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Constitutional Reform and Social Difference in New Zealand

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Summary

CONSTITUTIONAL REFORM AND SOCIAL DIFFERENCE IN NEW ZEALAND

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The new electoral system adopted by New Zealand in 1993 includes a little-known arrangement designed to assure fair and effective representation of the indigenous Maori minority in Parliament. I contend that this plan is a social invention of potentially first-rate importance-- one that ought to be studied and carefully considered in every emerging or established democracy that faces the problem of how to combine two or more different peoples into a unified polity on a basis of fairness and consent.

The system, which I call MMF-DC (mixed-member proportional with dual constituencies), grafts a modified version of New Zealand's old system of separate Maori constituencies (which have existed since 1867) on to a German-style double-ballot method of proportional representation. The combination, including certain essential details explained in the paper, meets three crucial democratic tests: it partitions the entire citizenry among the two classes of electorates, without forcing individuals to assume an ethnic identity against their will; it assigns a proportional share of seats to the Maori, with provisions for automatic adjustment as the number of people on the Maori roll changes; and it offers the minority group the likelihood of effective substantive representation as well as fair descriptive representation.

MMP-DC offers significant advantages compared to both major conventional electoral systems, single-member-district (SMD) elections and proportional representation (PR). Unlike SMD systems, MMP-DC can guarantee fair representation to a geographically dispersed minority, without ethnic gerrymandering of constituencies. Unlike PR, MMP-DC does not raise the possibility that the minority will have to resort to a separate political party in order to achieve fair descriptive representation in the legislature. Paradoxically, although MMP-DC requires group consciousness at the constitutional level, it promotes or permits closer geographic, partisan, and legislative integration between the majority and minority.

The paper also describes the process by which New Zealand arrived at MMP-DC. This history is also worthy of attention, both because it should give pause to those who would put all their faith in rationalistic constitutional engineering and because, at the final stage, it involved an exemplary process of consultation between legislators and an indigenous minority.

This analysis should be of interest to anyone in the development community who offers constitutional advice or assistance in ethnically plural societies.

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In an historic referendum on November 6, 1993, New Zealanders voted by a 54-46 margin to replace their Anglo-American method of electing Parliament with a system of proportional representation (PR). Dubbed MMP "mixed-member proportional" (MMP) by the Royal Commission that proposed it, the new system in essence simply transfers the well-known German electoral system to the antipodes, with suitable adjustments due to smaller scale and the absence of federalism. Thus far, international interest has focussed on three features of New Zealand's reform: it is the first adoption of party-list PR by an English-speaking democracy; it represents a partial repudiation of Westminster institutions by the country that had refined that model of democracy to its purest form; and (along with electoral reform in Italy and Japan) it shows that a democracy can peacefully enact fundamental constitutional changes that conflict with the interests of an established power structure. (Lijphart 1987; Boston 1987; Nagel 1993, 1994)

Almost overlooked has been a seemingly subsidiary but genuinely original aspect of the New Zealand reform--the provisions it contains to guarantee representation for the country's indigenous Maori minority. This paper is intended to correct that oversight, because I believe that New Zealand's new system for Maori representation under MMP is a genuine social invention of first-rate importance--one that ought to be studied and carefully considered in every emerging or established democracy that faces the problem of how to combine two or more different peoples into a unified polity on a basis of fairness and consent. Not only are the mechanics of the system potentially worth transferring to other settings; constitutional reformers and theorists may also find food for thought in the process and values that created it.

My purpose is to persuade the reader of the merit of these claims while explaining how the New Zealand system will work and how it came about. The first part of the paper presents necessary background. The main section describes and evaluates provisions for Maori representation in New Zealand before and after the 1993 referendum. I then discuss how a felicitous synthesis developed and the values that guided crucial decisions at the final stage of reform. A brief conclusion points out preconditions that other plural societies must meet before they can adopt (or adapt) the New Zealand model.

Background

The argument requires a brief introduction to (a) the problems of minority representation in conventional electoral systems, (b) the situation of the Maori in New Zealand, and (c) New Zealand's basic structures for conducting Parliamentary elections before and after 1993,

Minority Representation in Conventional Electoral Systems

Throughout this paper, I am concerned only with groups (usually minorities but sometimes majorities) that have a social existence independent of politics. Examples include racial, linguistic, religious, and ethnic groups. Excluded are groups based on purely political affinities such as ideology, partisanship, opinions, or policy preferences. Thus the electoral systems to be considered are relevant **for** what are variously called plural, divided, or segmented societies--a 'class' that includes most but not all democracies.

Most national legislatures are elected either from **single-member** districts (using plurality or majority rule) or from multi-member districts (using a proportional or semi-proportional decision rule). I shall discuss each in turn.

