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Modernising Parliament: Rethinking Parliament for the Next Generation

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"Guiding Principles for Modernising Parliament"

The subject before us is modernising how parliament operates. My particular task is to find a set of guiding principles to that effect.

My observations focus on the NZ Parliament, and there will thus be a limit to the significance for the larger world of parliaments – 190 altogether.

There is, however, no limit to the reverse process – how much the larger world can offer insights to the NZ situation. I intend to take advantage of that fact. Just this month (September '15), the Inter-Parliamentary Union issued a statement that "democracy is only as strong as the political participation of citizens". This must be increased, said the IPU President, for world peace, social cohesion and development. The IPU called for a step-up in efforts to involve the public more deeply in formal political processes and institutions, including parliaments. It urged parliaments to be more open and accessible to their citizens, and more representative of society as a whole.

That, essentially, is the call to older parliaments, such as New Zealand's, to ensure that they remain relevant through a continuous process of modernisation. I plan to explore these issues in more depth; I do so by addressing three challenges:

1. Optimality between tradition and innovation in a national parliament;
2. Traditions that may require modernising;
3. Principles for guiding that modernisation.

1. Optimality between tradition and innovation

The authority of a parliament rests on the extent of its political legitimacy. Political legitimacy requires, by definition, political roots. Those roots are embedded in the sub-stratum of a country's societal characteristics. If the institutional product fails to grow or, having grown and matured, weakens to the point of incompatibility with, or alienation from, those characteristics, trouble lies ahead.

If the response is revolutionary, a radical re-alignment of values and institutions occurs, justified either as a rediscovery of the 'true tradition', or the introduction of a 'new order'. In the former case, tradition guides innovation, claiming self-justification. In the latter case, innovation trumps tradition, seeking legitimacy through an untested vision.

If the response is evolutionary, it is because the society has summoned sufficient foresight and resolve, while retaining cohesion and coherence, to avoid revolution. Yet that avoidance requires genuine change, albeit incremental and measured. The art of evolutionary survival is finding the optimal balance.

The importance of getting that right should not be understated. Our contemporary time bears an eerie resemblance to the Edwardian Era, just a century ago.

2. Traditions in need of modernisation

The challenge for a parliament, then, is twofold:. First, it must accurately identify which traditions are in need of modernisation and secondly, it must judge the extent to which any such change is optimal.

There are, perhaps, four areas where tradition may have an undue lag effect on the modernisation of a parliament. They are:

(a) Demographic composition
(b) Structure and function
(c) International role
(d) Constitutional status

(a) Demographic Composition

Societies change, with greater rapidity and less predictability than do their representative institutions such as parliaments. They mutate with respect to ethnicity, gender, age and religion. The task for a national parliament is to check whether it remains, after a certain period, faithfully representative of the society for which it makes the law that binds its members. Underpinning all these is the question of political diversity.

Political diversity

With respect to representation, New Zealand has done well through its reform of the electoral system. Dissatisfaction over the results of the British 'first-past-the-post' system, in which minority political views across society's spectrum were continuously marginalised, resulted in a royal commission of enquiry, a global review of other systems, a recommendation for change, a national referendum, and a decision to adopt MMP. The result, since 1996, has been a broader representation of political views in the NZ Parliament than ever before, and a more flexible style of governing.

Whether this translates into greater diversity in other areas (ethnicity, gender, age, religion) is a derivative, dependent on the parties themselves, but the greater diversity of political view is almost guaranteed. The referendum of 2011 on retaining MMP (58% to 42%) made it clear that New Zealanders were satisfied that the new system was appropriate to the times, despite broad opinion in favour of marginal changes to the system. Parliament modernised itself, or more accurately, the people modernised their parliament.

Ethnicity

Although indigenous peoples make up 5 per cent of the global population and account for one third of the one billion extremely poor rural people, an IPU survey in 2014 found that out of more than 45,000 MPs in the world, fewer than 1,000 were indigenous people.

In the case of New Zealand, ethnic diversity has increased considerably. In 1900, Māori representation was 7%, in 1950 it was 5%, in 2000 it was 14% and in 2015 it is 21%. Pasifika representation has gone from 3% in 2000 to 7% in 2015; while Asian representation has increased from 1% in 2000 to 4% in 2015. In each case, this is, in very rough terms, proportionate to population.

