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APPENDIX B

**A HISTORY OF MAORI
REPRESENTATION IN PARLIAMENT**

by

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with a new source of inspiration and a new political language for negotiations with the pakeha.

So long as Maori had merely to contend with a few resident missionaries, pakeha traders, or whalers, there was no great external threat to their authority in New Zealand. But in the 1830s the situation began to change quite dramatically. As European trade and settlement increased, so the British authorities in Sydney and London became concerned with lawlessness of British subjects in New Zealand. Hitherto the British had disclaimed authority in New Zealand. Though James Cook had proclaimed British sovereignty over the country in 1770, no action was taken to make that claim effective. Indeed 3 British statutes relating to New South Wales and Tasmania in 1817, 1823 and 1828 had specifically described New Zealand as "not within His Majesty's dominions".¹ But although the British recognised Maori sovereignty over New Zealand, they became increasingly aware of the need to protect Maori from the excesses of British subjects in the country. Thus James Busby was appointed British Resident in New Zealand in 1833. Stationed at Waitangi in the Bay of Islands, Busby had no force at his command and therefore no effective authority over pakeha or Maori. He was often ridiculed or humiliated by chiefs. Yet some of his actions had a rather more enduring significance than has usually been admitted. In 1834 Busby persuaded 25 chiefs at Waitangi to adopt a national flag, so that New Zealand-made ships could be registered for the trans-Tasman trade. That flag was used by later assemblies of Maori leaders as a symbol of a continuing Maori identity.² In 1835 Busby embarked on a more ambitious piece of diplomacy. He again assembled northern chiefs at Waitangi, this time to combat an alleged threat that the self-styled Baron de Thierry was about to establish a personal kingdom in New Zealand, and persuaded 35 of them to sign a "Declaration of Independence". They asked for British protection. Later several chiefs from the south added their signatures to the document. Busby saw the assembly as the first stage in the creation of a Maori Parliament, modelled on that at Westminster. This too was to have a continuing significance in Maori political history: several later Maori parliamentary assemblies were regarded as direct successors to Busby's pioneer assembly.³ But for the British Government it was to have a more immediate consequence. Since Britain recognized the "Declaration of Independence"—yet another acceptance of Maori sovereignty—she was soon to find it necessary to treat with the chiefs of the United tribes and others for the transfer of that sovereignty. Thus the Treaty of Waitangi was conceived.

In the last years of the 1830s British intervention in New Zealand had become unavoidable. There was an influx of British settlers and speculators from across the Tasman, some of whom claimed to have purchased large areas of land from the Maori. There were rumours of

¹P. Adams, *Fatal Necessity: British Intervention in New Zealand, 1830-1847*, Auckland, 1977, pp.52-3.

²C. J. Orange, *The Treaty of Waitangi: a study of its making, interpretation and role in New Zealand history*, PhD thesis, University of Auckland, 1984, pp.77-83.

³*Ibid.*, pp.83-94.

French colonisation and intervention in New Zealand, though these were much exaggerated. Above all, there were the activities of E.G. Wakefield and his New Zealand Association (later the New Zealand Company) which finally forced the hand of the British Government. Wakefield proposed to establish colonies of British settlers in New Zealand and in May 1839 despatched a land-buying expedition, led by his brother William. For some time the Government had been considering a recommendation from Captain William Hobson for a limited form of intervention: the annexation of certain settled ports as "trading factories" to be controlled by a British consul. But with the despatch of the Wakefield expedition, Hobson's proposals were expanded and Hobson was sent to New Zealand to negotiate with Maori for the cession of the "whole or any parts" of the country. He soon found that it was indeed necessary to negotiate for the whole of the country.

McLean, much to the chagrin of the Ministry. In the later 1850s McLean and his assistants found it increasingly difficult to purchase Maori land, particularly in Taranaki and Waikato where Maori were co-ordinating their resistance to land sales. In Waikato they created a pan-tribal anti-land selling league with the selection of a Maori King in 1858. The settlers, resentful of the slowness of the Government to purchase Maori land, campaigned for the abolition of pre-emption. In 1859 the General Assembly passed a Native Territorial Rights Bill which abolished Crown pre-emption and allowed settlers to purchase land directly from individual Maori.¹⁶ It was disallowed by the British Government as an infringement of the Treaty of Waitangi; but it was an earnest of things to come, once the settlers had got responsibility for Maori affairs.

Although access to Maori land was the prime object of settler politicians, it was not their sole concern. They also wanted to extend law and order into Maori districts—to bring Maori, as well as their lands, under British law as rapidly as possible. There was never any support in the General Assembly for applying s.71 of the constitution. Grey had made a start towards extending British law to Maori districts by appointing several Resident Magistrates. In the later 1850s the Stafford Ministry pressed Browne to expand this system and he appointed F.D. Fenton a travelling magistrate to Waikato. Fenton made two circuits into Waikato in 1857 and 1858. He merely stirred up Maori opposition, provoking the Kingites into finally proclaiming Potatau Te Wherowhero as their King. On McLean's advice, Browne withdrew Fenton. The Ministers claimed that, because Browne had failed to govern the Maori, they were erecting their own Government. It was all part of the guerrilla war that the politicians were waging for control of Maori affairs. In 1858 Browne gave them some ground by allowing one of the Ministers, C.W. Richmond, to be designated Minister for Native Affairs, but Browne himself retained final responsibility. It was an unsatisfactory compromise and was not resolved until, on Colonial Office instructions, responsibility for Maori affairs was transferred to the local Ministry in 1861.¹⁷ But by then war had broken out over the Governor's bungling of the Waitara purchase in Taranaki.

¹⁶ M.P.K. Sorrenson, "The Maori King Movement, 1858-1885", in Robert Chapman and Keith Sinclair (eds.), *Studies of a Small Democracy*, Auckland, 1963, pp.38-39.

¹⁷ *Ibid.*, pp.33-4.

Legislative Council.⁴⁷ Thereafter there were usually 2 Maori representatives in the Council until its abolition in 1950.

In 1876 Tairaroa introduced a Bill providing for an increase in Maori representation in the House to 7 members, but the Bill was not passed.⁴⁸ In the same year H.M. Rangitakaiwaho and 394 others of the Ngatikahungunu tribe petitioned Parliament asking for Maori representation to be "in the same proportion as the representation is of the European race by European members" and for the Maori electorates to be based on tribal boundaries—a plea that was still being reiterated 110 years later.⁴⁹

Sometimes rival European factions recruited Maori with the necessary property qualifications to vote in tightly contested European electorates. The fact that such Maori were exercising a double vote led to some pakeha criticism.⁵⁰ In 1879 most of the Maori votes on the European rolls were eliminated when their householder franchise was abolished. Now Maori could only vote in European electorates if they had a £50 freehold or were ratepayers, whereas the same act gave Europeans the adult male franchise. But there was no move to abolish the Maori seats lest the resulting flood of Maori voters onto the European rolls put too many North Island seats in jeopardy. According to Jackson and Wood, "any actual move towards amalgamation...aroused fears as great in the 1870s and 1880s as in the 1850s".⁵¹ The 1867 Act was to remain in force for 5 years; but in 1872 it was extended for another 5 years; and in 1876 it was extended indefinitely. In time, it was assumed, miscegenation and the steady decline in Maori population, along with the rapid increase in the European population, would mean that it would no longer be dangerous to amalgamate Maori and pakeha representation. But, so far as Maori were concerned, their special representation came to be seen as their only guarantee that they would be represented at all.

Although the evidence is scanty—neither the government publications nor the newspapers published the full results in Maori elections prior to 1890, let alone reported electoral proceedings—it seems that Maori were gradually participating more fully in the electoral process. One indication of this is the steady increase in the number of polling places established for each election, no doubt at the insistence of Maori communities. For the 1875 election 13 polling places were established for Northern Maori, 21 for Western, 18 for Eastern and 14 for Southern Maori.⁵² By 1887 the numbers had risen to 35 for Northern, 86 for Western, 61 for Eastern and 25 for Southern Maori.⁵³ Usually a local schoolhouse or courthouse was used, but quite often a chief's house or a runanga house was chosen. Moreover polling booths were now

⁴⁷NZPD, Vol. 10, 1871, pp. 471-76; see also Appendix 5.

⁴⁸Ibid., Vol. 22, 1876, p. 230.

⁴⁹AJHR, 1876 J-6, pp. 1-2; for recent pleas see, for instance, the submissions of the Maori workshop on representation in Parliament at the Turangawaewae conference, 10-13 May 1985, to the Royal Commission on the Electoral System.

⁵⁰Jackson and Wood, p. 389.

⁵¹p. 388.

⁵²The New Zealand Gazette, 1875, p. 799.

⁵³Ibid., pp. 1032-33.

another within the confiscated block. Although territorial autonomy was no longer possible for the King movement, it still attempted to maintain political autonomy while also participating in the election of members for Western Maori. In the last years of his life Tawhiao continued to resist Government offers of a pension and a seat in the Legislative Council; and he continued to issue proclamations warning Europeans that they too were subject to "the laws of the Government of the kingdom of Aotearoa".⁶¹

Though the King's independent stand earned him much Maori sympathy, if little practical support, there were other centres of independency. The Urewera, home of Te Kooti's Ringatu supporters, also remained beyond the pale of pakeha law, though Te Kooti himself lived in the King Country until he was pardoned in 1883. There was yet another centre of independency: that of the prophet Te Whiti who organised passive resistance to the European occupation of the Taranaki confiscated lands from his settlement at Parihaka. For a while in the late 1870s and early 1880s Te Whiti commanded more support than the Maori King. He caused a succession of pakeha politicians to over-react. Passive resisters were arrested and imprisoned in droves. *Habeas corpus* was suspended. Then in 1881 the Native Minister, John Bryce, led 1500 heavily armed militia on Parihaka and Te Whiti, along with his chief lieutenant, Tohu Kakahi, were arrested, and held without trial for 15 months in the South Island. It was a heavy-handed demonstration of the pakeha determination to bring all Maori within the reach of the law.

But even within those Maori districts ostensibly under the law there remained some degree of autonomy. Maori communities, particularly at the level of hapu and whanau, remained very much to themselves, guided, for most domestic matters, by acknowledged chiefs and local runanga (committees). Maori matters continued to be regulated by tribal law and custom, though this was considerably modified by Christian codes. It was only when they had to deal with local pakeha, whether settlers or officials, that Maori had to abide by pakeha law. There was also a huge amount of intra-tribal activity, perhaps most conspicuously the annual hui held by the King movement and by Te Whiti, but also in other tribal districts. These gatherings were intensely political: though tribal rivalries and animosities remained, Kingites rubbed shoulders with Kupapa, and policies were thrashed out to combat the insistent pakeha demand for land, the operations of the Native Land Court, and legislation emanating from Wellington. There was an important attempt to institutionalise these proceedings when the Ngatiwhatua chief, Paora Tuhaere, a man with an impeccable loyalist record, tried to reconvene the Kohimarama conference in 1869. Ten years later he summoned a Maori Parliament at Orakei. The movement gathered force in the 1880s with a series of hui culminating with a meeting at Waitangi in 1889 at which a Maori Union of Waitangi was formed.⁶² Significantly, this

⁶¹Quoted by Williams, p.45.

