

2018

Constitutional realism and sustainability: Lessons learned from a systemic design investigation of New Zealand's democratic system

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Suggested citation:

Feast, Luke (2018) Constitutional realism and sustainability: Lessons learned from a systemic design investigation of New Zealand's democratic system. In: Proceedings of RSD7, Relating Systems Thinking and Design 7, 23-26 Oct 2018, Turin, Italy. Available at <http://openresearch.ocadu.ca/id/eprint/2679/>

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Constitutional realism and sustainability: Lessons learned from a systemic design investigation of New Zealand's democratic system

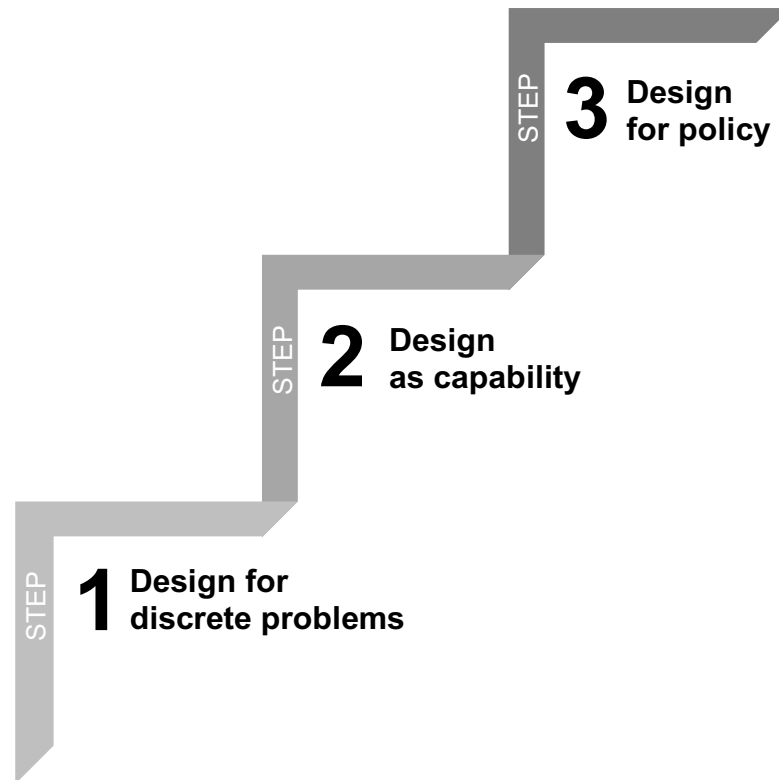
Luke Feast



AUT

Constitutional realism and sustainability

Public sector design ladder



Constitutional realism and sustainability

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

Constitutional realism and sustainability

Kinds of constitutions

Written constitutions		190
Unwritten constitutions		3

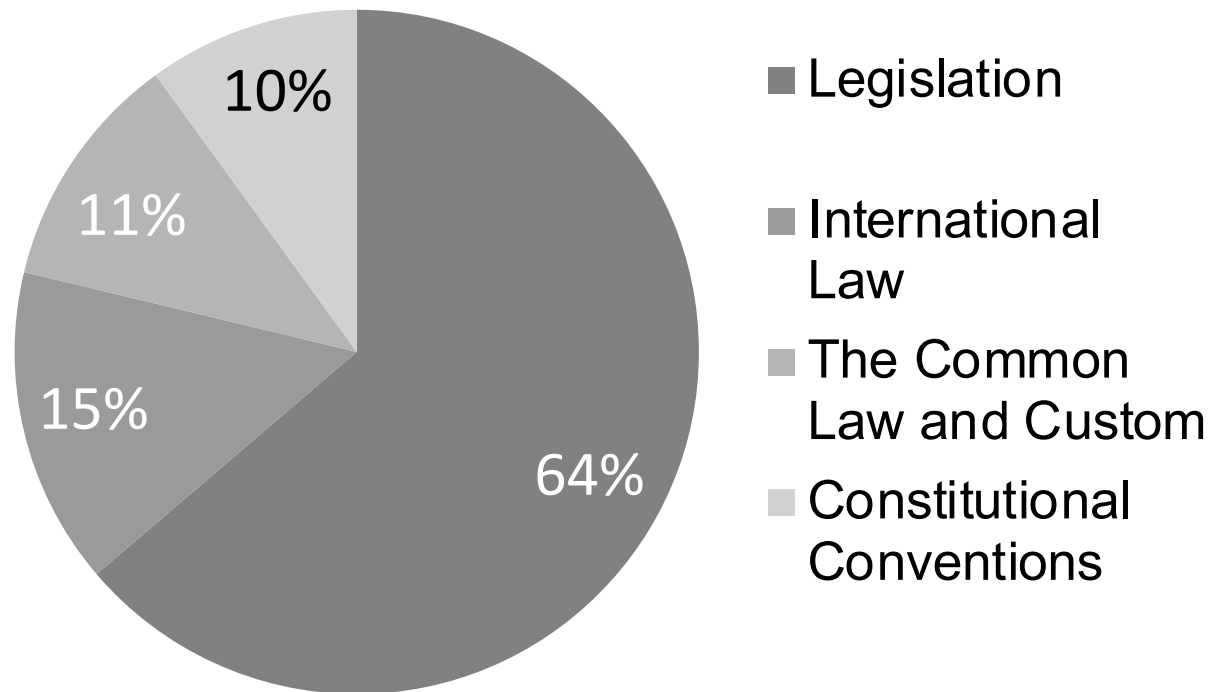
United Kingdom > Brexit

Israel > Conflict

New Zealand > Stable government, clean and green?

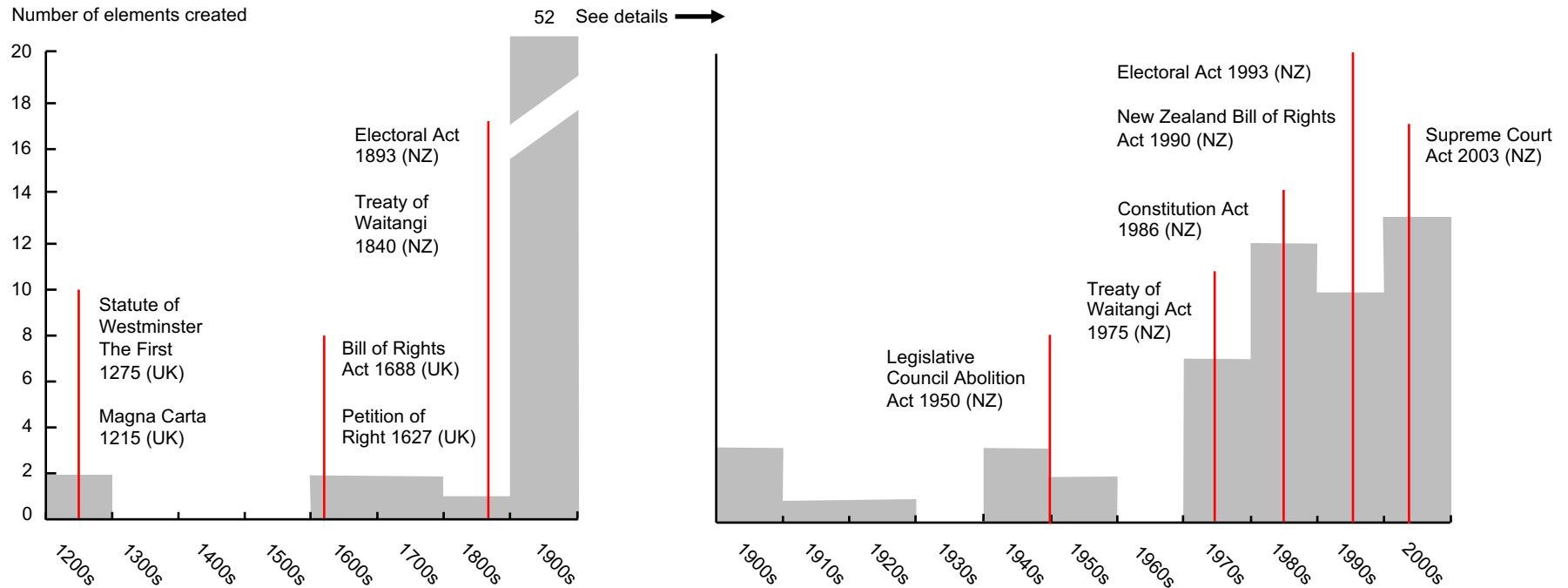
Constitutional realism and sustainability

What is New Zealand's constitution?



