many examples in the past in these columns of the way in which our reasonable and widely-shared views are instantly dismissed out of hand by the enlightened as not worthy of a second's consideration, and I see no reason why their attitudes should not continue. No ~ I doubt that we will get much help from our intellectual leaders, who on the whole think that the Treaty is just a simply *marvellous* idea. We are on our own.

But there is hope, although, like the cavalry, it may arrive only at the eleventh hour. For most of our history, certainly, until liberty and democracy were achieved, and until we could therefore take them for granted and be anaesthetised by home comforts and tawdry luxuries, our constitution has been a matter of burning concern. Constitutional development has indeed been one of the great themes of English history. From Magna Carta's sturdy assertion of established rights against the encroachments of bad King John, through the tumults of the Middle Ages, the despotism of the Tudors, the great resistance of the seventeenth century (when the people sent one king to the scaffold and another to end his days in gloomy exile in France) ~ through all of this to the gradual establishment of Ministerial responsibility and parliamentary government under the Hanoverians and a constitutional monarchy under Victoria, the great concern of the Crown's free subjects was the assertion and maintenance of their ancient liberties. This is why our hearts beat faster at the mention of those heroic days and deeds and documents. Our hearts stir at the assertion of liberty in the American Declaration of Independence, and in the lesser-known but magnificent Declaration of Arbroath whereby the Scots, fighting against the English Edward, declared that 'it is in truth not for glory, nor riches, nor honour that we are fighting but for freedom ~ for that alone, which no honest man gives up but with his life itself'.

'Freedom'! Think of that! Freedom! What might that be now, exactly?

Set against that magnificent background, this present review seems to be an utter betrayal of the human spirit. Its instigators' purpose is not freedom, not the greater good ~ not even the shallow lure of economic prosperity, not that that isn't handy ~ but special 'rights' for a racial minority. Their purpose is to bind the non-Maori population of this country hand and foot and turn them over to a racist constitutional regime in which they have far more power than they deserve. Apartheid as improvement. We would laugh out loud at the suggestion that granting more power to farmers, say, or manufacturers, or trade unions or the poor or the elderly, would lead to anything but their stronger pursuing of their own interests ~ yet somehow our rulers manage to suspend disbelief and assume that the inevitable consequence of enlarging Maori influence on our constitution will be the greater good. Equally bizarrely, they seem to think that we will not notice that such ideas are not consistent with our own understanding of our ancient rights and liberties.

The conclusion I am forced to, then, is that whatever the outcome of this review, it will only engender further bitterness and division. If Maori get what they want, then we shall be angry in future for ever. If they do not get what they want ~ if we

manage to hold the line ~ well, that will be good, but they will be disappointed, and they will be angry forever in future, because they will consider themselves deprived of what they are (somehow) entitled to. And absolutely everyone will of course have become agitated and concerned during the debate. The entire exercise seems to me to be doomed to an unfortunate outcome, regardless of what precisely happens.)

Doubtless different Maori will come up with different suggestions as to how New Zealanders' alleged obligations under the Treaty might be implemented. In recent years some have suggested a separate Maori House of Parliament, whose consent would be necessary to laws. Such a proposal would mean that the vote of a European New Zealander would not be worth as much as that of a Maori ~ for the 15% or so of the Maori population would have as much say as the 85% non-Maori. It would also be a guarantee of blackmail demands for ever. It would also mean, of course, a thorough racial classification of everyone in the country to ascertain whom they should be voting for and what their rights were. And then here we'd be, back in Nazi Germany.

(Some elections ago, by the way, the Green Party had a policy of separate and equal Maori and European Houses of Parliament. Perhaps they will tell us if they still have that policy, but they certainly used to.)