⁶²Ibid., p.50.

established in some of the most remote settlements in the North Island, an indication that participation in elections was no longer confined to the Kupapa or loyalists. For the 1886 by-election for Western Maori 5 polling places were established in the King Country. In the event the King party tribes split their votes, with Ngatimaniapoto supporting the Ngatiraukawa candidate, Hoani Taipua, and the King and his Waikato tribes supporting Major Wiremu Te Wheoro, a former Kupapa who had also previously held the seat. Taipua polled a total of 1,158 votes to Te Wheoro's 516, a result that gave the government agent some smug satisfaction as "showing how small now is Tawhiao's following within the Western Maori electoral district".⁵⁴ By 1887 polling places were established at Ruatahuna, Fort Galatea and Lake Waikaremoana on the fringes of the Urewera country.⁵⁵ Three years later a polling place was established at Hetaraka Te Whakaunua's house at Maungapohatu, in the heart of the Urewera, and the hapless Deputy Returning Officer, J.T. Large, was sent off on a 15-day trek from Lake Waikaremoana to record the votes. But he found on arrival that Te Whakaunua and his people had gone off to Whakatane and that those who remained "expressed indignation at a polling place being established under their sacred mountain". He was told to count the trees for votes but eventually persuaded a few of the men to cast their votes. And, despite getting lost and injured, he concluded that it was all worthwhile: "it has undoubtedly the effect of maintaining friendly relations between the government and this isolated tribe".⁵⁶ With this effort it could be said that all of the Maori tribes, if not all of their eligible voters, had been brought into the electoral process.

Although there is insufficient electoral data to present a full analysis of Maori voting behaviour in this period, there seems little doubt that tribal considerations were uppermost in the selection and support for candidates. They were sufficient, according to Ward, to "render invalid an analysis of Maori elections according to the normal criteria of psephology".⁵⁷ There were enough rivalries to ensure that elections never went uncontested, with Government being put to considerable expense and bother to collect what was often a mere handful of votes from remote polling places. Election to Parliament had become a matter of considerable personal and tribal mana.

But in Parliament the Maori voice was often ineffectual on matters of vital importance to them. Their members invariably opposed the Native Land Acts that were designed to facilitate settler purchase of Maori land; but their protests were ignored.⁵⁸ Although all 4 Maori members sat on the Native Affairs Committee, set up in 1872 to handle the flood of Maori petitions that poured into the House, they were invariably outvoted on large issues—like the return of the confiscated lands—but

⁵⁴G.T. Wilkinson to T.W. Lewis, 19 May 1887, AJHR, 1887 Vol. II, G-1, p.5.

⁵⁵*Ibid.*, 1887, p.1033.

⁵⁶Enclosure in G. Preece to T.W. Lewis, 16 December 1890, MA 23/15, National Archives.

⁵⁷p.344.

⁵⁸M.P.K. Sorrenson, *The purchase of Maori lands, 1865-1892*, MA thesis, Auckland University College, 1955, p.229.

sometimes won favourable decisions on lesser matters. According to Ward, the committee "was one institution which helped...to prevent the Maori from quite despairing of the parliamentary system".⁵⁹ Yet for the Maori members, despair and despondency must have been common for much of the time. Unable to speak English and therefore unable to follow the normal cut and thrust of parliamentary debates, and very often ignored or ridiculed when they did speak on important Maori matters, the Maori members were little more than a token representation that enabled the pakeha members to salve their consciences while also relieving the Maori of much of their remaining land and autonomy.

Since Maori members were largely powerless in Parliament, it seemed to many Maori that they would better protect their interests by remaining outside the European system. Indeed some Maori groups had remained outside the system for some time after the last shots in the New Zealand wars. After the battle of Orakau the Maori King and his Waikato supporters had taken refuge south of the confiscation line along the Puniu river in Ngatimaniapoto territory, henceforth known as the King Country. Here, for more than 20 years, Tawhiao resisted all Government overtures for the opening of the King Country to land sales and the law, and the approaching Main Trunk railway, always insisting on a complete return of the confiscated Waikato lands. As was the case before the war, the Kingites were trying to preserve local autonomy. In 1884 Tawhiao came out of the King Country and led a Maori delegation to England to present a petition to the Queen asking her to "grant a government to your Maori subjects...that they may have power to make laws regarding their own lands, and race, lest they perish by the ills which have come upon them".⁶⁰ Once more the Kingites were hoping that s.71 of the Constitution Act would be applied to them. The British had long been sympathetic to this plea—Newcastle, as Secretary of State for the Colonies, had recommended it to the New Zealand Government in 1861, but that plea could be ignored since Newcastle had also agreed to the transfer of responsibility for Maori affairs. In 1884 Tawhiao and his deputation were politely referred back to the Government in Wellington, and that Government had no intention of applying s.71 to the King Country or any other Maori district. In any case by 1884 the due processes of law—more especially the operations of the Native Land Court—were effectively eroding the King's independence. By that time, the leading Ngatimaniapoto chiefs, anxious not to let Tawhiao and his Waikato followers establish a title by occupation to land in the King Country, had agreed to allow the Native Land Court to adjudicate the external boundaries. They were duly rewarded when the court in the Rohepotae judgement of 1888 upheld their titles. In 1885 Ngatimaniapoto allowed the Main Trunk railway to enter the King Country—thus ceremonially opening it to European enterprise—and Tawhiao and his Waikato supporters withdrew, thereafter to follow a peripatetic existence, moving from one reserve to

⁵⁹p.271

⁶⁰Quoted by John A. Williams, *Politics of the New Zealand Maori*, Seattle, 1969, p.43.

and education—belated recognition of the long-standing Maori demand for local government by tribal runanga. It was also a shrewdly conceived means of cutting Maori support for a larger form of autonomy, then being powerfully advocated by the Kotahitanga or Maori Parliament movement. In 1900 Carroll passed another important piece of legislation, the Maori Lands Administration Act, which established Maori-controlled land boards to develop Maori land and lease any surplus. The act had the signal effect of halting alienation of Maori land—only 6,773 acres of land had been leased to Europeans by 1905. There was a hue and cry from the press and Parliament, and Carroll was forced to amend the act, placing the land boards under European control and giving them power compulsorily to lease Maori land. Then in 1907 the Stout-Ngata Commission was appointed to determine how much land should be retained for Maori use and how much could be made available for European settlement. The Commission examined some 3,000,000 acres of Maori land, and recommended that some 600,000 acres be made available for European settlement, mainly by leasehold. Threatened by a seepage of back-blocks farmer support to the rising Reform Party, Carroll and the Liberals were having to meet the incessant European demand for Maori land in the North Island.

Although Carroll was personally opposed to separate Maori representation in Parliament,⁶⁶ he was party to several legislative changes that helped to perpetuate that system. In 1893 the Liberal Government extended the franchise to women, including Maori women who voted for the Maori seats. At the same time the Liberals ended the dual Maori vote whereby Maori registered on the European rolls by virtue of property qualifications could also vote in a European constituency. When property qualifications were abolished in 1896, it was laid down that Maori could vote only in Maori electorates. Only half-castes, hitherto required to vote for the Maori seats, were now given a choice. Thus the electoral systems were segregated and any hope of a single amalgamated system, originally envisaged when the 1852 Constitution Act came into force, was left to the piecemeal process of miscegenation. The 4 Maori seats were more firmly established than ever.

Ironically, Carroll was to ensure that those seats were more effectively occupied than ever before—by bringing his "young colts",⁶⁷ the gifted men of the Young Maori party, into Parliament. The first was Apirana Ngata, who defeated Wi Pere for Eastern Maori in 1905. Born at Waiomatatini in 1874, educated at the local Native school, Te Aute College in Hawke's Bay, and Canterbury and Auckland University Colleges, where he took degrees in Arts and Law, Ngata was the most gifted Maori of his generation. He was destined to become one of the great parliamentarians of this century. He held Eastern Maori for 38 years, in that time becoming "Father" of the House. In 1909, following the sudden death of Hone Heke, Carroll managed to facilitate the

⁶⁶NZPD, Vol. 134, 1905, p. 37.

⁶⁷A. T. Ngata to P. H. Buck, 29 June 1931, Ramsden MS Papers 196/312, Alexander Turnbull Library.

only 108 votes. He soon went off to the war—as Medical Officer to the Maori Pioneer Battalion—and never again returned to politics.

Pomare, by contrast, remained in Parliament from his election to Western Maori in 1911 until his death in 1930. His assimilationist views and support for Reform gave him a rapid entry into Massey's Cabinet, if not to high office. He was appointed as Member of the Executive Council Representing the Native Race in 1912, but not to the portfolio of Native Affairs which was handed first to W.H. Herries and then to Gordon Coates. However Pomare did become Minister for the Cook Islands in 1916, Minister of Health in 1923, and Minister of Internal Affairs in 1928. Pomare's "desertion" of his Young Maori party colleagues earned him their bitter enmity. Their differences were sharply revealed in the debate over the Native Land Amendment Bill—designed to facilitate European freeholding of leases of Maori land—in 1913. Ngata and Buck attacked the Bill with Buck saying that "under the cloak of enabling the Maori to individualize his land...the Government is only taking a step in denuding him of his land".⁷³ But Pomare replied that individualisation of titles was "one of the chief essentials to the solution of the Native land problem...Communism has been the death-trap of the Native race". Ngata interjected that this was just "pakeha clap-trap". But Pomare continued: "No amount of communism will save any race...If the Maori tomorrow were dispossessed of all his land, and began to go on his own initiative and commenced to work, he would be a better citizen than continuing to be a spoon-fed Native...the only way to salvation of the Maori is by individual effort....I say there should be one law for the Pakeha and for the Maori....We have one King, one country and we should have one law".⁷⁴ And so the interchange proceeded with what one historian has called "some of the bitterest remarks ever made by one Maori to another on the floor of the House of Representatives".⁷⁵

But in later years there was some reconciliation between Pomare and Ngata. They worked together to recruit Maori volunteers during the war. After the war, when Pomare had more mana in Cabinet and the sympathetic Coates was Minister for Native Affairs, Pomare and Ngata persuaded the Government to investigate a number of long-standing Maori land grievances, including the confiscations carried out during the wars of the 1860s. A Royal Commission recommended compensation. It was Pomare's finest achievement. Just before his death Pomare persuaded his Taranaki people to accept an annual payment of £5,000 and Ngata, now Minister for Native Affairs, persuaded his Cabinet to approve. As Ngata explained, "My honour was involved in the Parliamentary affirmation of the settlement...but the financial situation was most difficult and [Prime Minister] Forbes on the eve of departure for London. A fortnight before the arrival of [Pomare's] ashes I wrapped my resignation round the kaupapa [proposal] and handed both to Forbes. At 5 p.m. of the day he left...the settlement received his formal

⁷³NZPD, Vol.167, 1913, p.412.