In SMD systems, if group membership affects voting patterns, then the ability of a minority to elect representatives depends on its geographical distribution in relation to constituency boundaries. This fact creates the potential for the following **disadvantages**:

- underrepresentation of geographically dispersed minorities:
- **overrepresentation of groups (minorities or majorities)** that are distributed geographically in an optimally concentrated pattern:
- increased salience of geographically-linked cleavages, which are often most dangerous to system survival, because they **are conducive to secession and civil war;**
- the development by groups of a political stake in **territorial segregation, which at the extreme can lead to group pressures on individuals to move or stay put:**
- **a strong group interest in the mapping of constituencies,** which can result in gerrymandering and other distortions.

In the United States, court battles over constitutionality of bizarrely-configured **"majority-minority" districts** (devised to elect more nearly proportionate numbers of blacks and Hispanics)

have dramatized the conflict between conventional single-member constituencies and equitable representation of groups.

Because of these problems with SMD systems, it has become the conventional wisdom in comparative politics to recommend proportional representation as the best system for plural societies.' Because PR (and related "**semi-proportional**") systems use multi-member districts, parties--acting from statesmanship or to gain votes--can offer lists that include candidates from various groups. If a group nonetheless considers itself underrepresented, its members can organize their own party and win a share of seats proportional to the vote they attract, once they surpass the threshold of representation.

Despite this compelling logic, conventional PR systems have four potential drawbacks as devices for representing minority groups:

- If groups are represented primarily by their own parties, then the process of political mobilization at the mass level will perpetuate and perhaps aggravate group differences. Unless such divisions are countered by accommodative norms and successful coalition-building at the elite level, the unity of the polity may be endangered.
- A group that organizes its own party in order to achieve fair representation risks ineffectual or even dangerous political isolation, because other parties may give up hope of competing for its members' votes.
- PR in itself offers no constitutional **guarantee** of representation to any minority; each group must take its chances in a political process that may be dominated by an indifferent or hostile majority.
- Although it is usually deemed an advantage that PR offers hope of fair representation within a legal framework that treats all individuals equally, without reference to group identities, **some** groups may strongly desire explicit constitutional recognition of their difference.

The last two of these considerations turned out to be crucial in New Zealand's invention of a **system** that assures representation **for its Maori minority within a PR framework.**

The Maori People of New Zealand

The Maori are a Polynesian people who first arrived in New Zealand about 1200 years ago (Davidson 1992, 6).² By the late 18th century, when regular contact with Europeans began, Maori had developed a relatively settled agricultural society organized

by whanau [extended families], hapu [clans or subtribes], and more than forty iwi [tribes]. Most estimates put their **population at that time between 100,000 and 200,000.³** Even before the beginning of large-scale European settlement after 1840, the arrival of Pakeha [whites] had a devastating demographic impact on the Maori, due to Western diseases and lethal tribal warfare stimulated by trade in firearms. In the **1860s**, defeat in wars with the Pakeha over land ownership accelerated the process of demoralization and decline. By the **1890s**, the Maori population had reached a low point at about 40,000. Many Pakeha expected that the **Maori** would, like the Tasmanian aborigines, become extinct. In the 20th century, however, Maori proved resilient. Aided by public-health measures introduced by the Western-educated physicians Pita Te Rangihiroa [Peter Buck] and Maui Pomare (who were both also Members of Parliament), the population began a long upward trend. By 1991 the census counted 511,947 persons who reported some Maori **ancestry (15.2% of the total population), including 323,493 who** identified themselves as half or more Maori (9.6%). The census also lists other small but rapidly growing minorities: Pacific Island Polynesians (**3.7%**), Chinese (**1.1%**), and Indians (0.8%). The census does not report the proportion of full-blooded Pakeha, but it may be inferred to just under 80% and shrinking.

After it became apparent that Maori would not physically disappear, most Pakeha expected (and hoped) that, through intermarriage and cultural assimilation, the two groups would become **"one people."** During the **1950s and 1960s, extensive** migration of Maori from rural areas to the cities appeared likely to hasten the process of integration: **many urban Maori grew up** speaking only English and no longer identified with iwi. Beginning in the late **1960s**, however, an effective movement developed to assert Maori identity **and invigorate** Maori culture. Both directly and by pressuring government, Maori revived use of their language, promoted Maori studies in schools, developed urban **marae** [meeting places], and sought to achieve kotahitanga [organized unity among Maori].