Gender

Women account for just over 22% of all parliamentarians in the world and less than 18% of all government ministers. Mechanisms such as quotas or other special measures have proved effective in many countries to increase women's representation in parliament, particularly when the concept has been enshrined in national constitutions or set figures established in electoral laws.

In New Zealand, the gender balance has evolved, from 100% men in 1900, to 96% in 1950, to 69% in 2000 (increasing again to 77% in 2015). There is a considerable way to go, for Parliament to be truly 'modern' in this respect.

Age

It is a misconception that early parliaments were frequented by older people: in the case of New Zealand, the Parliament in 1900 had 20% of its MPs over 60 years, in 1950 this was 39%, in 2000 it was 8% and in 2015 it is 18%.

The optimal spread of age for parliamentary representation is a contentious issue, reflecting divergent cultural contexts. On one hand, it is argued that life-experience is essential for sound political judgement and law-making. The counter-argument is that the interests of the younger cohort in society should be directly served by a parliamentarian representation that is more accurately proportionate to the demographic spread. There may be a need for more debate on the optimal age-spread for a modern NZ Parliament.

Religion

Unlike the UK, New Zealand has no official religion, with no established church. There are, however, certain anomalies apparent in this country. The head of state must be, by declaration, a Protestant Christian who will uphold the Protestant succession in accordance with the Accession Declaration Act 1910. The Act of Settlement 1700 (Section 3), applicable in NZ law, requires that the King or Queen of New Zealand must be an Anglican. The Title of the Queen of New Zealand includes the statement 'by the grace of God' and the title 'Defender of the Faith'. It is not made clear in NZ law which Faith this refers to.

This is essentially high theory derived through the British, or more accurately English, heritage. It contrasts with the more ecumenical common sense observed in the colony itself in earliest days. At the signing of the Treaty of Waitangi in 1840, Governor Hobson affirmed, in response to a question from Catholic Bishop Pompallier, that "the several faiths (beliefs) of England, of the Wesleyans, of Rome, and also Maori custom shall alike be protected". The statement has no constitutional effect, but it is taken to have considerable political significance.

In 2007, the government issued a National Statement on Religious Diversity containing, in its first clause, the observation that 'New Zealand has no official or established religion.' The statement caused some controversy at the time. Opponents argued that New Zealand's head of state, Queen Elizabeth II, is the 'Supreme Governor of the Church of England'. In fact Elizabeth does not act in that capacity as the 'Queen of New Zealand'. Yet she retains the title 'Defender of the Faith' within her official role. And yet, in turn, the last Governor-General was a Roman Catholic; and the Press Release from Buckingham Palace announcing his appointment in 2006 omitted to mention this fact.

In the NZ Parliament, the day's activities commence with a Christian prayer whose current version somewhat puzzlingly refers to the 'true religion' of New Zealand. The idea of rewriting the Prayer was raised by the Prime Minister and the Speaker in 1961, but was abandoned because of insufficient cross-party support. In 2015 the Speaker re-visited the idea of a change to the Prayer, but dropped it when a majority of MPs, at least within the governing party, opposed the initiative.

It has to be asked, nonetheless, how the current Prayer uttered by Parliament, the sovereign law-making body of the Realm, can be reconciled with the Statement of Religious Diversity whose first principle among eight asserts that "the State treats all faith communities, and those who profess no religion, equally before the law".[i]

(b) Structure and Function

There still exists, to this day, uncertainty over what the full range of functions a national parliament should fulfil. Is it exclusively a legislative machine, or is it a debating chamber?

To some extent it is both, in that the passage of bills is characterised by 'debates' in the three readings. These are, however, essentially expressions of party views on a single piece of legislation; with 12 speakers in each of

the three readings totalling 24 speeches of 10 minutes each, plus an average of two hours in committee of the whole, means 6 hours for each bill. This contrasts with General Debate and Question Time for which less time is allocated.