⁷⁴Ibid., pp.407-8, 412.

⁷⁵McCLean, p.36.

he did not attempt to abolish the seats when he came to power. Nor did the Liberals when they returned to office as the United Party in 1928, though they could scarcely do so with Ngata number 3 in Cabinet.

The success of the Young Maori party leaders in Parliament also meant the gradual demise of autonomous, extra-parliamentary Maori political movements. The most notable of these was the Kotahitanga movement which at its height at the end of the nineteenth century claimed, with some exaggeration, to have the support of 37,000 Maori.⁹⁹ The ideal of Kotahitanga, or Maori unity with autonomy, had a long but tenuous history. It began with Busby's confederation of northern chiefs, continued through the King movement, the Kohimarama conference of 1860, took more tangible form with Paora Tuhaere's Parliament at Orakei in 1879, and culminated in the formation of a "Maori Union of Waitangi" in 1899. Over the next 2 years, hui at Waiomatatini, Omaha and Wanganui supported the proposal. In 1891 the Arawa people petitioned the Queen for a separate Maori Parliament, "as your Majesty has already concluded with us the glorious bond of union in the Treaty of Waitangi".⁹⁹ The petition was bound to fail since the Queen would not intervene in New Zealand politics; it was necessary for the Maori leaders to take their project to the New Zealand Parliament in Wellington. Meeting at Waitangi in April 1892, they agreed to form a Maori Parliament. This was to be composed of a lower house of 96 elected members, and an upper house of 50 members, chosen by the lower house. It was thus similar to the European Parliament in Wellington, although the electoral districts were based on tribal boundaries. The Maori Parliament held its first session at Waipatu in Hawke's Bay later in the year. It continued to meet annually in different Maori settlements for the next 11 years.

The Maori Parliament had a very considerable measure of support, more particularly from the loyalist or Kupapa tribes, the very people who had long been involved in electing members for the 4 Maori seats. But it failed to gain the adherence of Te Whiti's followers at Parihaka or the King movement. In 1894 the Kingites decided to set up their own Parliament, or Kauhanganui, at Maungakawa near Cambridge. However it soon became evident that the pakeha Parliament in Wellington would brook no rival. Although that Government did not interfere with meetings of either the Kingite Kauhanganui or the Kotahitanga Parliament, any attempt by the Maori Parliaments to exercise authority which resulted in a breach of the law was suppressed. Thus when Kerei Kaihau, a follower of the Maori King, decided to destroy survey pegs for a government road in Waikato—because "he recognised no laws but King Tawhiao's"¹⁰⁰—he and his followers were promptly arrested and jailed at Mt Eden.

As befitted their loyalist status, the supporters of the Kotahitanga Parliament had a more law-abiding approach. They sought recognition

⁹⁹Williams, p.60.

⁹⁹Quoted by Williams, p.51. Significantly, Arawa had not signed the Treaty.

¹⁰⁰Quoted by Williams, p.46.

widows' pensions.¹¹⁷ With the passage of the Social Security Act in 1938 Maori were eligible for the child benefit on the same basis as Europeans. But Labour was slow to act on long-standing Maori land grievances; for instance the Waikato and Ngaitahu compensation claims, in abeyance since Commissions of Inquiry in the 1920s, were not finally resolved until the late 1940s. And Tirikatene's frequently reiterated demand for ratification of the Treaty of Waitangi was ignored. Altogether Labour's record in Maori affairs prior to the war was decidedly uneven; as Claudia Orange put it, the Government "just muddled along".¹¹⁸ There was little leadership from the top with the portfolio of Native Affairs nominally in the hands of the ailing Savage but most of the responsibility devolving to the insensitive Acting Minister, F. Langstone, who formally took over the post on Savage's death in 1940. Moreover the Ratana movement became divided with the death of T.W. Ratana in 1939 when the presidency of the Church was conferred on his son, Tokouru, but leadership of the movement in Parliament remained for the time being with Tirikatene. The Ratana members "seem to have remained peripheral to policy decisions on Maori matters".¹¹⁹ Nevertheless the Ratana/Labour alliance remained firm since Labour's social welfare and economic policies were bringing many benefits to Maori—as well as to pakeha.

The outbreak of war in Europe and later the Pacific was to divert attention from domestic concerns. A Maori Battalion was recruited and sent overseas in May 1940. At home a Maori War Effort Organisation was formed under the chairmanship of Paikea who had been appointed to the Executive Council as Representative of the Native Race.¹²⁰ The Organisation was primarily concerned with recruitment and support for the Maori Battalion, but it also began planning for rehabilitation of returned servicemen after the war.¹²¹ The Organisation worked through a network of tribal committees, was outside the control of the Native Department, and soon began to develop larger ambitions; indeed some of those involved saw it as a way of reviving that long-unachieved will-o'-the-wisp, Maori autonomy. Paikea once described it as fulfilling a recommendation made by Sir George Grey 80 years before that Maori could best be governed through their tribal leaders.¹²² But the Organisation did not survive the war, although the tribal committees were kept in existence under the Maori Social and Economic Advancement Act of 1945. As Love puts it, "the government effectively destroyed the incentive and initiative of a large measure of self-determination which had been the motivating factor behind the Tribal Committees during the time of the Maori War Effort Organisation".¹²³ But, much to the dismay of the Maori members, the committees were no

¹¹⁷C.J.Orange, *A Kind of Equality: Labour and the Maori People*, M.A. thesis, University of Auckland, 1977, pp.63-4, 105-110.

¹¹⁸*Ibid.*, p.116.

¹¹⁹*Ibid.*, p.118.

¹²⁰On Paikea's death in 1943, Tirikatene took over both responsibilities.

¹²¹Orange, p.135.

¹²²Quoted by Love, p.361.

¹²³*Ibid.*, p.400.

longer part of an independent structure; they were made responsible to a newly constituted welfare section of the Native Department.¹²⁴ Later, however, two important Maori organisations grew out of the remains of the War Effort Organisation: first the Maori Women's Welfare League, formed in 1951, and then the New Zealand Maori Council, a male-dominated confederation of tribal committees, formed in 1962. But neither of these gender-oriented organisations possessed great independence; they could attend to purely Maori social and cultural matters within their particular spheres, but otherwise their powers were only advisory.

The 1946 election was a close-fought contest. There was some dissatisfaction with the Ratana/Labour members and in the Northern and Eastern electorates there were unsuccessful attempts to field other candidates bearing the Labour banner. The National Party, under the vigorous leadership of S.G. Holland, ran Ngata again in Eastern Maori and made much use of officers from the Maori Battalion, including J.C. Henare, son of the former member, who stood for Northern Maori. But in a high poll in which more than 85% of Maori adults cast their vote,¹²⁵ the 4 Ratana/Labour candidates came home with increased majorities—and with 63.9% of the total valid votes.¹²⁶ In Eastern Maori, where 2521 more votes were recorded than in 1943, there were allegations of plural voting, but they were not sustained.¹²⁷ Since the Maori election was held a day before the general election, Fraser was able to capitalise on Labour's victory in the Maori seats. But when the general election was held, Labour and National won 38 seats each and Labour clung to office by virtue of the Maori seats.

The Maori members had a golden opportunity to extract the maximum advantage. Unwilling to hand over the portfolio of Native Affairs to one of the Maori members, Peter Fraser reluctantly took it on himself—and became the most successful pakeha holder of the office since Coates. Tirikatene was eventually given a minor portfolio: Minister in Charge of the Government Printing Works and Stationery Supplies. But he had little influence in Government since Fraser could not "swallow him".¹²⁸ The other Maori members were even less influential. Matiu Ratana, who had succeeded his brother in a 1945 by-election, was not fluent in English; and neither Omana in Eastern Maori nor T.P. Paikea, who had succeeded his father in Northern Maori, was at all forceful.¹²⁹ So the initiative remained with Fraser, a shrewd and astute politician, and his Ministerial Secretary, M.R. (Mick) Jones. It was he who persuaded Fraser to have the term "Native" replaced by "Maori" in all official documents and communications. Commissions were set up to examine outstanding land grievances in Taranaki, Northland and elsewhere. Fraser personally settled the Waikato, Whakatohea and Ngaitahu

¹²⁴*Ibid.*, p.396.

¹²⁵A.J.McCracken, *Maori Voting and Non-Voting: 1928 to 1969*, M.A. thesis, University of Auckland, 1971, pp.235-7.

¹²⁶See Chapman Annex, Graph 1.

¹²⁷Love, pp.407-8.

¹²⁸Ngata to Ramsden, 12 October 1947, quoted by Orange, p.167.

¹²⁹*Ibid.*

lacklustre performances in the House, continued to increase their majorities.¹³⁶

Though National was philosophically inclined towards assimilation, it did nothing to abolish the Maori seats. Just before his death in 1950, Ngata told Corbett that "the Maoris themselves will demand the abolition in the course of a few years".¹³⁷ But Maori leaders made no such demand. National, unwilling to eliminate the Maori voice from Parliament, continued to hope that it would win back at least one of the Maori seats. In the meantime, it was content to tinker with the existing system. Thus in 1950 and 1951 legislation was passed to schedule Maori elections on the same day and same hours as the general election; and in 1954 there were changes to the electoral boundaries, mainly to increase the Southern Maori electorate by bringing it into the southern North Island. There was some concern over the state of the Maori rolls, but Corbett adamantly refused requests from the Electoral Office to use Maori Welfare Officers to recruit Maori voters. In September 1954 he told the Minister of Justice, J.R. Marshall, that "it would be unwise to have officers of my department engaged in matters related to the enrolment on the Electoral Roll....It was previously reported to me that when Welfare Officers were engaged in this work that their enthusiasm went further than the business of enrolling electors and took the form of political propaganda [sic]".¹³⁸ Evidently Corbett regarded the Welfare Officers as recruiting agents for the Labour Party. To get round the problem Maori enrolment was made compulsory in 1956, in line with European enrolment which had been compulsory since 1927. But now a new problem arose because the old rolls were destroyed and all Maori voters were required to re-enrol. Though the Electoral Office sent out re-enrolment cards to all Maori on the previous roll, only about half replied within 2 months and the Office once more requested the aid of the Welfare Officers, only to be turned down again by Corbett.¹³⁹

In the longer term, Corbett was looking for a way of eliminating the Maori seats. He told Marshall in July 1957 that "the time has arrived when consideration should be given to amendments being made to the Electoral Act whereby Maori electors are given the option of enrolling on European Rolls if they so desire". He claimed that there was a feeling among Maori "that their interests could be best served by local European members of Parliament, and that the time has arrived when the Maori electorates should be abolished". But "rather than place the responsibility on the Government to arbitrarily abolish the electorates, it would be better for the Maori people themselves to decide the issue by going on the European Rolls if they so desire and if the numbers on the Maori Electoral Rolls fall below a fixed minimum, then the time will have arrived for doing away with the electorates".¹⁴⁰ But the Government did

¹³⁶See Chapman Annex, Graphs 1 & 7.