These efforts took place in the context of a distinctive constitutional status. British sovereignty over New Zealand was established by the Treaty of Waitangi, which was signed in 1840 by the Queen's emissary, William Hobson, and most (though not all) Maori chiefs. As tangata whenua [original people of the **land***] and as equal participants in the **"partnership"** established by the Treaty, **Maori** believe they are entitled not just to equality of citizenship as individuals but also to collective rights of ownership, self-governance, and **protection of 'taonga [treasures] guaranteed by the Treaty.** As immigration from other Pacific islands and from Asia increasingly makes New Zealand a multicultural society, Maori consider it all the more important to insist that they are not just another ethnic minority and that constitutionally and legally New Zealand is, and must remain, a

bicultural state. In 1993, their determination to preserve this distinctive status was an important reason for Maori insistence on the maintenance of a separate system of Parliamentary representation.

New Zealand's Old and New Electoral Systems

Ignoring for the moment its unusual provisions for representing the Maori, New Zealand's parliamentary electoral system from 1914 through 1993 was a standard version of what the British (and New Zealanders) call first-past-the-post (**FPP**).⁵ All members of the House of Representatives were elected from single-member districts (**SMDs**) by simple plurality. This is the method also used to elect most legislators in the United Kingdom, the United States, Canada, India, Jamaica, and other places **influenced by the Anglo-American tradition,**

Again setting aside provisions for Maori representation, the basic elements of New Zealand's new MMP **system** are as follows: Each voter will cast two ballots--one for a constituency representative elected as before by plurality from a **single-member** district, and one for a national party list. Initially, **65 members of the unicameral Parliament will be elected from** constituencies and 55 from party lists. Seats that parties win from districts will be subtracted from their list allocations, so that overall representation in Parliament will be proportional to party votes. A party will earn list seats only if it wins at least 5% of the party vote or at least one constituency seat. Thus, like the German system that inspired it, MMP is a hybrid of SMD and PR features. More than half the **MPS** will be elected as individuals from SMDs, but the relative strength of parties will depend entirely on a PR formula.

Maori Representation in Parliament

New Zealand has had two systems designed to guarantee Maori representation--the old **system** used through the 1993 election and the new system enacted by the referendum that year. Serving as a bridge between the two came the **system** proposed by the Royal Commission on the Electoral System, which was modified after a remarkable process of consultation between Parliament and the **Maori people.**

The Old System

From 1867 through 1993, members of the New Zealand House of Representatives⁶ were elected from a dual constituency (DC) **system--two** sets of racially separate, geographically superimposed single-member electorates. The system can best be

visualized as a map with two overlays--one dividing the country into numerous European (later called "**general**") electorates, and the other apportioning the same territory into a smaller number of geographically much larger Maori electorates.'

Although sometimes denounced by critics as "**electoral** apartheid," the DC system imposes separateness only at the voting stage. From the beginning, **MPs** representing both **types** of electorates have served in the same chamber with equal rights and privileges. Compared with both standard systems of representation, the New Zealand invention of dual constituencies has significant advantages as a device for ensuring minority representation.

- Unlike conventional SMD elections, the DC **system** guarantees seats for a minority even if it is geographically dispersed. Because they neither require nor promote territorial **separation**, **dual** constituencies are, with respect to residential segregation, the opposite of apartheid.
- In contrast to PR, DC does not raise the possibility that the minority will have to resort to a separate party in order to achieve descriptive representation in the legislature. Although DC does not bar the group from setting up their own party, minority electors can, if they prefer, vote for national parties with the assurance that they will also elect people of their own group. If elected, **those** members will then be part of an ethnically diverse caucus.

Thus, paradoxically, **the legal or constitutional group-**consciousness entailed in establishing dual constituencies promotes closer geographic,, partisan, and legislative integration between the minority and majority.

Despite these advantages, a DC system cannot be judged satisfactory from the perspective of democratic theory unless it meets three crucial tests:

- **Partitioning**--If the entire citizenry can be fairly and **unequivocally divided into just two ethnic groups**, a DC system is conceptually unproblematic. In reality, some citizens will be of mixed ancestry and some may belong (by **ascription or choice**) to **neither group**. **How are they** assigned to electorates? This is both a practical and a moral question. If some members are not eligible to vote on either roll, then the polity fails the democratic test of full inclusiveness. If people are compelled to assume an ethnic identity against their will, then the state both perpetrates individual injustice and perpetuates group divisions unnecessarily.

- **Proportionality**--Are groups assigned seats proportional to their shares of the population, defined in some suitable way?⁸ If not, then one group--which may be either the minority or the majority--will **enjoy excessive descriptive representation** and, very likely, an unfair advantage in substantive power as well.

Substantive representation--Even when minority group members win a proportional share of legislative seats, they may be unable to exercise a commensurate influence over policy **decisions affecting the substantive interests of their members**. Because a DC system gives non-minority legislators no electoral incentive to appeal to minority voters, there **is danger that the minority and their representatives will become politically marginalized and ineffectual**.