In fact, the average weekly schedule for the House, apart from committee work, is roughly as follows:

Function	*Hours*	*% Time*	
Bills	11	73%	(80% Govt.; 20% Private/Members)
Question Time	3	20%	
General Debate	1	7%	

Finally, there is the question of parliamentary style. An adversarial system prevails in the NZ Parliament, heightening the adversarial nature of debate to the detriment of reason and occasionally sanity. There are two underlying reasons:

- The physical lay-out of the Chamber. The NZ lay-out derives from the Westminster system of opposing benches, two swords-length apart. It compares, unfavourably, with the hemispherical lay-out of the European continental parliaments.
- The Standing Orders allow unduly loud, frequent, and boorish behaviour from MPs during speeches. This includes sports-style clapping in support. It is unedifying, and astonishing to visiting school-children who are taught to behave otherwise so that they may be worthy one day of political leadership. It is incorrect to justify the antics that are perpetrated in the name of 'robust debate'. Most debates elsewhere prohibit such behaviour and are superior in quality as a result. The Standing Orders need to be stricter, and more strictly applied, for Parliament to become 'modern' in the sense of attaining a higher level of dignity and respect that retains public confidence.

(c) International Role

A related question is: what proportion of time should the NZ Parliament devote to domestic issues and how much to foreign issues. Although there is a 'foreign affairs, defence and trade' committee, these issues are rarely debated in the House. It is only when such issues take legislative form, usually through free trade agreements, that they become part of the legislative machine, absorbing the time of the House.

But as the 21st-century world becomes globalised, the membrane separating domestic and international affairs becomes more permeable. The best example is climate change, which is orphaned in terms of parliamentary focus, being tucked awkwardly into LGE (Local Government & Environment). There is a strong case for establishing a Standing Committee on Climate Change, in order for the house to develop a sustained focus on this critical global crisis and New Zealand's role.

The question arises of the extent to which the major international treaties have influenced New Zealand constitutional thought and practice.

The relationship between international law and national law is complex, and somewhat obscure as to the precise convention that applies to each country. Of the two main approaches, monism and dualism, the British-based, common law systems tend generally to respect the dualist system. Although there is no precise correlation, most continental countries with civil law traditions observe the monist system.

There is a major procedural difference between these two approaches to implementation of international law, and opinion differs on the extent to which these differences impact on the disposition of countries to respect international obligations they assume.

Monists assume that their national legal system and international law together constitute a unified body of law. International law thus does not need to be translated into national law. The act of ratifying an international treaty immediately and automatically translates those provisions into national law – it 'becomes' national law. International law can be directly applied by a national judge as if it were national law, and it can be directly invoked by citizens.

That international law, moreover, may in some cases take precedence. In some countries, a judge can declare a national law invalid if it contravenes international law that a country has accepted on the grounds that the

international provisions have priority. In its pure application, monism holds that a national law (even a constitutional provision) is null and void if it contradicts international law. In others (such as Germany), treaties have the same status as national legislation, and take precedence only over those laws enacted prior to ratification.

This applies especially to the timing of legislation. In a monist tradition, international law will take precedence over national law, whether or not the latter was adopted prior to or after the treaty was ratified. In the dualist tradition, however, incorporated international law will take precedence only over laws enacted prior to ratification.[1]

In contrast, dualism recognises a 'firewall' between national and international law. It requires the conscious and explicit translation of international law into national law for the former to have any effect within a state. If international law is not so translated into national, it is no law at all – effectively the obverse of monism. If a state, which accepts a treaty but does not adapt its national laws to ensure conformity or explicitly incorporate the treaty into domestic law, commits an action in violation of the treaty's provisions, then it has contravened international law but not its domestic law. Given that international law carries few sanctions, a dualist state carries a less weighty feeling of obligation under international law. Citizens cannot rely on international law for redress. Judges can apply only international law that has been translated into national law.

In the UK and New Zealand, the dualist approach is markedly dominant, and a treaty has no effect in domestic law until an Act of Parliament is passed to give effect to it.[2] That 'act of implementation' by the legislature is separate and distinct from the act of ratification which is done by the executive. In the majority of states, however, the legislature participates in the process of ratification, so that ratification becomes a legislative action and the treaty becomes effective in international law and national law simultaneously.

A monist state is less at risk of violating international law because its judiciary apply it directly. It is only in a dualist state that governmental negligence or unwillingness to translate international law may arise. A dualist state may delay or choose a particular interpretation of international law, and face no liability. As is shown above, New Zealand has taken lengthy periods of time to implement international law, based on a strict dualist tradition. We have meandered at our leisure on matters of global import. Theoretically, states are equally accountable for international treaty obligations, but there is no question that the monist tradition reflects a more purist respect for international law.