¹³⁷Quoted in Corbett to J.R. Marshall, 29 July 1957, EL 19/15/3.

¹³⁸Corbett to Marshall, 7 September 1954, EL 19/15/3.

¹³⁹L. Irwin to Corbett, 13 June 1957, and Corbett to Marshall, 26 June 1957, EL 19/15/3.

¹⁴⁰Corbett to Marshall, 29 July 1957, EL 19/15/3.

Maoris within New Zealand society in a broad context, although they do not seem to realise that the ratification does not or cannot bestow on individual Maoris what they want from life".¹⁶⁰ Rata's comments here are a useful demonstration of the role of Maori MPs in Maori community affairs at this time. They tended to follow and even to moderate the demands coming from Maori organisations. But they had also to lend their weight to the growing cultural renaissance and more particularly the revival of Maori language that Nga Tamatoa had called for. It was no longer sufficient for Maori members to be competent in English; they had to embody and promote Maoritanga in their constituencies.

The radicals also became involved in the campaign against sporting contacts with South Africa which raged unabated from 1960, and divided Maori as much as it divided pakeha. Inevitably the Maori members of Parliament and the political parties were dragged into these controversies. Tirikatene had opposed the visit of the All Blacks to South Africa without Maori; Rata was one of the first to say that it was no better for Maori to go to South Africa as "honorary whites", as happened in 1970.¹⁶¹ The National Governments under Holyoake and Marshall were content to "build bridges" with South Africa, once Maori could be included; Labour, pressed by radical and trade union groups, was forced to oppose any further sporting contacts.

In 1972 a reinvigorated Labour Party, led by Norman Kirk, had a landslide victory with a majority of 23 seats. Labour's Maori members again came home with increased majorities and accumulated 82.4% of the valid votes in the 4 constituencies, compared with a mere 12.8% for National.¹⁶² Kirk, having failed to persuade, then told the Rugby Union not to proceed with the planned Springbok tour of New Zealand for the winter of 1973. The following summer Christchurch triumphantly hosted the Commonwealth games, attended by athletes from black African Commonwealth nations. Later in the year Tanzania's president, Julius Nyerere, made a state visit to New Zealand. Kirk was a dominant figure at the Montreal Commonwealth conference.

He also quickly developed considerable empathy with Maori and made Waitangi Day a national holiday—the closest a Labour Government came to the long-espoused Ratana demand for the ratification of the Treaty—taking full advantage of the Waitangi ceremonies to bring the races together. This third Labour government gave its Maori members a full part in Cabinet. Rata and Whetu Tirikatene-Sullivan were elected to Cabinet, and Rata was given Maori Affairs, the first Maori to hold the portfolio since Ngata. There was also an important electoral change, already foreshadowed by Kirk in 1967. In the Maori Affairs Amendment Act of 1974 the definition of a Maori had been broadened to include any person descended from a Maori, and in the 1975 Electoral Amendment Act Maori as so defined were given the option of registering on the Maori or the General roll. Hitherto this option

¹⁶⁰Rata to Mira Szaszy, 7 November 1968, Rata Papers, 2/23, National Archives.

¹⁶¹Tom Newnham, *Apartheid Is Not A Game*, Auckland, 1975, p.36.

¹⁶²Chapman Annex, Graph 1.

Now the record of a one-term Labour Government came into play. Great expectations were disappointed particularly by the Prime Minister being both Minister of Maori Affairs and a supporter of the Rugby Tour of South Africa despite the "No Maoris, No Tour" movement. There were other factors which I examined in *New Zealand Politics in Action*², but suffice it to say that they all produced a strong reaction which appears as the loss of 4.9 points. That and a minor decline of 2.3 in Independency made possible the simultaneous rise of both opposition parties, National gaining 4.0 points and Social Credit 3.2.

For Social Credit H.T. Reedy continued to gain (+6.3) in the East, W. Clarke succeeded T. Maihi in the North and rose (+7.3), while Southern crept up (+1.2) and Western descended (-2.7) when H. Tuwhangai replaced Colonel Awatere (Graphs 4, 5, 2, 3 respectively). Only Pei Jones was a notable candidate for National and all the others were new since the last election, yet just the same they went up in percentage terms in 1960. The lesson of 1960 was that a strong tide carries candidates up or down almost regardless of quality or mana. The same lesson appeared to have been taught in 1954 but then was partially contradicted in 1957. Now 1963 was to reinforce the 1957 demonstration of the importance on occasion of the Maori candidate's heritage, reputation, achievements and tribal and confederal connections.

Meantime National was back in power and the Rt. Hon. Keith Holyoake calmly disposed of a similar but smaller foreign exchange crisis than the one Nordmeyer had dealt with by taking the opposite tack. The Prime Minister had his Minister of Finance borrow and wait for export prices to rise—as they did. His Government was rewarded by the General electorate with a fall in support of only 0.8 points in the "No Change Election". The Hon. E.B. Corbett had retired in 1957 and this time Keith Holyoake chose the third-ranking man in his Cabinet, Josiah Ralph Hanan, to be Minister of Maori Affairs as well as Attorney-General, Minister of Justice and Minister of Island Territories. A lawyer from Invercargill, Hanan claimed no experience or expertise on Maori Affairs but he had strong opinions about equality before the law in all matters and a growing suspicion of institutions like the Maori seats which might recognise and actively express cultural differences.

Above all Ralph Hanan was a contrast to Ernest Corbett in being a widely influential and indefatigable legislator. By 1961 the Maori Education Foundation was established because education was the key to integration as set forth in the Hunn Report which, ironically, was a deferred and interpretative summation of much data-gathering under Walter Nash's regime. From 1961 separate registration of Maori births and deaths was abolished and Maori became eligible for jury service. The following year came the New Zealand Maori Council which federated the district and tribal committees, thus producing an alternative leadership system at the centre with which the Government could have more sympathy than with the 4 Labour Maori MPs. From this

²R.M. Chapman, W.K. Jackson A.V. Mitchell, *New Zealand Politics in Action. The 1960 General Election*, London, 1962, pp. 71-2, 283-4.

(Sorenson, 1986)

McLean, much to the chagrin of the Ministry. In the later 1850s McLean and his assistants found it increasingly difficult to purchase Maori land, particularly in Taranaki and Waikato where Maori were co-ordinating their resistance to land sales. In Waikato they created a pan-tribal anti-land selling league with the selection of a Maori King in 1858. The settlers, resentful of the slowness of the Government to purchase Maori land, campaigned for the abolition of pre-emption. In 1859 the General Assembly passed a Native Territorial Rights Bill which abolished Crown pre-emption and allowed settlers to purchase land directly from individual Maori.¹⁶ It was disallowed by the British Government as an infringement of the Treaty of Waitangi; but it was an earnest of things to come, once the settlers had got responsibility for Maori affairs.

Although access to Maori land was the prime object of settler politicians, it was not their sole concern. They also wanted to extend law and order into Maori districts—to bring Maori, as well as their lands, under British law as rapidly as possible. There was never any support in the General Assembly for applying s.71 of the constitution. Grey had made a start towards extending British law to Maori districts by appointing several Resident Magistrates. In the later 1850s the Stafford Ministry pressed Browne to expand this system and he appointed F.D. Fenton a travelling magistrate to Waikato. Fenton made two circuits into Waikato in 1857 and 1858. He merely stirred up Maori opposition, provoking the Kingites into finally proclaiming Potatau Te Wherowhero as their King. On McLean's advice, Browne withdrew Fenton. The Ministers claimed that, because Browne had failed to govern the Maori, they were erecting their own Government. It was all part of the guerrilla war that the politicians were waging for control of Maori affairs. In 1858 Browne gave them some ground by allowing one of the Ministers, C.W. Richmond, to be designated Minister for Native Affairs, but Browne himself retained final responsibility. It was an unsatisfactory compromise and was not resolved until, on Colonial Office instructions, responsibility for Maori affairs was transferred to the local Ministry in 1861.¹⁷ But by then war had broken out over the Governor's bungling of the Waitara purchase in Taranaki.

¹⁶ M.P.K. Sorenson, "The Maori King Movement, 1858-1885", in Robert Chapman and Keith Sinclair (eds.), *Studies of a Small Democracy*, Auckland, 1963, pp.38-39.

¹⁷ *ibid.*, pp.33-4.

CHAPTER 6 : TERM OF PARLIAMENT

Term of reference 6 : the term of Parliament.

Introduction

6.1 In Chapter 1 of this Report we referred to the essential democratic requirement that the people choose the Government. Voters must have the power to change the Government at regular and frequent elections so that it remains responsible to them. At the same time, voters wish the Government to have an adequate opportunity to implement its policies. This requires the Government to have sufficient time to put in place cohesive policies upon which the electors can in turn pass an informed judgment. Voters in addition require a Parliament and political parties which operate effectively and are not constantly preoccupied by an imminent election. So in deciding upon an appropriate term for Parliament there is a balance to be struck between voter sovereignty and effective government.

6.2 In considering these issues we:

- (a) discuss the choices made by New Zealand and other countries (paras. 6.3 to 6.9);
- (b) eliminate some of the possible changes (paras. 6.10 to 6.12);
- (c) state the arguments for and against change under the 2 heads of effective government and voter sovereignty (paras. 6.13 to 6.29); and
- (d) record our conclusions (paras. 6.30 to 6.34).