Constitutional realism and sustainability

New Zealand's constitution evolves



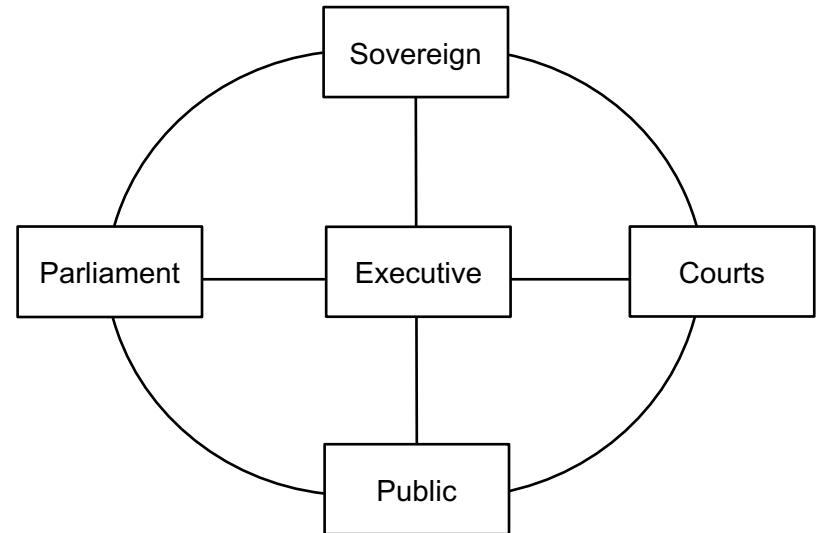
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New Zealand's constitution in theory

Separation power

Identity and change

Appearance or reality?

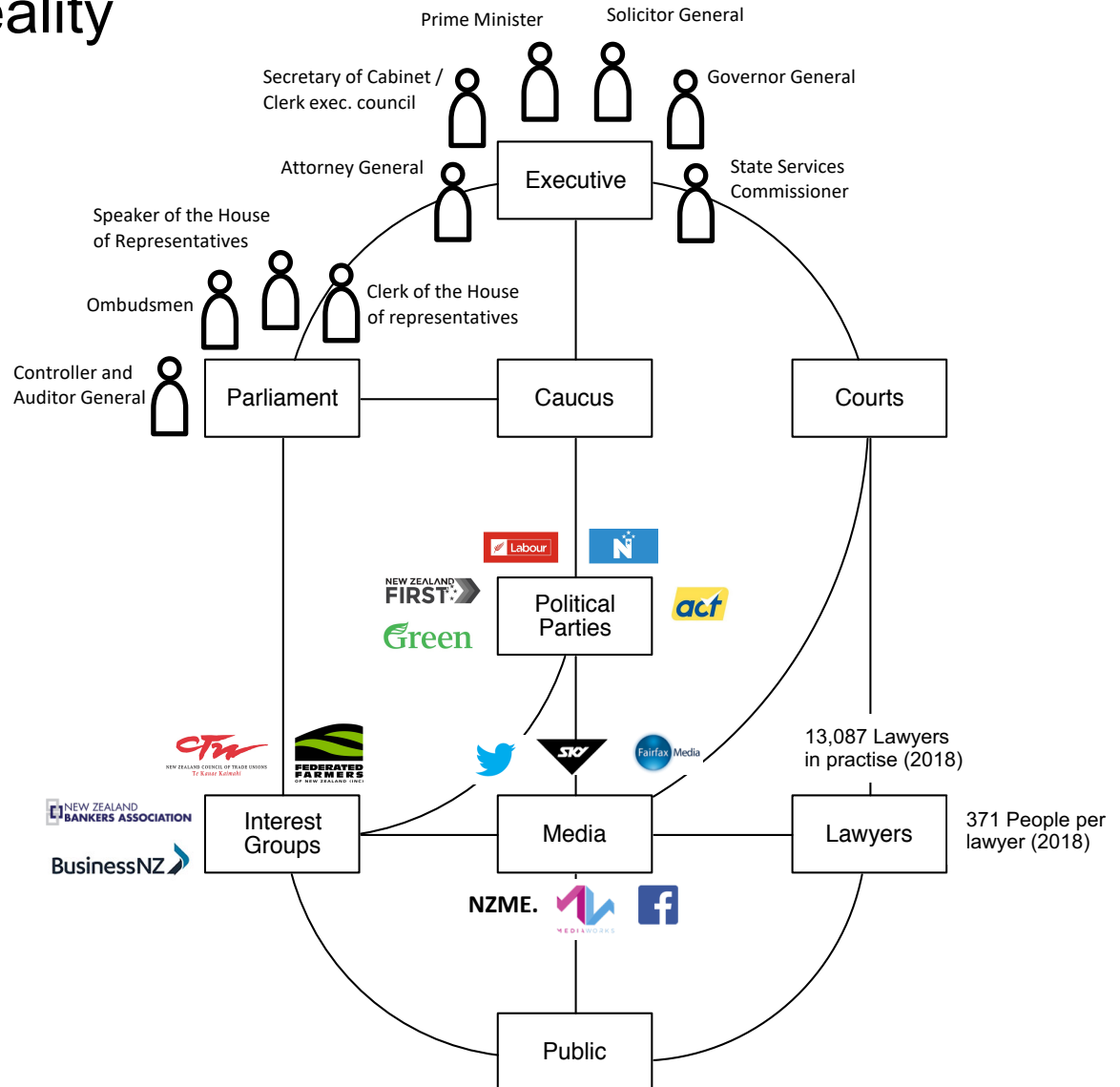


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NZ's constitution in reality