New Zealand takes dualism at least as far as does the UK.[3] Five approaches to the use of legislation for the implementation of treaties in NZ Law have been identified:[4]

- no legislation is required;
- the Act gives direct effect to the treaty text, by using a formula to the effect that the treaty provisions 'have the force of law' in New Zealand;
- the Act uses some of the wording of the treaty, incorporated into the body of the relevant area of law, or indicates in some other way its treaty obligations;
- the substance of the treaty is incorporated into the body of the law, without any obvious indication of the fact;
- the Act authorises subordinate legislation that gives effect to identified treaties or otherwise takes cognisance of them.

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[1] "Lex posterior derogat legi priori". The later law replaces the earlier law. See Vienna Convention on the Law of Treaties, Art. 30, para. 3.

[2] In UK, the celebrated case of Rex v. Jones testifies to the strength of the dualist tradition, and the 'firewall' which British domestic courts retain, even to this day, between the national and the international legal systems.

[3] "There is a basic constitutional principle … that the executive cannot, by entering into a treaty, change the law. In addition to the prerogative steps taken by the executive to become party to the treaty, legislation is in general needed if the treaty is to change the rights and obligations of individuals or to enhance the powers of the state." A NZ Guide to International Law and its Sources Report 34, NZ Law Commission (May 1998, Wellington), Ch. 2. "The Implementation of Treaties through National Legislation", p. 14.

[4] Ibid.

A monist state also has no problems of direct transformation – the international law simply becomes national law. In contrast, a dualist system undertakes a conscious act to ensure consistency of current national law, and to transform international law consistent with the intent of the negotiators. Human machination and fallibility can, and does, get in the way.

Against these considerations, monist states run the risk of fallible judicial decisions through a limited understanding of international law. Yet dualist states face the challenge of both the legislature and the judiciary, both of modest experience and insight in international law, getting it right.

(d) Constitutional Status

Perhaps more than any other aspect of political life in New Zealand, the constitutional status of the Parliament is the least developed. The presidential system in the US with its strict separation of powers, and the presidential-prime ministerial system in France, contrasts with the constitutional monarchy of the UK and New Zealand, with the Executive drawn from and remaining part of, the Legislature. The result is the partial merger of executive and legislature in New Zealand, with some confusion.

- Our head of state is shared with 16 other sovereign jurisdictions, thereby constraining our capacity to determine the nature and role of our own.
- The head of state resides on the other side of the world.
- The delegation of daily head-of-state function to a resident individual in New Zealand raises complexities as to division of responsibility, engendering a certain lack of clarity.
- The Executive and Legislature is merged, through the Westminster system, according overlapping of function and lack of clarity, as evidenced with the sharing of information platforms (for 'practical' reasons) which raised a matter of privilege in 2013.
- The Executive maintains excessive control of sensitive functions of government such as intelligence, extending to self-review under the managerial control of the head of government, who is the subject of such review.
- Responsibility for issues of privilege such as security and intelligence files being opened on current MPs is confined to the Speaker, thereby introducing a perception of natural bias.
- The Legislature is unicameral, thereby according greater control to the Executive, with fewer checks and balances.
- The Executive has far-reaching control over the local jurisdictional authorities, disbanding or seeking to restructure them. Parliament has less control than the Executive in this respect.

Some of these concerns may be seen as extending beyond the immediacy of modernising Parliament, but they do in fact have an effect. If, for example, the head of state were a New Zealander, with no relationship to any religion, this would have a far-reaching effect on the parliamentary Prayer, or even whether there would be one.

A recognised authority on the Constitution, Mathew Palmer, has identified four norms of the New Zealand culture that are "essential to the character of the NZ constitution: representative democracy; parliamentary sovereignty; rule of law, including judicial independence; and the unwritten, evolving nature of the Constitution. There are, he says, three aspects of the NZ cultural attitudes to power: egalitarianism, authoritarianism, and pragmatism.