THE TERM IN NEW ZEALAND AND OTHER DEMOCRACIES

6.3 **New Zealand.** The concept of a fixed term for Parliament reached New Zealand through the English political tradition. In England the fixed term was not established until 1694 when the Triennial Act was passed. Although successive English Parliaments differed on the optimum length of the term, the concept of a fixed term became accepted into the political tradition. The New Zealand Constitution Act of 1852 followed that tradition, fixing the maximum life of Parliament at 5 years. In 1879, following the abolition of the provinces in 1875 and the consequent increase in power of central Government, the term was reduced to 3 years, largely with a view to making Governments more accountable to the electorate. Since then, the 3-year term has been altered on only 3 occasions. The first was an extension to 5 years in 1916 during the First World War. The second was in 1932 when, during the Forbes coalition Government, Parliament first extended its life by 1 year and then in 1934 passed a general extension to 4 years. This was unpopular, and may have contributed to the defeat of the Forbes Government in the election of 1935, after which the extension was repealed. Finally, in 1941, during the Second World War, it was agreed by both parties that Parliament should be prolonged by 1 year. A similar

prolongation was agreed on in 1942. Since then the term has remained unchanged at 3 years. The entrenchment provisions of the Electoral Act 1956 require a majority in a referendum or a 75% vote of all the members of Parliament before the term can be changed.

6.4 During the 1960s, discussion of the advantages of a longer term led to the Electoral Poll Act of 1967 which, in accordance with the 1956 entrenchment provisions, put the issue to the people in a referendum. The poll produced a 69.7% turnout with 68.1% of those who voted favouring 3 years and 31.9% favouring 4 years. Such later opinion poll results as are available appear to show an increase in support for a 4-year term with, however, a majority still favouring 3 years. Any change in the public attitude may result from a recognition, in the context of increasing anxiety about the operation of our economy, of the need for measures which adopt a medium or long-term perspective. Those concerns were reflected in submissions made to us by various business organisations, the members of which generally favour a 4-year term while acknowledging the considerable power of our Governments once they are elected. Indeed, a substantial majority of all the submissions made to us concerning the term sought an increase, with by far the greatest number favouring 4 years. It is likely, however, that we heard more from the proponents of change than from those who wish to maintain the existing term. The Labour, National, Democratic and Values parties stated that they favoured 3 years. The New Zealand and Mana Motuhake parties favoured 4 years.

6.5 **The term in other countries.** The terms of elected Parliaments range from 2 to 6 years. The vast majority of Parliaments from which governments are formed have longer maximum terms than New Zealand. A study of 39 broadly democratic countries¹ shows that 19 favour a 4-year term (for example, Belgium, Denmark, the Federal Republic of Germany, the Netherlands and Norway) and 17 favour a 5-year term (for example, Canada, India, the Republic of Ireland and the United Kingdom). Only Australia, Sweden and New Zealand share the 3-year term. The United States of America has a 2-year term for the House of Representatives but a 4-year term for the Presidency and a 6-year term for the Senate.

6.6 **Observations on the term chosen by New Zealand and other democracies.** Over 100 years ago the New Zealand Parliament made a deliberate choice in favour of a 3-year term. That choice has been maintained, with only 3 exceptions in times of crisis, and was reinforced by Parliament in 1956 when the provisions of the Electoral Act relating to the term were entrenched. Subsequently, when New Zealand electors were directly consulted in the 1967 referendum, they showed a clear preference for the 3-year term. Doubts have been expressed concerning the 1967 result, both because there was little public discussion at the time and because the issues concerning the term may have been overshadowed by the public debate surrounding the contemporaneous referendum concerning hotel closing hours. We

¹Dick Leonard & Richard Natkiel, *World Atlas of Elections*, London, 1986.

are inclined to think, however, that the 1967 result constituted a clear expression of the wish of voters at that time to exercise regular control over the Government. Whether that is the view of the majority of present-day voters may be open to some debate. Though voters may continue to place a high value on their right to review the performance of the Government every 3 years, too much weight should not be placed on a referendum result obtained nearly 20 years ago.

6.7 Successive Governments have respected the 1956 entrenchment and we think it is now an accepted part of our constitution that any change to the term of Parliament should only be made on the basis of s.189 of the Electoral Act (see para. 9.175). In our view it is highly desirable (other than in a pressing emergency) for any proposal to change the term to be decided by referendum rather than by the alternative method provided by s.189 (75% of all the votes in the House or in essence the agreement of the major parliamentary parties). A proposal for change could not then be interpreted as an attempt by politicians to obtain greater power.

6.8 While the term of the New Zealand Parliament is comparatively short, care is needed in making comparisons. Most western democracies with longer terms have other restraints on the powers which their governments exercise. Some have federal systems which impose constitutional and other checks on the government. Others have bicameral systems, with the Second Chamber having delaying or veto powers. Others again have proportional systems, bills of rights or constitutions which restrict government power. By contrast, New Zealand Governments do not have such restraints on their powers.

6.9 In countries with a longer term Parliaments do not necessarily last the full period. Thus Canada and the United Kingdom, both of which have a 5-year term, have since the Second World War had elections about every 3 to 3 1/2 years (approximately 37 and 41 months respectively).² Similar averages pertain in relation to those countries with a 4-year term (approximately 40 months). On the other hand, New Zealand Parliaments regularly last their full term. The average frequency of elections in New Zealand since the Second World War is approximately 35 months and there have in that period been only 2 early elections. In Australia, which also has a 3-year term, the average frequency of elections in the post war period is only 29 months, but this is at least in part due to Australia's bicameral system and is affected by the occasions when double dissolutions have been sought.

POSSIBLE CHANGES IN RESPECT OF THE TERM

6.10 We do not consider there is any possibility of a shorter term in New Zealand. This would significantly reduce the ability of Governments to plan and implement policies, while at the same time placing an unreasonable burden on political parties in planning and carrying out election campaigns at shorter intervals. In other words, a lesser term

²See Ivor Crewe, "Electoral Participation", in *Democracy at the Polls*, ed. D. Butler, H.R. Penniman and A. Ranney, Washington, 1981, Table 10-2.

than 3 years would strike the wrong balance between the competing objectives of effective government and voter sovereignty. In relation to a longer term, we first note that in view of the points referred to in para. 6.9, we do not consider that there should be a change to a longer term unless there is some restraint on the right of dissolution. We return to this issue in paras. 6.33 and 6.34. We further consider there is no case for any term greater than 4 years. In the New Zealand context, with no Second Chamber, federal system or other substantial constitutional restraints, any term greater than 4 years would in our view represent an unacceptable erosion of voter control.

6.11 Another possibility suggested to us, which we do not favour, is that a new Government should have a longer term than a Government which is returned to office. First, there are practical problems in applying such a rule in a volatile political situation. For example, it is difficult to apply the rule to a coalition Government which includes a party that was in the previous Government, or to a new party which is formed out of an old one. Second, such a rule might in practice favour the party in Government, i.e. better the party the voters know for another 3 years than the other untried party for 4. Third, there could be inequality of voting power in that, if the Opposition succeeded in the election, a vote for it could be regarded as worth 4/3 of a vote for the Government.

6.12 A final possibility suggested to us is that some MPs should be elected at different times from others—for example, half the MPs being elected every 2 years. We consider this proposal could only be contemplated for a Second Chamber in the context of a bicameral Parliament. In our unicameral situation the electorate would never have a single and decisive opportunity to select or reject a Government. Nor would the electorate necessarily have the ability at the first opportunity to remove a Government which initially won a large majority but subsequently pursued a course unacceptable to most voters.

ARGUMENTS FOR AND AGAINST THE PRESENT TERM

6.13 We now consider the arguments for and against retention of the present term. It is convenient first to consider the arguments based on effective government.

Arguments based on effective government

6.14 **Time required to implement and assess policies.** Many policies, particularly those which affect the economy, require both time to develop, introduce and implement and time for their effects to be judged. Those who favour a 4-year term point out that the time required to implement or judge policies may well exceed 3 years. It is claimed that 4 years would allow for greater consultation and help avoid hasty legislation, giving a better opportunity both to implement and judge policies. Moreover, a 3-year term may deter Governments from making necessary changes because they cannot be introduced and seen to be working effectively within a 3-year time span. This may result in poor decisions and may also have wider ramifications because Government

decisions radically affect the way in which the Government departments, the business community and individuals plan their affairs. If Government decisions focus on the short-term, it is likely that business and other decision-makers will do likewise. Thus a short-term planning mentality, possibly focussed on caution and risk minimisation rather than on long-term investment initiatives, may be encouraged in the business community. Likewise the ability to make sound forecasts in all areas of administration may be lessened.

6.15 Election-year influences. A further series of arguments raised against the 3-year term relates to the frequency of undesirable election-year influences. These influences may exist whatever the length of the term. They simply arise more frequently with a shorter term. In the first place, an approaching election may cause a Government to act improperly by taking unsatisfactory decisions designed for short-term political advantage. There is, for example, some evidence, more pronounced in some other countries than in New Zealand, that in an election-year economic restraints tend to be relaxed with Government expenditure and the budget deficit increasing. This then contributes to a cyclical economy with serious effects on the country's economic performance, to the ultimate detriment of the whole population.

6.16 Other election-year influences concern the disruptive effect of elections and the reduced effectiveness of Governments as a consequence. Thus there is in an election year a temptation to avoid decisions which, while necessary, are controversial or will offend some sections of the electorate. Moreover, an approaching election disrupts the Government's legislative programme as MPs begin to give more attention to electioneering and less to policy or governmental matters; and following an election the new Government (particularly if there is a change in the governing party) needs time to plan, consult and commence implementation of its policies, which further increases the disruptive effect of the election.

6.17 A longer term should also enable individual MPs to become more effective. Ministers in particular would have more time to become acquainted with the detailed workings of their departments before feeling the pressures of electioneering and should therefore be able to exercise more influence over them. All MPs may have more time to build good working relationships with the various sectional interests in the community. Respect for MPs may also be increased because of the less frequent onset of electioneering. Finally, less frequent elections would reduce the cost to taxpayers and political parties.

Analysis of effective government arguments

6.18 Many submissions made to us supported a 4-year term on the basis of the arguments summarised above. We think it clear that the community has become increasingly conscious of the need for more effective management, particularly in the economic sector. The key issue, however, is whether a 4-year term will provide a greater

opportunity for more effective economic and other management by the Government. This requires some consideration of the evidence. Turning first to the economic evidence, it is not in our view as clear as some critics of the 3-year term suggest. This may in part be because of the lack of suitable research, but the best advice we have been able to obtain is that improved research would require very considerable time and expenditure and might still fail to produce definitive answers. In relation to research needs we consulted the Treasury, the Reserve Bank of New Zealand and the New Zealand Institute of Economic Research (Inc). We also heard a wide range of views from experienced people who were invited to attend a seminar organised by the Institute of Policy Studies at Victoria University of Wellington. While it is not possible to record all the views expressed to us, we think it is helpful to reproduce the conclusions reached in a paper submitted to us by the Reserve Bank.

Perhaps the strongest message that emerges ... is that it is difficult to establish objectively a clear relationship between the length of the electoral term and economic well-being. Certainly we are not aware of any methodologically sound study that establishes conclusively, either in New Zealand or overseas, that economic performance has been materially affected by the electoral term. Any hypothesis that it has been remains just that, and claims that there have been significant welfare losses must therefore be treated with a degree of caution. In New Zealand the serious empirical work which may or may not support such a claim has yet to be done.