Over time, New Zealand refined its old system of Maori representation so that it included an exemplary solution to the partitioning problem. However, throughout its history, the system had glaring inadequacies with respect to proportionality and substantive representation.'

Partitioning, In the New Zealand context, there are two facets to the partitioning problem: the treatment of people who are neither Maori nor Pakeha, and the treatment of people who are both Maori and Pakeha. Through a series of incremental improvements that took more than a century, the New Zealand DC system developed answers to both difficulties.

Despite their name, **"European"** constituencies were never **comprised exclusively of Pakeha voters**. For example, at the inception of the DC system, Maori who held individual title to a sufficient amount of property were eligible to vote on the **European roll**.¹⁰ **As persons of other ethnic groups settled in New Zealand**, they too were permitted to vote on the European roll. In 1975, Parliament replaced "European" with "General," thus recognizing the multi-ethnic status of these seats; and in 1993 the first Pacific Islander MP, **Phillip Field**, was elected as a **Labour** candidate from an Auckland constituency.

Extensive miscegenation makes the treatment of mixed-race persons an especially crucial problem in **New Zealand**. The 1867 Maori **Representation Bill** defined Maori for its purposes as **"male aboriginal native inhabitant[s] of New Zealand...[including] half-castes"**. (Dept. of Justice 1986, A-29) This formula implies that men with less than one-half Maori ancestry were to vote on the European roll. In 1893 the landmark bill that enfranchised women also extended to half-castes the right of opting to vote on the European roll. This option was immediately exercised by James Carroll, the first great Maori parliamentary leader, who **shifted from the Eastern Maori seat he had represented since 1887 to Waiapu (later Gisborne), a European seat that he was to hold**

until 1919. In 1967, Maori other than half-castes were permitted to stand in European electorates; eight years later, Ben Couch and Rex Austin, Maori candidates nominated by the National Party, succeeded in winning General **seats**.¹¹

The most significant reform came in 1975, when Maori identity for electoral purposes was in effect made a matter of individual choice:

"Maori" means a person of the Maori race of New Zealand; and includes any descendant of such a person who elects to be considered as a Maori... (Dept. of Justice 1986, A-86)

In what came to be known as the **"Maori option,"** individuals' decisions whether to be listed on the Maori or General rolls were henceforth to be made in conjunction with the quinquennial census. An individual had only to affirm that he or she was **descended from a Maori and wished to be listed on the Maori roll** to be included there. This procedure opened up some potential for farce or fraud, because persons who were, in genetic terms, overwhelmingly or even entirely Pakeha might put themselves on the Maori roll: but the real significance of the reform was that **"now all the Maori and not only half-castes had the option of choosing whether they wished to be on the Maori or General roll."** (Dept. of Justice 1986, A-87) Thus the General roll became inclusive and open to all, while Maori retained the privilege of voting for separate representatives so long as they wished to avail themselves of it.

Proportionality. From 1867 through 1993, the number of Maori constituencies was fixed at four. The European or General seats have varied from 70 to 95. In proportion to population, the Maori were drastically underrepresented in the early years of the system, when they should have been entitled to fourteen or **fifteen seats (at least 20% of the House)**. As the Pakeha population grew and the Maori ebbed, there was a period of rough proportionality in the late 19th and early 20th centuries. In the **1920s, Maori were actually overrepresented on a population basis**, but the population per seat lines crossed again in the 1940s. Subsequently, the ratios grew increasingly inequitable. By 1993, if all persons with any Maori ancestry were counted in the Maori electoral population, there would have been fifteen Maori seats on a proportional basis. **Of course**, from 1975 on, the Maori option complicated judgments about what number of Maori seats would be fair. In 1984, for example, only about 37% of New Zealanders descended from Maori were registered on the Maori roll, which made four seats a proportionate number on the basis of **enrollment**.¹² Nevertheless, New Zealand's DC system was rendered inequitable in principle by the fact that the law fixed the number of Maori seats whereas (beginning in 1965) it increased the number of General seats according to a **population-based formula**.

Substantive Representation. As early as 1905, James Carroll contended that the DC system gave Maori guaranteed descriptive representation at the cost of lessened substantive influence:

I do believe that the Natives would be better off if the Maori Representation Act...were repealed...[I]f you make a change in the direction of allowing the Natives to be placed on the general roll, you will have Native interests... represented by every member from the districts in which there are Maori constituents. ..It does not necessarily mean that there must be a majority of Maoris in a district to insure proper representation for them on the part of their representative. The very fact of Natives being on the roll and exercising their privilege as voters will bring the representative or candidate to attention at once. (Dept. of Justice 1986, **A-49-50**)

In recent years, a few prominent Maori have revived Carroll's case for abolition (Sorrenson 1986, B-62), but the preponderance of Maori opinion appears consistently to have supported retention. The inception of the Maori option softened the dilemma for Maori collectively, because it enabled them in principle to retain their own seats and have some influence over General contests as well.. However, the quandary was shifted to Maori as individual electors. Because the **Labour** Party held all four Maori seats for half a century (**1943-93**), usually by landslide margins, an individual voter was more likely to make a difference by shifting to the General roll; but if too many Maori made this move, the case for retaining Maori seats would be weakened.