None of these, he says, "support the constitutional norm of the rule of law and separation of powers in New Zealand, making that norm vulnerable". Yet Palmer is not uncomfortable with this: "The evolving nature of constitutional life in New Zealand, he says, "is the most internationally distinctive aspect of New Zealand's constitution and resonates with both our British constitutional heritage and the Māori tikanga; our constitution is not a thing but a way of doing things."[5]

This resonates with the observations of Moana Jackson, who would effectively return the constitutional debate to the pre-1840 era, based more directly on the Declaration of Independence rather than the Treaty of

[5] New Zealand Constitutional Culture, Matthew S R Palmer, NZ Universities Law Review, Vol. 22, pp. 565, 580

Waitangi, thereby making the 'constitutional conversation' between iwi and Crown more one between equals. Now, this would 'modernise' Parliament, to an existential level.

The question, however, is whether the Parliament is proactive enough to lead in the evolution of constitutional life in New Zealand sufficiently to keep pace with societal change. The point is that a constitution is not a 'way of doing things'; it is, in fact a 'thing'. The 'way of doing things' is the cultural underlay to the codified document, which cements, at a particular point in time, the values and principles that prevail at that point. The cultural evolution is the essential ingredient for updating (amending) the constitution; but it ought not be mistaken for the thing itself.

Because society is in constant flux, the task of ensuring that Parliament remains 'modern' is a continuous one. What structures are in place to meet that demand?

The Parliament's Privileges Committee has, to some extent, a role to play in modernising Parliament. Its job is to ensure that parliamentary privilege is upheld and that parliamentary supremacy over the Crown is maintained. It is a misnomer insofar as it suggests personal privilege to individual MPs. It is the opposite; it guarantees freedoms to MPs to perform their responsibilities.

To the extent that New Zealand has an 'evolving constitution', this places greater importance on the Privileges Committee to keep Parliament updated. This the Committee has done in a number of respects in the three most recent parliaments, with reports on a number of matters. The Committee has not been required to engage in personal disciplinary matters, but some issues involving individual actions have been seen as giving rise to general matters of privilege which the Committee has handled upon referral by the Speaker.

To a considerable extent, a parliamentary committee is acting as guardian of New Zealand's constitutional integrity, but acting in the capacity as one of its creatures. The Diceyan notion of sovereignty in which the Parliament is sovereign supreme, remains alive and well in New Zealand.

This compares, unfavourably I suggest, with the German system, whose Constitutional Court is empowered to adjudicate between the branches of government, and even strike out legislation. The US Supreme Court may declare congressional legislation to be unconstitutional, but in the US system, it is one of the three branches of government making the judgement. The German system would seem to be superior; its Constitutional Court is even tucked, thoughtfully, away in a city removed from the capital.

The major issues addressed by the NZ Privileges Committee recently are varied. It has addressed issues of parliamentary freedom of speech in relation to judicial name suppression; parliamentary protections against potential defamation charges; ownership of information, whose platforms are (erroneously) shared between the executive and the legislature, and relative rights and responsibilities of parliamentarians in relation to police and intelligence investigations. More specifically:

- Court Orders (2009): clarified the extent to which freedom of speech by MPs may be limited in the context of court orders (such as name suppression); and clarified the protections (absolute, qualified, or none) applicable to the Speaker, other MPs, the Clerk and the media in making public any proceedings in breach of such orders.
- Parliamentary Privilege (2013): pursuant to the defamation case (*Attorney-General and Gow v Leigh),* the Committee recommended and referred primary legislation to restore and reaffirm understandings of the scope of aspects of parliamentary privilege, in the form of consolidated and modernised legislation. As the Committee put it: "The importance of this bill for our country and parliamentary democracy should not be understated. Once enacted, it will form part of our constitutional framework." In this report the Committee, and on its recommendation the Parliament, 'pushed back' against a Supreme Court ruling that adopted the test of 'necessity' (for the proper and efficient functioning of the House) in deciding the level of privilege (absolute or qualified) by which members and their advisers should be protected. In the view of the legislature, the judiciary had breached the fine line between the two branches that is drawn by the principle of comity.
- Intrusive Powers (2014): explored a controversial issue involving the use of investigative powers pursued by the Executive within the parliamentary precincts. The findings of fact highlighted the

constitutional vulnerability of New Zealand.[6] A protocol was developed to ensure the mistakes cannot be repeated.

