Constitutional realism and sustainability: Lessons learned from a systemic design investigation of New Zealand’s democratic system
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Public sector design ladder

1. Design for discrete problems
2. Design as capability
3. Design for policy
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Complexity and incremental change

Complex socio-technical systems
   Healthcare, governmental policy, environmental protection

Designers can deal with complexity by:
   Sampling for requisite variety
   Change by small, incremental steps
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Kinds of constitutions

Written constitutions 190
Unwritten constitutions 3

United Kingdom > Brexit
Israel > Conflict
New Zealand > Stable government, clean and green?
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What is New Zealand’s constitution?

- Legislation: 64%
- International Law: 11%
- The Common Law and Custom: 15%
- Constitutional Conventions: 10%
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New Zealand’s constitution evolves

Number of elements created

- Statute of Westminster The First 1275 (UK)
- Magna Carta 1215 (UK)
- Bill of Rights Act 1688 (UK)
- Petition of Right 1627 (UK)
- Electoral Act 1893 (NZ)
- Treaty of Waitangi 1840 (NZ)
- Constitution Act 1986 (NZ)
- Electoral Act 1993 (NZ)
- New Zealand Bill of Rights Act 1990 (NZ)
- Legislative Council Abolition Act 1950 (NZ)
- Treaty of Waitangi Act 1975 (NZ)
- Supreme Court Act 2003 (NZ)
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New Zealand’s constitution in theory

Separation power
Identity and change

Appearance or reality?
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NZ’s constitution in reality

A few interpreters

Executive paradise

21stC NZ is different
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Paths to constitutional reform

1. Courts
2. Executive
3. Parliament

[Diagram showing the relationships between Courts, Executive, and Parliament, including roles such as Prime Minister, Solicitor General, Governor General, Speaker of the House of Representatives, Clerk of the House of Representatives, Attorney General, Controller and Auditor General, Ombudsmen, and other key figures.]

- 13,087 Lawyers in practice (2018)
- 371 People per lawyer (2018)

[Logos and symbols representing organizations like NZME, First, Green, ACT, BusinessNZ, and others are present in the diagram.]
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Executive reform

Electoral Act 1993 (NZ)

Plurality voting (FPP) to proportional representation (MMP)
Force coalition government to compromise the executive

Since 1990 NZ Gov. breached NZ Bill of Rights 30 times
Incremental change has not limited executive power effectively
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Parliamentary reform: Written constitution

Write down basic rights and democratic rules in superior law
Publicly accessible and usable constitution
Make credible promises for long-term planning
Prediction can mimic impartiality (Rawls’s veil of ignorance)

Tribunal of public opinion
A judicial opinion is just a piece of paper
Enforcement by dread of shame and fear of non-reelection
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Parliamentary reform: Parliamentary procedure

Prevent elites from pursuing their sinister interests
Remove obstacles to intellectual, moral, active aptitudes
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Parliamentary reform: Free-rider problem

Remove opportunity to free-ride in debates and votes

https://youtu.be/1z_PD5Z2DG8
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Incremental vs discontinuous constitutional change

Incremental change
  Selecting variety through elections has had limited effect

Discontinuous change
  Deal with issues with long planning horizons
  Foster democratic aptitudes in all citizens
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Results in theory

Framing the problem as requisite variety has not succeeded
Reframe the problem as public education and usability
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Results in practice

Constitutions might be an exception to the incrementalism rule
Constitutions should be a framework for political struggle
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What remains unresolved?

Beware of resentment
Implement change during peace not crisis
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