That being said the following points might still be made:

- There appear to be no strong economic arguments that we are aware of that the electoral term should be shortened.
- Economic arguments do not allow us to clearly choose between the most likely possible alternative terms (say, three, four or five years). If the present term were four or five years, there would not be compelling arguments to reduce it.
- There is some evidence of an electoral economic cycle in New Zealand in recent years, but it is impossible to quantify the costs of this, or to establish that the costs would have been either higher or lower if the Parliamentary term had been different.
- If the relatively short electoral term has resulted in poor economic policymaking in the past, this does not necessarily mean that it will do so in the future. Providing that the electorate can learn and is presented with alternatives, economic theory suggests that politicians will eventually have incentives to implement better policies.
- Lengthening the electoral term is not the only possible remedy if the short-term focus of politicians is perceived to be a problem. For example, the accountability of governments, and the understanding of economic issues in the electorate, could

possibly both be improved if policies were subjected to independent scrutiny more formally and thoroughly than they are at present.

- A relatively short term does not preclude the adoption of a medium term approach to economic management, as the present Government has demonstrated. In principle, it should not be necessary to have to demonstrate tangible benefits from particular policies in order to obtain electoral endorsement for them.

6.19 The best, therefore, that can be said of some of the economic arguments in favour of a longer term is that they are, on the basis of our present knowledge, unproven.

6.20 In our view, qualifications need also to be made to many of the other arguments based on effective government. Thus the contention that the 3-year term leads to hasty legislation with inadequate research and consultation is to some extent countered by the possibility that the 3-year term acts as an effective spur to get planning under way and legislation passed with proper efficiency. Moreover, extending the term to 4 years will not necessarily provide a greatly improved opportunity to pursue medium and long-term strategies. In many instances, for example, resource and industry development, health, education, justice and employment, lengthy periods may be necessary before policies are seen to be producing results. The time required may considerably exceed 4 years and the difference between 3 or 4 years may not be significant.

6.21 Similarly, in relation to election-year influences, the situation is not as clear-cut as is sometimes suggested. Thus there is evidence that some countries with longer terms, of which Mexico with a 6-year presidential term is an example, have very severe cycles associated with elections. Although there are cyclical movements in New Zealand which have some correlation with the electoral term, the evidence is not always clear. To take a specific example, it was pointed out to us that the budget deficit as a proportion of gross domestic product sharply increased in the years following the 1972, 1975 and 1978 elections, allegedly as a result of policies pursued in the election year. However, the same effects are not observable in respect of the 1981 and 1984 elections. All past and present Cabinet Ministers to whom we have spoken deny efforts to stimulate the economy purely to create a more favourable climate in an election year. They point both to the difficulty and complexity of doing this if the aim is to achieve predictable short-term results and to the multitude of other factors—including external developments and cycles quite beyond New Zealand's control—which may influence the economy. It is possible that politicians have come to appreciate how imprecise many calculations of economic outcome are and that the New Zealand electorate is also now suspicious of attempts to woo support by short-term measures which may have undesirable long-term consequences.

6.22 The remaining election-year arguments (disruptive effects, decreased opportunity for Ministers, Government and parties to be effective, increased costs) all have force, but there are again considerations which need to be placed in the balance. While elections are indubitably disruptive, one viewpoint is that the disruptive effect is of much more concern to those in places of influence and power than to the average citizen. The latter may see Governments as being restored to course rather than blown off course by an election.

6.23 A final matter which we note in relation to the effective government arguments is that it is sometimes said they overlook that a 3-year parliamentary term does not necessarily mean the total period a party spends in government will be less than if there were a longer term. Governments are often re-elected and on that basis it is argued that the length of the term is not as important as it might appear. It is true that New Zealand Governments are often re-elected and also that the number of post-war Governments is little greater than in some countries with longer terms. In our view, however, the ability of Governments to gain re-election is largely irrelevant to the effective government issues. It is the period of time before the next election which dominates the thinking and actions of both Government and the public. Moreover, all the election year influence arguments remain applicable to the extent that elections are more frequent when the term is shorter.

6.24 In summary, there are real qualifications to be taken into account in relation to most of the effective government arguments. At least in the light of the present evidence, it cannot be said that those arguments decisively establish a 4-year term would provide more effective government. However, giving full weight to all the qualifications, we think it can properly be said that there are certainly some beneficial policies which, because of their initial impact or the complexity of the planning involved, a Government would find it preferable to implement over a 4-year period and could be deterred from implementing with a 3-year period. There will also always be at least a temptation in election years for Governments to take unsatisfactory decisions designed for short-term political advantage; and it is undoubtedly true that, as an election approaches, Governments tend to avoid or defer decisions which, though desirable, may prove unpopular with some sections of the electorate. It must always be likely that a Government will endeavour to take unpopular decisions as early as possible and will show a real disinclination to do so later in its life. Likewise, frequent elections undoubtedly tend both to encourage short-term planning and to deflect Governments as greater attention is paid to electioneering. They also have a generally disruptive effect as Governments and parties campaign and then settle in following an election. While we accept that some disruption is often valuable, and is in any event part of the price to be paid for democracy, we believe that a reduction in the disruptive effects of elections would be desirable. We therefore consider that the effective government arguments generally favour a 4-year term. We are also clear from the submissions made to us

that many New Zealand people are both concerned to see that the Government has a good opportunity to embark upon sound policies and believe there would be a better chance of this with a 4-year term.

Arguments based on voter sovereignty

6.25 Opportunity to pass judgment on Government. If the term of Parliament is increased to 4 years, electors will have fewer opportunities at elections to pass judgment on the policies adopted by the Government. It is essential to democracy that those opportunities should be frequent. They also maintain the interest of electors in the process of government and prevent voter apathy. Moreover, electors have more opportunities to pass judgment on the policies of the main political parties in the many countries with a federal system or an elected Second Chamber.

6.26 Opportunity to control Government. Frequent elections also enable voters to exercise greater control over Governments. This is particularly material in the New Zealand context with our unicameral system and relative lack of other restraints on the powers of central Government. Keeping the periods between elections short lessens any tendency by those elected to neglect their responsibility to the electorate. This may happen through incompetence in carrying out a policy which was endorsed at the previous election, or through a deliberate decision to embark on measures inconsistent with the election platform in the hope that over a longer period electors will forget the breach. In either event, a shorter term enhances accountability and enables a Government which has lost the confidence of the people to be removed more speedily from office. On other occasions, and probably more frequently, departures from election policy result from Governments discovering facts previously unknown to them or encountering a change of circumstances thought to render the previously approved policy inappropriate. If, as a result, a Government considers it is obliged to change its policy in the alleged interests of the electorate, a democratic verdict on the change will be that much further away if there is a longer term.

Analysis of voter sovereignty arguments

6.27 The above arguments are generally regarded as favouring a 3-year term. Once again, however, there are qualifications to be made. Although electors should have frequent opportunities to pass judgment on Governments, it is also essential to ensure that those opportunities allow for the exercise of an informed judgment as to whether the Government should be changed. If elections are too frequent, the Government will not have time to implement policies which are seen to be working, with the result that the Government will be judged on inadequate evidence. A longer term may thus enhance accountability by enabling the electorate to judge the Government better and by compelling decision-makers to live with the consequences of their decisions. The key issues concern the period necessary to enable a

Government to be properly judged and how informed or educated the electorate is concerning the Government's policies. Many policies may have a lengthy lead time before their effects are fully observable, but a well informed electorate may still be capable of making appropriate judgments about the likely end results, thereby encouraging politicians to adopt longer-term policies. Weighing the above factors, we are of the view that the New Zealand electorate, which is a reasonably well-educated one, is capable of making suitable medium and long-term judgments if kept adequately informed by the Government.

6.28 In relation to voter control of the Government, the key issue in New Zealand is the power which our system gives to the governing party and particularly to the executive. New Zealand has limited local government and at national level a unicameral, non-federal, plurality system under which the Government of the day has large powers. Though frequent elections can be a powerful weapon in the hands of a populist Government, on the whole they act as a restraint on Government power. Given that situation, it must be accepted that, in the New Zealand context, the voter sovereignty arguments support a 3-year term. Moreover, many people would wish to retain the power to replace a bad Government after 3 years.

6.29 It is, however, true that steps have been taken over the past 30 years to place restraints on the power of Government and to increase its accountability. Examples are the creation of the Public Expenditure Committee and the Ombudsmen, more active intervention by the Courts in relation to administrative fairness, greatly increased parliamentary scrutiny of Bills, the Official Information Act, and the recent changes in relation to select committees and control of regulations. Moreover, steps taken to deregulate economies both here and overseas mean that there is now a group of indicators in the financial, equity and foreign-exchange markets which produce a rapid response to perceived divergence from sound economic management. More sophisticated ways of conveying the views of the electorate to Governments have also been developed, including opinion polls and increased pressure from interest and other political groups. All the above changes have placed some restraint on Government power.

CONCLUSIONS

6.30 Although the effective government arguments favour a 4-year term they cannot, as we previously indicated, be said to do so conclusively. Nevertheless, they would lead us to favour the relatively modest extension to a 4-year term, which we would not regard as significantly reducing voter sovereignty, were it not for the relative lack of restraints on the power of New Zealand Governments. In our view, there are as yet insufficient restraints to justify recommending a change to a 4-year term. We would not be prepared to do so until the present trend towards additional restraints has been further developed.

6.31 The first possibility by way of additional restraints is the proposed change to the Mixed Member system of proportional

representation (MMP). Under that system there is an increased likelihood the Government will be representing, and aiming to satisfy the views of, at least 50% of the electorate. Even if there is a minority Government, there is likely to be a significantly greater degree of consultation and accommodation of other views with a consequent restraining effect on the powers of Government. Whether or not there is a change to MMP, there are other possibilities and trends which have a restraining effect on Government power and are making Governments more accountable to the public. The most promising of these is the tendency towards a better informed and more vigilant electorate. In that respect, it is increasingly clear that access to knowledge and information on the part of the electorate is of crucial importance. We would support all measures which result in greater public access to information, including the progressive fulfilment of the objectives contained in s.4 of the Official Information Act (more effective participation, improved accountability and thereby better Government). We also believe economic management will improve as communication between the Government and the electorate on economic matters increases. It may, in addition, be possible to develop better monitoring of Government policies by way of better funded political parties and public research organisations and, in particular, the provision of better research facilities for the principal opposition parties. An increase in the number of MPs leading to wider scrutiny by select committees coupled with vigilant press reporting, would again be a material improvement. We would add that all these protections are important if we remain with a 3-year term. They simply become more important with a 4-year term. Though they do not necessarily produce the same constraints as an election, they all enhance Government accountability. We also mention that we have not included the development of a Second Chamber amongst the possible restraints, for the reasons we give in paras. 9.149 to 9.156.