- Policing and Search Warrants (2014): reviewed the agreements governing the role of the Police and the SIS in exercising their functions on the parliamentary precincts. In particular it requires now that the SIS Director consult with the Speaker before opening a file on a sitting MP, and also provide a written memorandum setting out the actions done or information held by any such member.
- Role of Social Media (2015): recommended guidelines governing the use of social media by MPs, making it clear that such use is not covered by privilege and that anything said on social media is potentially actionable in court. The Guidelines prevent use of electronic devices for photographs in the House, apart from ceremonial occasions authorised by the Speaker.

This kind of work by the Privileges Committee is important, and perhaps critical, given the low-key, pragmatic way New Zealanders approach constitutional issues. Charlotte Macdonald has observed that "Abstraction has little tradition of popular following in Aotearoa/New Zealand. Institutionally, we have tended to favour the simple, accessible and pragmatic."[7] And Silvia Cartwright has commented:

> "….constitutional change is often the result of a pragmatic and practical response to events. It is often unheralded and sometimes even slips in almost by the backdoor. Change is incremental and gradual, and frequently he result of emerging consensus on an issue. Future changes are likely to occur in a similar way – New Zealand's constitutional development has always been based on consensus, never revolution."[8]

This cultural attitude, however, also gives rise to the kind of mindless ignorance and resulting arrogance that resulted in the Henry inquiry and the need for Parliament's Privileges Committ*ee* to step in rapidly and decisively, and clear things up. In doing so, it is not aided by any national constitutional roots, and finds itself in the invidious position of reaching to other jurisdictions for help.

Moves to consciously develop the constitution have come to little. A major effort in the 1980s to codify the constitution resulted in less than what was originally envisaged. In 2004 the Parliament established a Constitutional Arrangements Committee to undertake a review of New Zealand's existing constitutional arrangements and the appropriate processes to follow if significant constitutional reform were considered. The Committee concluded that "although there are problems with the way our constitution operates, none are so apparent or urgent that they compel change now or attract the consensus required for significant reform.

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[6] "Much of this material is kept on systems maintained and serviced by the Parliamentary Service, from which material was released to the Henry inquiry. The fact that no consideration was given to this issue at the outset of the Henry inquiry is of considerable concern to us. … We find it unacceptable that an inquiry, lacking formal powers to control the production of information, including information about a journalist, without the direct involvement of members or the Speaker. ….

The failure to consider the complex role of members of Parliament in a representative democracy, where all members, including Cabinet ministers, have distinct roles in relation to the House, their constituents, and their parties, is concerning. In particular, our inquiry has highlighted a lack of understanding by key participants of the distinction between Parliament and the Executive. The necessary separation between Parliament and the Executive is clearly acknowledged in many forums and contexts; legislation such as the Official Information Act 1982 or the Privacy Act 1993 does not apply to Parliament; the Speaker is in charge of the precinct, and special arrangements have been made through the Speaker to clarify when formal investigations by the Executive may access material related to Parliament. That this separation was not considered in relation to these requests confounds us. In addition, the lack of thought about the rights attached to the important role particular groups such as journalists might play in our democracy is similarly worrying. ….

… the absence of appropriate policy guidance on what information can be released and when, or when issues should be escalated and to whom, and indeed the disappointing actions taken, result primarily from these underlying deficiencies. … We consider that the current situation, if left unchecked, would have the effect of weakening our representative democracy and our constitutional arrangements." *Question of privilege regarding use of intrusive powers within the parliamentary precinct; Interim report of the Privileges Committee, Dec. 2013, pp. 21-22.*

[7] 'What constitutes our nation? How do we express ourselves?" in Colin James, Building the Constitution (2000), p. 87

[8] Dame Silvia Cartwright, *The Role of the Governor-General* (NZCPL Occasional Paper, 2001), p. 15

We think that public dissatisfaction with our current arrangements is generally more chronic than acute". The Committee did, however, suggest an independent institute for the fostering of a better public understanding of, and informed debate on, New Zealand's constitutional arrangements.

A decade later, the Government-inspired Constitutional Panel produced a report described as 'a snapshot of a developing conversation about New Zealand's constitution'. It recommended that the Government invite and support the people to continue the conversation about constitutional arrangements.

It seems clear that the people of this country, and the Parliament that represents them, are conscious of the need to address the issue of a national constitution, but hesitant over how to go about it. In my view, there is a need for one legislative act

3. Guiding Principles for Parliamentary Modernisation

In light of the above considerations, I put forward the following suggestions as guiding principles.