A few interpreters
Executive paradise

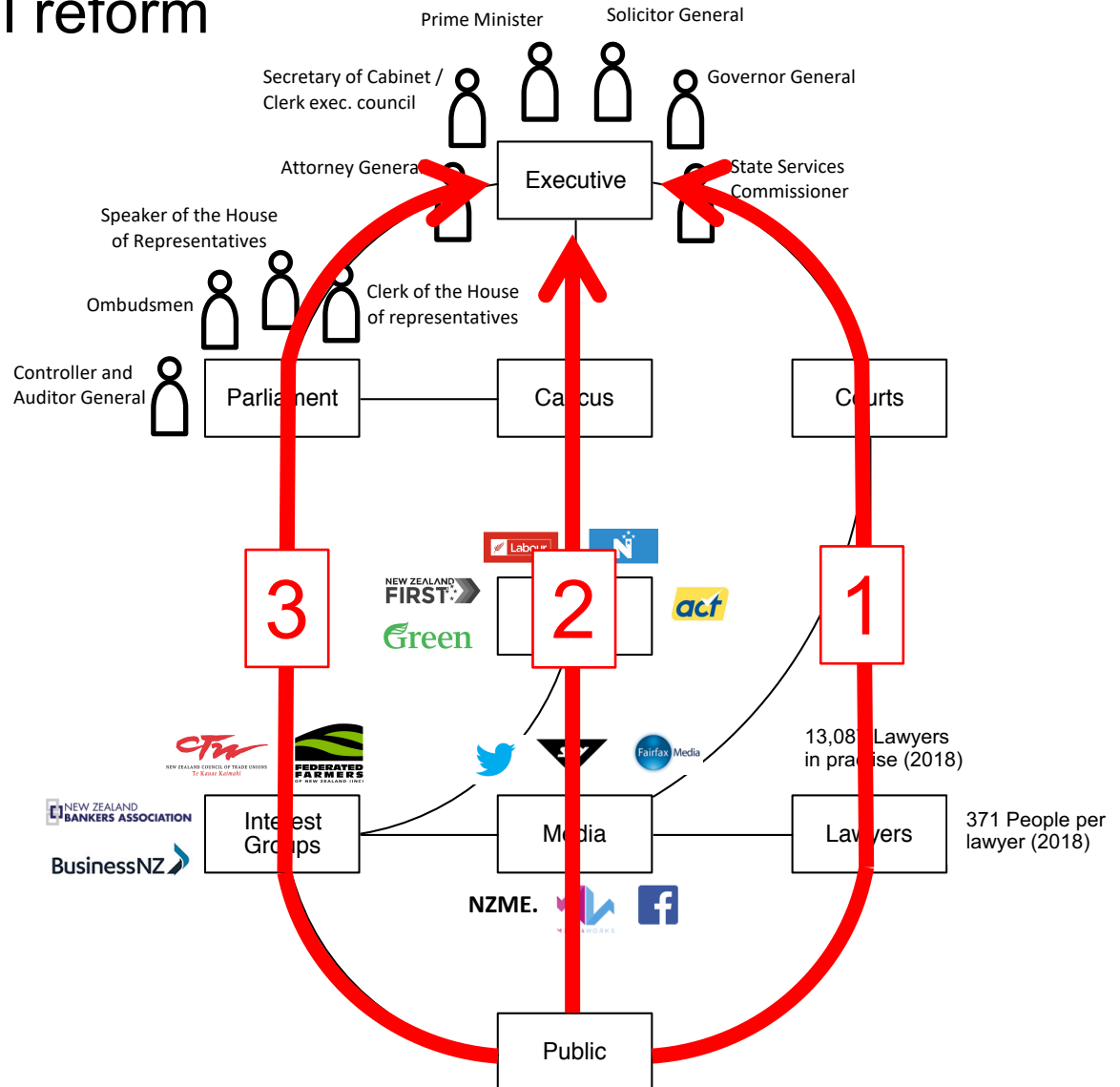
21stC NZ is different



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Paths to constitutional reform

1. Courts
2. Executive
3. Parliament



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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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