The Royal Commission's Recommendation

The Royal Commission on the Electoral System (RCES) set the achievement of fair and effective Maori representation as one of its major criteria for judging alternative electoral systems. Using this test, they condemned New Zealand's existing system of dual constituencies not so much because the Maori were numerically underrepresented (which could easily be fixed), but because the system inherently ghettoized the minority, thus depriving it of substantive influence. **"Separate** representation gives the majority culture a **licence** to ignore the political interests of the Maori people. . . .Maori seats under plurality have not given the Maori people a fair share of effective political power and influence. They have become a political backwater."
(**RCES 1986, 19, 98**)

The Royal Commissioners' belief that MMP offered a desirable solution to the problem of Maori representation was an important reason why they recommended such a radical reform. The version of MMP that they proposed would have abolished the separate Maori

roll and constituencies, **thus putting all citizens on a formally equal footing.** The RCES believed that because MMP would give all political parties an incentive to win Maori votes, their competition would result in policies appealing to Maori and in the slating of Maori candidates **"for high list places and in winnable constituency seats."** (102) If Maori felt that mainstream parties were nonetheless not offering them an adequate share of seats and power, proportional representation would enable a separate Maori party to win seats. To give extra assurance that such a party could succeed (and to put further pressure on other parties not to take Maori votes for granted), the RCES recommended that its proposed 4% threshold should **"be waived for parties primarily representing Maori interests."** (44) This concession was the only formal recognition that the RCES plan gave to the distinctive historical and constitutional position of the Maori in New Zealand.

The System Adopted in 1993

Under the entrenched clauses of the Electoral Act 1956, changes such as those the Royal Commission proposed could be enacted only by a three-quarters vote of Parliament or by a national referendum. Expecting that the major parties would oppose a reform that would destroy their duopoly, both the RCES and the subsequent grassroots pro-MMP movement advocated a referendum. Following a remarkable series of events too complex **to summarize here,**¹⁹ a National Party government agreed to hold an indicative (non-binding) referendum in September 1992. An astonishing 85% of voters rejected FPP, and MMP received 65% **support when pitted against three alternative reform systems.** By effectively crushing direct parliamentary resistance, this **landslide** cleared the way for the binding choice between FPP and MMP in November 1993. First, however, the **MMP plan that was to be voted upon had to be specified in legislation, for the RCES recommendation had no legal status.**

The Government introduced its initial Electoral Reform Bill in December 1992. Drafted in a hurry after the indicative referendum, it followed all the core recommendations of the RCES, **including the abolition of Maori seats. The bill was assigned to the Electoral Law Committee, which spent the next seven months listening to public submissions, holding hearings, and deliberating before reporting back to Parliament in July 1993.** The Committee's main departures from the original bill (and the RCES plan) were in the provisions it recommended for Maori representation:

- The Maori roll and Maori option would be retained.
- **Single-member constituencies under MMP would be of two types: General and Maori.**

- **The number of Maori constituencies would be allowed to fluctuate up or down depending on the number of people on the Maori roll, using the same population quota as would be applied to General constituencies.**
- Parties primarily representing Maori interests would have to meet the same standards as other parties to win list seats-- that is, they would have to win a constituency seat or receive at least 5% of the list **vote.**¹⁴

Parliament **accepted** these provisions, so they became part of the MMP plan that the voters approved in the 1993 referendum.

The resulting system of representation, which I shall abbreviate MMP-DC (mixed-member proportional with dual constituencies), thus alters New Zealand's longstanding DC system to make it equitable at last, and then grafts the result onto a German-style mixed-member trunk (itself already a hybrid). The result may seem idiosyncratic and exotic, but I contend that other plural societies ought to consider transplanting MMP-DC to their shores, because it offers the following attractive features:¹⁵

1. **MMP-DC allows separate representation to a minority that desires it--whether negatively out of insecurity and distrust or positively to maintain a cherished distinctive identity; but it also provides a mechanism to end that separate system without requiring a new constitutional decision if--through intermarriage, assimilation, or personal choice--members of the minority acting as individuals no longer wish to affirm their difference.**

2. **Although MMP-DC offers members of the minority a distinctive status, it does not confine them to it. The majority or general system of representation is defined in universalistic rather than exclusive terms, and it is open to all who choose to join. Thus the voting system is fully inclusive and the state forces no one to accept an unwanted ethnic identity.**