(a) <u>*Appropriate Representation*</u>

1. *Societal Diversity:* Consideration should be given to whether time-bound aspirational targets should be set for gender balance, between male and female, across the total membership of Parliament (120 members, subject to overhand); it being left to the discretion of each political party as to its own balance of representation.
2. *Religious Equality:* The parliamentary Prayer could be subject to review by an independent commission, established by Parliament; a decision whether there is a prayer should not be subject to a decision by Members of parliament, but put to a national referendum; the content of any Prayer should be the product of the commission, subject to adoption by the Parliament, according to a personal vote.

(b) <u>*Structural and Procedural Integrity*</u>

3. *Complementary Function:* Parliament should more appropriately maintain two functions (debate and legislation) as separate and discrete, albeit inter-related. It could consider restoring an upper chamber, which would not have a role in the legislative process, but would act as a forum for a continuous General Debate. That debate could focus on cabinet portfolios: Public Accounts; Fiscal Policy; Monetary Policy; Foreign Affairs; Trade; Defence; Agriculture and Forestry; Climate Change; Education; Health; Transport. One theme could be debated for a full sitting day, by MPs who could select slots according to their own interest, responsibilities and commitments. The aim would be to provide opportunity for an exchange of views across parties, on relevant issues, but unconnected with the precise legislative provisions before the lower chamber.
4. *Physical Configuration:* The debating chamber of the House could be reconfigured, along the lines of most continental European and American parliaments, in a physical lay-out that is hemispherical with members surrounding the central podium, rather than the adversarial, opposing-trench lay-out that is characteristic of the Westminster system. Consideration could be given to having constituency MPs seated according to region, as is the case with Norway, (with list-MPs seated behind according to party).

(c) <u>*Global Responsibility*</u>

5. *Treaty Transparency:* International treaties under negotiation should be tabled before Parliament, either in public session or in closed session as appropriate to the treaty, for debate and non-binding resolution, before being signed by the Government.
6. *Lawful Force:* No decision should be taken by the Government (the Executive) pertaining to deployment of New Zealand's armed forces overseas without a written paper by the Attorney-General, tabled in Parliament, affirming with supporting explanation that such deployment is in

accordance with international law and in particular the UN Charter; the paper to be tabled by the Prime Minister and subject to a Parliamentary debate and non-binding resolution.

(d) <u>*Constitutional Integrity*</u>

7. *Public Cognisance:* An independent institute could be established to underpin the democratic state of New Zealand, by promoting and maintaining a public conversation about the NZ constitution, and ways of modernising the NZ Parliament.
8. *Public Vigilance:* Public and parliamentary awareness of the need for constitutional clarity and integrity, including appropriate separation between the Executive and Legislature and comity between the Legislature and Judiciary, should be sanctioned by a guardian body with rights and responsibilities entrenched in domestic law. A central task could be to consider the entrenchment of the most important principles of New Zealand's constitution.

[i] "New Zealand is a country of many faiths with a significant minority who profess no religion. Increasing religious diversity is a significant feature of public life. … The following statement provides a framework for the recognition of New Zealand's diverse faith communities and their harmonious interaction with each other, with government and with other groups in society:
1. The State and Religion: The State seeks to treat all faith communities and those who profess no religion equally before the law. New Zealand has no official or established religion.
2. The Right to Religion: New Zealand upholds the right to freedom of religion and belief and the right to freedom from discrimination on the grounds of religious or other belief.
3. The Right to Safety: Faith communities and their members have a right to safety and security.
4. The Right of Freedom of Expression: The right to freedom of expression and freedom of the media are vital for democracy but should be exercised with responsibility.
5. Recognition and Accommodation: Reasonable steps should be taken in educational and work environments and in the delivery of public services to recognise and accommodate diverse religious beliefs and practices.
6. Education: Schools should teach an understanding of different religious and spiritual traditions in a manner that reflects the diversity of their national and local community.
7. Religious Differences: Debate and disagreement about religious beliefs will occur but must be exercised within the rule of law and without resort to violence.
8. Cooperation and Understanding: Government and faith communities have a responsibility to build and maintain positive relationships with each other, and to promote mutual respect and understanding