6.32 Although we would favour a 4-year term only if further steps are taken to restrain the exercise of Government power, we recognise that the competing arguments are finely balanced and that the issues are such that there will continue to be room for genuine differences of view. We also recognise that an increase in the term was advocated in many of the submissions made to us and that, as we previously indicated (para. 6.7), the length of our parliamentary term is a question for the people to decide. We therefore consider that it is in any event appropriate for a referendum to be held to determine whether the term should be increased to 4 years. Our preference would be to defer a referendum until it is seen whether any of the possible additional restraints on Government power are implemented during the next few years. We accept, however, that views on whether or not the referendum should be deferred could legitimately differ. We accordingly recommend that a referendum be held no later than December 1993 to determine whether the term of Parliament should be increased to 4 years. Should the referendum favour change, the new term should apply from the time of the general election next following the referendum.

RIGHT TO SEEK A DISSOLUTION

6.33 A final matter to which we draw attention is the likely effect of a longer term on decisions by the Government to call an early election. A simple increase in the term, without any restriction on the right to call an early election, would make it easier for Governments to choose an advantageous time to go to the electorate. Overseas experience indicates that, when Governments have longer terms, they endeavour to choose times for an election which are politically advantageous (cf. para. 6.9). This may allow the Government to distort the people's choice by its own self-interested choice of time. Moreover, dissolutions which are sought not for the good of the country but for naked political advantage lead to cynicism in the electorate. Predictability of elections is also important in terms of effective government. The ability to call early elections tends to be both destabilising and disruptive, with constant speculation about whether or when there will be an election. By contrast, New Zealand with its 3-year term has had long sequences of regular elections with early elections having been called only twice (1951 and 1984) in more recent times.

6.34 In our view, a longer term would almost certainly reduce the chances of a fair election at a regular time. Parliament might quite frequently fail to last the full term, which would tend to negate any advantage in increasing the term. These are consequences which we consider undesirable. They can, however, be prevented by appropriate legislation restricting the power to call an early election. This has, for example, been done in the Australian States of Victoria and South Australia, both of which have recently introduced a 4-year term. In each case their Parliament may not now be dissolved before the expiration of 3 years. In the New Zealand context we think it would be preferable for the term to be a minimum of 3 1/2 years. It should also be noted that, if a minimum term is introduced, it is essential to make an exception for the situation where a Government can no longer govern because it has lost the support of the House. Both the Victorian and the South Australian legislation make such an exception. If MMP is adopted in New Zealand, the exception would need to include the case discussed in Chapter 2 (paras. 2.207 to 2.209) where, following a change in coalition arrangements, the new Government considered itself obliged to seek a mandate.

Recommendation:

- 21. (a) A referendum should be held no later than December 1993 to determine whether the term of Parliament should be increased to 4 years (para. 6.32).
- (b) The referendum should include a proposal to limit the power to seek a dissolution (para. 6.34).

4 The Liberal Period

- 1893—Women given the same voting rights as men (4.3)
- Residential requirement reduced from 6 to 3 months (4.2)
- Absentee voting rights extended to shearers and commercial travellers (4.2)
- 1895—Controls placed on payment of election expenses (4.8)
- 1896—Non-residential qualification for voting abolished; existing registrations remained valid (4.5)
- A Representation Commission established for each Island (4.9)
- 1903—Multiple-member city seats reverted to single electorates (4.17)
- 1905—Absentee voting available to all registered voters (4.20)
- Position of Chief Electoral Officer established (4.21)
- 1908—"Second ballot" system of voting introduced (4.27)
- 1910—Voting by show of hands in Maori electorates replaced by declaration (4.32)
- Census of electors introduced (4.33)

5 The Reform Period

- 1913—Second ballot system abolished (5.5)
- 1919—Women able to stand for election (5.24)
- 1924—Compulsory registration of European voters introduced (5.29)
- 1927—Postal [Special] voting introduced (5.26)
- 1934—Parliamentary term extended to 4 years (5.31)

6 The First Labour Government

- 1937—Parliamentary term restored to 3 years (6.1)
- Secret ballots and scrutineers introduced for Maori elections (6.11)
- 1945—Single Representation Commission established (6.20)
- Country quota abolished (6.20)
- 1948—Creation of Maori electoral roll nivan stationery (6.20)

- Composition of Representation Commission changed (7.41)
- Certain sections of the Act entrenched (7.45)

8 The Last Twenty Years

- 1965—Quota for determining electorates changed to preserve 25 South Island seats (8.2)
- 1967—Referendum decided that parliamentary terms should remain at 3 years (8.8)
 - Maori candidates able to stand for European electorates, and vice versa (8.9)
- 1969—Voting age lowered to 20 years (8.11)
- 1974—Voting age lowered to 18 years (8.19)
- 1975—British nationality no longer part of qualification for voting (8.22)
 - Definition of "Maori" widened (8.26)
 - Maori option introduced and linked to census (8.29)
 - Residential qualification reduced to 1 month (8.22)
- 1977—Residential qualification extended to 3 months (8.37)
- 1979—Standing parliamentary Select Committee on the Electoral Law established (8.42)
- 1980—Census re-enrolment replaced by roll revision (8.44)
 - Maori Option to be exercised during period in census years (8.45)
 - Post Office assumed responsibility for rolls (8.40)
- 1981—Representation Commission to fix boundaries of 4 Maori electorates (8.46)
- 1983—Limit on election expenses raised to \$5,000 (8.50)
- 1985—Royal Commission on the Electoral System established (8.51)
 - Residential qualification reduced to 1 month (8.53)
- 1986—Common enrolment for parliamentary and local body elections introduced (8.51)
 - Constitution Bill would allow newly elected government to assume office immediately after general election (8.48)

1 The Colonial Period

1.1 On the 14th of August 1839, Captain William Hobson was instructed by Lord Normanby, Secretary for War and the Colonies, "to adopt the most effective measures for establishing amongst [those living in New Zealand] a settled form of Civil Gov[ernment]". Normanby referred to the finding of a Committee of the House of Commons of 1836, that the riches which would be obtained for Great Britain by the acquisition of New Zealand could not be justified in view of the cost to the natives. Such a step would "be too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the Sovereignty of New Zealand is indisputable, and has been solemnly recognised by the British Gov[ernment]". He also noticed, however, that by 1838 over 2,000 British subjects, many of doubtful character, had settled in New Zealand, and that large tracts of land had already been purchased from the Maori. The coming establishment, by the New Zealand Company, of settlements further south, it may be assumed, influenced Normanby's instructions. To quell this "spirit of adventure", he suggested the negotiation of a treaty with the Maori, whose:

own welfare would, under the circumstances I have mentioned, be best promoted by the surrender to Her Majesty of a right now so precarious and little more than nominal and persuaded that the benefits of British protection, and of Laws administered by British Judges would far more than compensate for the sacrifice by the Natives of a National independence which they are no longer able to maintain.¹

It was in response to these instructions that the Treaty of Waitangi was negotiated.

1.2 Also in 1839, Lord Durham published his Report on British North America. There he argued for a system of responsible government for Canada. By this he meant government in which the Ministers were responsible to an elected assembly rather than to a Governor or to the Imperial Government. Edward Gibbon Wakefield was a member of Durham's entourage when he visited Canada, and the latter was also a member of the original New Zealand Company. It was to be expected, therefore, that these ideas of self-government would be reflected in the settlements established in New Zealand by Wakefield. Charles Buller, who also travelled with Durham to Canada and had connections with the New Zealand Company, argued in the House of Commons in 1845 for self-government as the appropriate response to the tension created by the Wairau massacre of 2 years earlier.

1.3 Such views inevitably led to conflict between the settlers in these settlements, and the Governor, as representative of the British Government and protector of the interests of the Maori. In Auckland opposition to the Governor was if anything more violent than was the case in the Wakefield settlements, but for different reasons. There, in the 1840s, opposition to the Governor centred around a group which came to be known as the "Senate". This group's support came from 2 sections of the community whose interests were specifically related to

the acquisition of land. These were the settlers who had been in Auckland before the signing of the Treaty of Waitangi, and were waiting for their purchases of land, made before 1840, to be validated, and the merchants and tradesmen of the town, who were critical of the way the Government had disposed of land in the town area.² Thus while dissatisfaction with the Governor's power was widespread, there was no unity in opposition. The differing reasons for the wish for self-government were to be the cause of much future political conflict.

1.4 It was, nevertheless, the New Zealand Company settlements through their representatives which were able to influence the British Government in the 1840s. When a Select Committee of the House of Commons was appointed in 1844 to examine colonial matters, its chairman was Lord Howick, later Earl Grey, who was one of Wakefield's Colonial Reformers. The Committee's draft report reflected that allegiance. The Company's land claims were upheld and the administration of Hobson severely criticised.³

1.5 It was only after it became clear that its hope of proprietorial government was illusory, that the New Zealand Company pressed for representative government.⁴ Lord Stanley, the Secretary of State, early in 1845 did not believe the colony was yet ready for self-government. W. E. Gladstone, who succeeded Stanley in the same year, was more sympathetic. Influenced by Wakefield, he prepared a Bill which would have divided New Zealand into 2 colonies and created representative institutions. Gladstone lost office in 1846, and his place was taken by Earl Grey who, with the help of Charles Buller, moved the Bill through Parliament.

1.6 The New Zealand Constitution Act of 1846 divided New Zealand into 2 provinces, New Ulster in the north, and New Munster in the south. In each of these 2 districts the Governor was to constitute elective municipal districts. These districts had the right to elect members of their respective provincial Houses of Representatives. The franchise was given to those in occupation of a tenement, and able to read and write English.

1.7 The national Government consisted of a General Assembly comprising a Governor-in-Chief, an appointed Legislative Council, and a House of Representatives, members of which were appointed by the 2 provincial Houses of Representatives, from their own members. The functions of the General Assembly were strictly limited. It had control of duties and customs, the establishment of a Supreme Court and determination of its jurisdiction, the regulation of the coin, the determining of weights and measures, the regulation of the Post Office, the establishment of laws for bankruptcy, the erection and maintenance of lighthouses, and the imposition of shipping dues. All other matters were to be dealt with by the 2 provincial Houses of Representatives.

1.8 The requirement of literacy in English for the right to vote effectively excluded the Maori population from the franchise.

1.9 The Act provided for the Maori population to continue to be governed by its own laws and customs in all dealings among its own

members, and for particular districts to be set apart as areas in which those laws and customs should be observed.