Possibly likelier, but equally disastrous, would be the elevation of the principles of the Treaty to some form of 'higher law'. If we were to adopt a written constitution then it would be very surprising indeed if it did not begin with some acknowledgement of the Treaty and its principles, and thereby give judges the opportunity to strike down laws made by Parliament on the ground that they offended against Treaty principles. This is not far-fetched. Our present Chief Justice ~ one Treaty claimant described her at the time of her appointment as Maoridom's 'best weapon', although we would readily concede she is not entirely responsible for what other people say about her ~ has already publicly stated that she considers herself legally entitled to strike down Acts of Parliament right now if they offend against her interpretation of Treaty principles. She has not been the only judge to voice that opinion. This would be the overturning of centuries of absolutely fundamental constitutional law and democratic principle. She considers herself to be entitled to strike down the laws of this country, decided by democratically-elected Parliaments, if she thinks that 'Treaty principles" justify it. These are the words of a would-be dictator. As I may have said before, for a judge to do that would be as much a *coup d'etat* as if armed men entered Parliament and drove the Members out at gunpoint. It is as much treason as Guy Fawkes' plans (worse, in fact, for it seems that he may very possible have been framed!) She has already demonstrated her readiness to overturn long-established law and embark on disgraceful political adventures when she and her fellows in the Court of Appeal made the 2003 *Ngati Apa* decision on the foreshore and seabed which has already brought so much anger and division to this country and will continue to do so. That decision was a deliberate political choice. If we get a written constitution, however, we will inevitably be handing more power over to its interpreters ~ some of whom will be people like her.

Treaty principles, as I hope I have explained sufficiently in the past, are such vague platitudes, pulling in different directions, that they can be used to justify about any decision any judge might ever want to reach. If we should ever be unlucky enough to have the Treaty or its principles inserted into our constitution as some special standard with which legislation must comply, then judges will forever after be entitled to strike down any law, any decision on the ground that it offended against Treaty 'principles'. The Maori Council has already argued, for example, that it is a breach of 'Treaty principles' if Maori do not receive preferential treatment in the allocation of limited medical services, such as kidney dialysis ~ this because old people (with kidney disease) are 'taonga', guaranteed by the Treaty. By the same token, young and middle-aged Maori people are probably

taonga also. So if our constitution says that the Treaty and its principles have some special status ~ a reasonable prospect if we get a written constitution ~ and if some judge swallows this argument, also surely a reasonable possibility ~ then hey presto, Maori enjoy better access to health care for ever than anyone else. We pay the taxes, they use the services. And so it could be with any aspect of government. One could easily imagine that a taxation law, say, could be struck down because Maori can't afford it as much as anyone else, and therefore it's oppressive ~ or there might be a declaration that Treaty principles require the Maori language to be taught in all schools, or that the whole country be bilingual, or that more money be allocated to Maori television, or Maori education, or that the Department of Conservation give Maori special rights (the judges have begun to head down this track already), or that the Treaty requires that more rates money be spent in Maori communities, or that they should have 50:50 representation on local bodies….The possibilities are endless. And there are judges who will enjoy nothing more than making lofty holier-than-thou pronouncements of principle with disastrous consequences and then handing it over to others to attempt to clean up the mess. Examples may be found in some decisions on Treaty principles in the last twenty-four years.

In the light of our present political situation, then, I cannot but think that just about any constitutional reform which is likely to ensue from this current review is going to be bad for this country and its people. Our attitude should most certainly be one of caution ~ indeed, of cynicism. My own family has a saying, a famous remark by a great-great uncle of mine ~ also a lawyer, as it happened ~ who used to say, 'If you trust anyone, you're simple'. A little cynical, perhaps, but also wise. And this is the principle of all democracy. We won't trust other people, thank you very much ~ we'll be in charge ourselves. We won't hand care for ourselves over to the state, or to another race, or to judges. No thank you. Right now, we're in charge, and we want things to stay that way.

Doubtless different Maori will come up with different suggestions as to how New Zealanders' alleged obligations under the Treaty might be implemented. In recent years some have suggested a separate Maori House of Parliament, whose consent would be necessary to laws. Such a proposal would mean that the vote of a European New Zealander would not be worth as much as that of a Maori ~ for the 15% or so of the Maori population would have as much say as the 85% non-Maori. It would also be a guarantee of blackmail demands for ever. It would also mean, of course, a thorough racial classification of everyone in the country to ascertain whom they should be voting for and what their rights were. And then here we'd be, back in Nazi Germany.

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