3. **MMP-DC offers guaranteed representation to the minority even if it is geographically dispersed.**

4. **MMP-DC does not require the minority to form a separate political party in order to attain an assured minimum of descriptive representation: however, if enough members of the group believe that a separate party would be advantageous, that alternative is readily feasible.**

5. **MMP-DC provides a mechanism to ensure that the minority's guaranteed descriptive representation is fairly proportional, thus preventing the dangers of **tokenistic** underrepresentation or privileged overrepresentation.**

6. MMP-DC enables the minority to have a guaranteed level of descriptive representation without risking loss of substantive influence. The party list vote determines the overall allocation of seats among parties, and there is no distinction between the party-list votes of electors on the minority and general rolls. Therefore, all parties have an incentive to appeal to the minority for list votes, despite the segregation of their constituency votes. Thus under MMP-DC the minority can have separate representation without becoming politically marginalized.

7, MMP-DC promotes higher levels of voting participation among the minority group in three ways. First, if its members believe that the polity treats them fairly, they will be less alienated from politics.¹⁶ Second, because the number of minority seats depends on how many voters register on the separate roll, MMP-DC rewards efforts to enroll minority voters." Third, as a list-PR system, MMP-DC fosters higher turnout generally, because each party-list vote has a roughly equal chance to influence the allocation of seats and even minor parties have a chance to share legislative power. In contrast, in single-member-district systems, votes cast in safe districts and votes cast for minor parties have less impact."

No matter how compelling they seem, these arguments remain theoretical until the MMP-DC system is tested in practice. Therefore, the development of Maori politics over the next decade will be a question of more than parochial interest.

Observations about the Process of Constitutional Innovation

If MMP-DC does fulfill its promise, the process by which it developed should give comfort to disciples of Burke and Oakeshott and pause to those who would put all their faith in rationalistic constitutional engineering.

When it was first devised, the dual-constituency system was merely a temporary expedient, authorized initially for just five years. It has now lasted 137 years and survived a radical transformation in the basic electoral structure. Although a few Pakeha in 1867 advocated fair and egalitarian treatment of the Maori, most were willing to grant them representation only as a peace overture to rebels, a reward to loyalists, and a sop to humanitarians in Britain who were pressuring the Colonial Office. Thus the system that now stands as a symbol of equitable partnership between two peoples sharing the same country began as much less than that. Moreover, the invention of a separate roll was originally a solution to a problem that has long since become obsolete--the fact that the communal Maori could not be accommodated within a franchise based on individual property ownership.

The token allocation of just four seats might easily have made Maori completely cynical about the system. Fortunately, because of demographic changes, the problem of underrepresentation was less glaring from the 1890s through the **1930s**, a period in which gifted Maori MPs--Sir James Carroll, Sir Peter Buck, Sir Aparana Ngata, and Sir Maui Pomare--transferred their **mana** [prestige, authority] to the Maori seats, helping to make them a taonga in the eyes of **most** Maori people.

When the question of equitable numbers rose again from the **1940s** on, the protracted impasse was **due** mainly to **partisan** conflict rather than Pakeha racism. The Maori electorates had become safe for the **Labour** Party, so any increase in their number would give it more seats. Consequently, the National Party would not countenance new Maori seats; and National controlled Parliament all but six years between 1949 and 1984. In **1975**, a short-lived **Labour** government actually enacted the same formula as was eventually adopted in 1993--that the number of Maori seats should vary with the number of voters on the Maori roll. After **Labour** lost the 1975 election, the new National government promptly fixed the Maori seats at four again, so the **variable-seats** formula was never implemented. Only when dual constituencies were combined with MMP did the partisan conflict **evaporate**, because under MMP, the parties' overall seat totals would depend only on the party list vote, no matter how many Maori constituencies **might** be available for **Labour** to win. Ironically, MMP--intended by its authors to end the embarrassment of separate **representation**--instead made it politically feasible to correct at last the most glaring weakness of the old DC system.

Officially, National had excused its protracted resistance to a proportional number of Maori seats by advocating two **principles that neatly combined to justify the status quo**--commitment to a single roll as an ideal, but support for retaining the existing Maori seats until Maori themselves **consented to abolition**. This stance--supporting a common roll in principle but not in practice--may well have been motivated by fear that **Labour** would gain by an influx of Maori onto the general roll, but National's longstanding invocation of the principle of Maori consent took on a force of its own when the prospect of a single roll became imminent in 1993.