1.10 Copies of the Bill were circulating in the colony in December 1846, and the Governor, George Grey, was officially notified in April 1847. Alarmed at the implications of the Act for the Maori, he wrote on 3 May to Earl Grey severely criticising the Bill. After pointing to the indignation the Maori would feel if reduced to a state of relative inferiority after they had ceded the sovereignty of their country to the Queen, and the development among them of a sense of national unity, Grey continued:

At present, the natives are quite satisfied with the form of Government now existing, and as the Chiefs have always ready access to the Governor, and their representations are carefully heard and considered, they have practically a voice in the Government, and of this they are well aware; but under the proposed constitution they would lose their power, and the Governor would lose his influence over them, in fact the position of the two races would become wholly altered, and the Governor would, I fear, lose that power which I do not see how, he can well dispense with, in a country circumstanced as this.⁵

Grey's arguments were successful in persuading Earl Grey that the Act should be suspended for 5 years, and on 13 December 1847, a Suspending Bill was introduced into the House of Commons. With the passing of this Bill, the first attempt to introduce a form of self-government into New Zealand came to an end.

1.11 The division of the colony into 2 provinces, New Ulster and New Munster, was, however, preserved by Grey. In November 1848, the Legislative Council passed the Provincial Councils Ordinance. This provided for the Provincial Councils to consist of not less than 9 members, to be comprised of members of the Executive Council of the province, or members appointed by the Governor. Although the Council for New Ulster never met, that for New Munster survived until 1850. At ~~that date a clash between Grey and Edward Eyre, whom Grey had appointed Lieutenant Governor of the province, led to the abandonment of what had never been a popular institution with the settlers.~~

(Bill is back)

2 The Provincial Period

2.1 While Sir George Grey succeeded in deferring the Constitution Act of 1846, the difference between himself and those of the settlers who were pressing for self-government was less that of whether the settlers should achieve that end than how soon it should be obtained.

2.2 Grey himself, in 1848 in a dispatch to Earl Grey, suggested a new constitution. Each of 2 provinces was to have a Legislative Council. Two-thirds of its members would be elected, and one-third nominated. The General Assembly would consist of a nominated Legislative Council and an elected House of Representatives. The

members for each province would be determined by the European population.

2.3 Voting would be open to all European males who could read and write, and owned property worth £30 or occupied a town house worth £10 a year or a country house worth £5. The vote was also to be given to such Maori as owned property worth £200 or more, or who had been granted a certificate by the Governor authorising them to vote. This was a wide franchise, and Grey commented,

I have been influenced by the desire of including among the voters all those persons who have acquired or are acquiring small properties on which they intend to reside themselves during the remainder of their lives and to settle them on their children.¹

Such persons, he believed, would be those most likely to have a real interest in the country's future prosperity.

2.4 A number of areas of jurisdiction relative to the provinces, similar to those in the Constitution Act, were reserved for the General Assembly. It was also required that the Governor approve any provincial legislation. He also had power to amend any provincial constitutions.

2.5 The passing of the Suspending Bill was also to provoke vigorous resistance from the settlers which soon became organised in the form of a number of Constitutional Associations. The first was launched in Wellington in December of 1848. The views of members of the Associations varied considerably. The most radical was possibly that expressed by some members of the Nelson Association. Its committee drew up the following list of principles:

- 1 A parliament, consisting of an upper and lower house, both elected.
- 2 A governor, appointed and paid by the Crown, removable by the vote of two-thirds of each house.
- 3 Triennial parliaments, annual elections.
- 4 Universal manhood suffrage.
- 5 Ballot voting.
- 6 No membership qualification for the lower house.
- 7 Ex officio members removable by a vote of two-thirds of each house.
- 8 Government to have absolute power in local matters.
- 9 All bills for raising and appropriating of revenue to originate in the lower house.
- 10 Acts can be replaced by two-thirds of each house.
- 11 No salaries from civil list except for those of judges.
- 12 Municipal corporations for each settlement.²

This programme was somewhat modified, under the influence of E. W. (later Sir William) Stafford, before being forwarded to Earl Grey but is reflective of Chartist ideas current in the early years of the Colony.

2.81 A number of tribes, however, maintained their allegiance to the European Government. As early as 1860, the Maori Chiefs had left the conference they had had with Governor Gore Browne and Sir Donald McLean, Native Secretary, at Kohimarama understanding that further conferences would be held to consider the participation of the Maori in Government. In 1864 a number of Chiefs approached Fitzgerald on the possible creation of Maori seats,⁵⁵ and in September 1865, the Native Commission Act was passed.

2.82 The Commissioners to be appointed were "not less than twenty nor more than thirty-five persons of the Native race and . . . such other persons of the European race not being less than three nor more in number than five".⁵⁶ They were "required to examine and report to the Governor as to the most expedient mode of defining an Electoral Franchise to be conferred temporarily and pending the conversion of their customary titles to land into titles under grant from the Crown. . .".⁵⁷ With the defeat of the Weld Government by that of Stafford a month later, however, this Act came to nothing.

2.83 McLean introduced the Maori Representation Bill into the House of Representatives on 6 August 1867. He commented:

He would simply say that the Native race, as a people paying taxes, and owners of three-fourths of the territory of the North Island—a people with whom the Government had been recently at war, and with whom it was desirous that peace should be established—it therefore devolved upon this House to use the means at its disposal for allaying any of the angry feeling or excitement that might still remain. He had no doubt that honourable members would perceive there was a necessity for the adoption of such a measure as would direct the minds of the Natives in the proper channel. The courts of justice in all parts of the country were open to them, and they should feel that the Legislature itself was not closed against them.⁵⁸

2.84 The Act provided for the creation of 4 Maori districts, the Northern, Eastern, Western and Southern Maori Electoral Districts, the latter covering the whole of the South Island, each to return 1 member. By way of explanation, the Preamble to the Act stated:

owing to the peculiar nature of the tenure of Maori land and to other causes the Native Aboriginal inhabitants of this Colony of New Zealand have heretofore with few exceptions been unable to become registered as electors or to vote at the election of members of the House of Representatives or of the Provincial Councils of the said Colony and it is expedient for the better protection of the interests of Her Majesty's subjects of the native race that temporary provision should be made for the special representation of such Her Majesty's Native subjects in the House of Representatives and the Provincial Councils of the said Colony. . .

The assumption behind these words would appear to have been that the granting of 4 seats to the Maori was a temporary measure until such time as the fact that the tribal nature of Maori land ownership denied Maori the vote was rendered irrelevant by the issue of Crown grants. This "temporary provision" was expressed to have a duration of 5 years.

2.85 For the purposes of the Act, a Maori was defined in Section 2 as "a male aboriginal native inhabitant of New Zealand of the age of twenty-one years and upwards and shall include half-castes". This meant that Maori electors achieved a universal manhood franchise over a decade before European voters.

2.86 The question of whether Maori or Europeans should represent the Maori voters was a matter of some contention in the debate on the Bill. It will be remembered that Graham in 1865 had recommended that the Maori be represented in Parliament by Europeans. Richmond, on this occasion, expressed the fear that European representatives would turn out to be "land jobbers, Maori traders, and other go-between of the Natives and the Europeans".⁵⁹ In the event, the Act provided for the election of Maori representatives in Section 6, as follows:

Such members shall be chosen respectively from amongst and by the votes of the Maori inhabiting each of the said districts who shall not at any time theretofore have been attainted or convicted of any treason felony or infamous offence and shall be otherwise qualified as hereinafter provided.

The reference to "treason felony or infamous offence" reflected the view of members of the Government that the 4 seats were to be seen in some sense as a reward to the Maori who were loyal to it during the Land Wars.

2.87 The boundaries of the electoral districts were, according to Section 8, to be declared by proclamation by the Governor. Carleton criticised this, arguing that the Governor could, by manipulating the boundaries, determine the outcome of elections. In spite of the apparent return to the principles of the original Constitution Act of 1852 of this Section, Charles Heaphy's opinion was accepted that "the necessity of the Governor defining the Native districts, for the separation and dispersion of tribes would render any other mode of procedure impracticable. The electoral districts must be tribal".⁶⁰

2.88 The Maori Representation Bill was introduced into Parliament on the same day as the Westland Representation Bill. In that the Maori electoral districts gave 3 more seats to the North Island and 1 to the South Island, the Government was able to ensure a balance in the number of new seats offered to each Island.

2.89 That the new Maori seats were needed to facilitate the purchase of Maori land was denied by Carleton. He commented that, "the Natives were, under 'The Native Lands Act, 1865', taking out their Crown Grants as fast as possible, and the moment a Native touched his Crown Grant, he became just as privileged as any European".⁶¹

2.90 The *New Zealand Herald* commented that Crown grants would give the Maoris exactly the same share in the representation of the country which the European settlers enjoy. To this they are entitled. They are entitled to no more. The better means, therefore, to effect the object would, we think be to facilitate, in every possible way, the working of the Native Lands Courts—both as regards routine and expense. To remove all obstructions to their free and impartial working; to cause them to be held as frequently and as conveniently to Maori requirements as possible.⁶²

And, it might have been added, for European requirements.

2.91 The young Hone Heke, asked in 1895 about the value of the creation of the Maori seats, said that "There were no great hopes cherished of the political experiment; in fact, the natives took no interest at all. They were ignorant of what it meant".⁶³ He also denied that the creation of the seats was the result of agitation from the Maori. With the expiry of the Act in 1872, the duration of the Maori districts was extended for a further 5 years by the Maori Representation Act Amendment and Continuance Act. H. K. Taiaroa, member for Southern Maori, had moved an amendment that the Maori members be increased to 5. The motion had, however, been defeated on a point of order. Four years later, Taiaroa introduced the Maori Representation Act Continuance Bill, by which means it was hoped to increase the Maori members to 7. This too failed. The rest of the Bill, however, was passed. Its substance is contained in Section 2:

"The Maori Representation Act, 1867" as amended by "The Maori Representation Act Amendment and Continuance Act, 1872" shall be and is hereby continued in operation, and shall remain in operation until expressly repealed by an Act of the General Assembly.

Thus, the 4 Maori seats became a permanent part of the country's electoral system.

2.92 After the creation of the 4 Maori seats, Parliament continued its ritual of re-drawing the electoral boundaries. In 1870, the Representation Act divided the country into 68 European electoral districts, returning 74 members. Fox, the Premier, in introducing the Bill, alluded to the uncertainty of the principles upon which, in the past, electoral districts had been created, and stated that:

We have based our representation upon provincial representation; we have endeavoured to assess that which we conceive a fair proportion of members, not in each district, but in each Province, as it has always been . . .⁶⁴

A Select Committee was to be appointed to define the boundaries of the districts within each Province. Stafford's doubt that "any good will come from the proposed relegation to the Committee"⁶⁵ appears to have been justified, for in 1871 a Representation Act Amendment Act