

by Danny Keenan



# Reviewing the Constitution

## What can Maori expect?



The Maori parliament at Orakei. Illustrated London News, Dec 4 1880. Artist unknown.

Unlike the United States, New Zealand does not have a written constitution. Nor do we have courts which specifically monitor our basic rights, safeguarding such protections as the freedom of speech and the rights of free association, amongst others. As the terrorism raids of 2007 demonstrated, governments in this country can easily ride roughshod over their citizens, based upon the flimsiest of excuses.

In New Zealand we have a huge constitutional jigsaw with pieces and protocols located in many different legal places, each offering limited protections. Many of our constitutional procedures, like the appointment of a Governor General by the Queen on the advice of our Prime Minister, are governed by

convention, formality and well-tryed historical practice.

There is no single, symbolic constitutional document which says it all, laying everything out in plain language for all to see and understand. Perhaps the New Zealand Constitution Act 1986 comes closest. This Act finally recognised New Zealand's independence in statute from Britain. It had taken 134 years to untangle us from the 1852 Act which had first established our colonial independence.

But what of our Bill of Rights protections? Our obligations to international covenants? Should our courts have the power to challenge Parliament's laws, as in the US? How long should our terms of Parliament be? And, of most concern to Maori, what is the place of the Treaty of Waitangi? In short, should important

constitutional matters such as these be enshrined in a single document?

Should New Zealand have a single, written constitution?

This question, and many others like it, will be addressed when the Government appoints a Commission to review our piecemeal constitution and to recommend changes.

Prime Minister John Key promised the Maori Party, when seeking their support for a coalition deal in 2008, that such a review would be undertaken. But, like the rest of the country, he's been in no hurry. Pakeha are doing okay. In fact National refused to support the last attempt at a review, in 2005. Now their hands are tied to the Maori Party, which is insisting on the review. With an election looming (and perhaps another coalition agreement), the



National Government can't leave it any longer to get the two or three year review underway.

But any controversial recommendations, like a new flag or more MPs, won't necessarily be National's problem. That's something for the next government to worry about and, though a long shot, it might in fact be a Labour centre-left coalition. This is because the review commission is unlikely to report before 2013 or even 2014. How long it takes will depend on how long the Government allows New Zealanders to take part in its 'long conversation' on constitutional matters, and how much money it wants to spend.

For Maori, this review can't come soon enough. The influential Iwi Leaders Group is watching developments and is yet to decide whether to support the Commission, or to set up a parallel consultation process of its own.

The Commission will be answerable to Deputy Prime Minister Bill English, who is looking for 'safe hands' to manage the Commission. It would be unusual if prominent Maori like Eddie Durie or Tipene O'Regan were not involved. Maori confidence will suffer if the Government confines itself to Maori with known links to National.

Maori expectations are high. The reform of electoral inequities and the affirmation of Maori as sovereign Treaty partner are bottom lines for any constitutional change.

When introducing the 1867 Act granting the franchise to Maori, the Government conceded that Maori owned three-quarters of the North Island and paid most of the country's taxes. Maori, it was said, were deserving of equal rights with Pakeha colonists.

But such assertions told only half of the story. Article Two had promised much more; electoral equity at least, on the basis of Maori being a sovereign and equal participant in the Treaty signing.

How the constitutional Commission resolves this 171-year-old issue will be interesting to see.

Since the advent of MMP in 1996, the

Maori seats and the Maori electoral option have been the focus of intense electoral interest. The Maori Party now offers Maori the chance to attain an independent Maori political voice, a focus not seen since the days of Te Kotahitanga in the 1890s. This cannot be said of the other mainstream parties with Maori parliamentarians where party concerns invariably override Maori policy.

One major argument against the Maori

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seats turns on the supposed value of MMP to Maori. This year's constitutional Commission will almost certainly review the adequacy of our MMP electoral system, though the forthcoming 2011 referendum on MMP will influence its findings.

When MMP was first mooted in 1986, it was suggested that, with the appointment of list MPs, mainstream parties would favour 'minorities' like Pacific people, women and Maori.

Since 1996, when our first MMP government was elected, the numbers of Maori MPs have increased with most parties appointing Maori to senior list positions. But National still has relatively few and the Act Party none.

Under MMP, the list clearly does not guarantee that Maori will be elected to

Parliament, much less that Maori political aspirations would ever receive their due. Whether Maori are elected should not be left to the expediency of party apparatus controlling their party lists.

There is ample argument that a new constitution should safeguard the Maori seat not least because they guarantee Maori representation in Parliament by Maori. A guaranteed Maori representation is a Treaty right, an issue that the review Commission need to grapple with.

Until the mid 1970s, there was little enthusiasm in government circles for the Treaty of Waitangi. It was seldom considered when legislation and policies for Maori were devised. This all changed with the passage of the Treaty of Waitangi Act 1975, among others, which promised to 'adhere to the Treaty.'

But a problem soon arose: what did the Treaty actually mean, in strict policy terms; one was sure. In 1987, the Court of Appeal agreed with the Maori Council that the Government had breached the Treaty by setting up State Owned Enterprises.

As a consequence, the Crown devised a set of 'principles' in 1989 that would thereafter guide its negotiations with Maori on Treaty issues. But by these principles, the Government was able to dodge its Treaty responsibilities.

The forthcoming constitutional enquiry will be hugely complex. Many constitutional issues, like the orderly transfer of power following triennial elections, do not directly affect Maori. Maori however are vitally interested in creating safeguards for their continuing representation and the unhindered maintenance of political autonomy.

The constitutional review Commission therefore, faces a monumental task. Maori not shy away from the tough debates ahead but their Treaty expectations are clear. Perhaps now, in this new century, we might remember the old adage: Ka hura te mata o te tai - the tide has begun to flow. *o*