How were the Maori to give or **withhold** consent?" The Electoral Law Committee received 430 written submissions from groups and individuals. Although more than half dealt with the **issue of Maori seats, "less than one handful" came from Maori**, whose tradition emphasizes oral debate. According to Maori MP and Committee member Whetu Tirikatene-Sullivan, the silence was **"not** a boycott; it was just that most could not believe that there was to be an abolition of special Maori representation . . . [Maori were] traumatised and **unbelieving.**"²⁰ Recognizing the

need for a for a process of consultation that would be more compatible with Maori culture and traditions, the Committee established a Maori project steering committee with the help of the New Zealand Maori Council, the National Maori Congress, and the Maori women's Welfare League. Together they organized more than 20 hui [protracted discussions] on **marae** throughout New Zealand, culminating in a national hui of Maori leaders at Turangawaewae in May 1993. Committee members attended the hui, which convinced them that a **"clear consensus"** existed among Maori in favor of **retention**.²¹

For many years previously, a clear consensus had also existed among Maori in favor of allowing the number of Maori seats to increase, but Pakeha had not deferred to Maori wishes on that question. Why did Parliament behave in such a statesmanlike way in 1993 when it had not done so in the past? This question is especially intriguing because most members of the Electoral Law Committee were believed to be personally opposed to MMP, and on another crucial issue they undermined support for electoral reform by insisting that the size of Parliament would differ under the two options-- remaining at 99 for FPP but increasing to 120 for MMP. (The Royal Commission had recommended an increase with either system, but the prospect of more **MPs** was extremely unpopular among voters.) If Parliament had offered the electorate FPP with Maori seats and MMP without, then they probably would have swung the Maori vote against electoral reform.

It may be that **MPs** opposed to reform simply overlooked a Machiavellian opportunity. More likely, the overwhelming vote against FPP in the 1992 indicative referendum caused them to expect that MMP was almost surely going to win and that the margin would be too great for Maori votes to be **decisive**.²² If New Zealand had to live with MMP, Committee members reasoned, then it was vitally important to devise the best possible form of MMP--one that could reconcile the nation by settling an **"historic grievance of Maori people."** As National MP Tony **Ryall** put it, **"The committee spent some time trying to gain consensus because the committee members were acutely aware that to decide the likely future of this nation's parliamentary democracy in an undisciplined way would produce a result that would not be in the best interests of this nation."**²³

Whatever their underlying motives and calculations, the process of consultation, deliberation, and decision by consensus seems to have deeply impressed members who participated in it, accustomed as they were to New Zealand's tradition of harshly adversarial partisan politics. Members seem to have shared a sense of elation because, as **Labour** MP Pete Hodgson put it, **"This is the first time in New Zealand's history that we have got it right."** Many Pakeha seem to have undergone a genuine conversion. National MP Jeff Grant testified:

[I]t would be fair to say that I **entered** Parliament in 1987 as what could be termed a redneck, and I had very strong views about Maori representation. As I am leaving **Parliament I am about to say that that I am a liberal!....I** now take the view, and it may seem extreme to some, that there is an argument for separate representation of indigenous people. I think there is even an argument for **representation** of minority people--outside indigenous people--in a **Parliament.**²⁵

To Tirikatene-Sullivan, the decisionmaking process, the unity of Maori, and the acceptance of their wishes by Pakeha who had historically opposed separate representation were **"a victory and a turning-point for race relations" in New Zealand:**

I believe that, in the annals of the history of attitudes between the races, this massive change of opinion is **epoch-**making. In fact, I believe that it has influenced this legislation in a historic way...Never before in contemporary history has [a process of consultation] happened in quite that way: Maori opinion was canvassed, and that was funded and made possible by the Government....So it was that virtual unanimity was achieved among Maori.... [There will be] overwhelming support from Maori people for MMP. Therefore, I bring to the House expressions of gratitude from all those Maori **people.**²⁶

Limits on the Transferability of the MMP-DC Model

Although observers elsewhere might well seek to emulate the spirit of unity that New Zealand **seems** to have found through' acceptance of difference, it would be remiss to conclude without a few sobering reminders. Even if the new system for Maori representation proves an unqualified success in New Zealand, other plural societies should not consider transplanting it unless they meet three preconditions.

1. There must be no constitutional barrier to giving **some** citizens a distinctive status on the basis of group identity.
2. As a form of proportional representation based on party lists, MMP-DC does not apply to small councils, non-partisan **elections**, or single-winner contests. It is **most** suitable for parliamentary **systems** with fairly large chambers, in which list votes can be pooled systemwide or in large-magnitude districts.
3. If a polity has more than one significant minority, there **must** be some generally accepted way to decide who is entitled to separate representation. In New Zealand, that question **is** readily answered, because Maori are the tangata whenua and other minorities are not yet numerous. Where two or more substantial

minorities have compelling claims, the concept might be extended to three or more sets of constituencies; but proliferation could not **be** carried too far without creating unworkable political and administrative complexity.

The first two of these restrictions (and perhaps also the third) suggest that **MMP-DC** will not be applicable in the United States, which is regrettable, given our current dilemma over the gerrymandering of majority-minority congressional districts. I leave it to readers to consider whether adaptations of the New Zealand system might help solve the problems of other plural societies with which they are familiar.

Endnotes

1. The writings of **Arend** Lijphart have been especially influential in this regard--see, e.g., Lijphart 1991. For an opposing argument, see Horowitz 1991.
2. A few comments about Maori words may be helpful. It is now standard usage in New Zealand to use the Maori plural, which does not add the letter s. Thus "**Maori**" may be singular or plural, depending on context. As part of the move toward biculturalism, New Zealanders, both Maori and Pakeha [Europeans], increasingly incorporate Maori words in everyday speech and writing, so they are not italicized. Many have no exact English equivalents, but I offer approximate translations in brackets the first time they appear. Spelling of Maori words is mostly phonetic, except that **wh-** is pronounced **f-**, New Zealanders, including Maori, pronounce the word **Maori** with two syllables, not three.
3. Population data in this paragraph are from the New **Zealand Official Yearbook 1993**, pp. 78-9.
4. The rich ambiguity of the Maori language is especially important with respect to the crucial phrase **tangata whenua**. Literally "people of the **land**," it originally meant the group who occupy and permanently claim a place, in distinction to manuhiri [visitors]. Used strictly with this connotation, as it is by some Maori radicals, it implies that Pakeha are temporary visitors in an Aotearoa [New Zealand] that justly belongs to Maori. (Mulgan 1989, 21) However, as the phrase has become commonly applied to Maori by all New Zealanders, it is usually translated "original people of the land," a virtual synonym for "indigenous **people**." As such, it connotes that the Maori are entitled to special **status** and consideration, **but not to** exclusive domain over the country.
5. **The system** described here actually operated in **most** respects from 1881 through 1993, except in 1908 and 1911, when New Zealand experimented with a majority-or-runoff (second ballot) system. It may be used again if a snap election is called before steps necessary to implement MMP are completed sometime in 1995.
6. Until 1950, New Zealand also had an appointed upper house, the Legislative Council. After a successful packing plan in 1893, it was essentially powerless until it was finally abolished.
7. Variations on the dual constituency idea have also been used in Cyprus, Zimbabwe, and Belgium (Lijphart 1986).
8. Although the principle of proportionality to population is simple enough, the definition of group populations for electoral purposes requires technical decisions that can have a significant

effect on the apportionment of seats (Nolan 1993).

9. Most of the history that follows is drawn from Sorrenson (1986) and Department of Justice (1986).

10. Indeed, the Maori seats were introduced in part because most Maori held property communally and therefore could not vote under the individual property-ownership test that prevailed for the European franchise until 1879. Thus Maori won universal male suffrage before Pakeha, albeit for a restricted set of seats.

11. The 1967 bill also permitted non-Maori to stand for Maori seats, but none has done so successfully.

12. **This** does not mean that 63% registered on the General roll. Perhaps as many as one-third did not enroll on either list. In addition, voter turnout (measured by the average number of votes cast per seat) was consistently lower in Maori than in General electorates. (Sorrenson 1986, B-63-66)

13. For accounts of the political process that produced New Zealand's electoral reform, see Levine and Roberts **1994a, 1994b, McRobie** 1994, Nagel **1993,1994**, and Vowles 1995.

14. The Committee raised the threshold from the 4% the RCES had recommended.

15. **Just as** California, Chile, Turkey, and others have transplanted the kiwifruit (which, after all, was originally the Chinese gooseberry).

16. The opportunity to vote for MMP-DC has already galvanized Maori participation. The number of votes cast in New Zealand's four Maori electorates rose 29.4% in 1993 compared with 1990; in contrast, the number of votes nationwide rose Only 5.1%. Voters in the Maori electorates favored the new electoral system by a 66-34% margin. (Levine and Roberts **1994b**, 64; Appendices to the Journal of the House of Representatives 1990, 169)

17. In order to determine the number of Maori seats under MMP-DC, a special Maori option was **conducted** in early 1994. A campaign by Maori organizations to encourage voters to register on the Maori roll resulted in five Maori seats--7.7% of the **single-member** constituencies, compared with only 4.0% under the old system.

18. For statistical evidence on the effect of electoral systems on turnout, see Powell 1987 and **Jackman** 1987. In New Zealand under the old FPP-DC system, the Maori electorates were the safest in the country and the Maori party **Mana** Motuhake would have remained a minor **party even if it had succceded in winning** seats (which it did not). Thus the low rate of voter turnout

among Maori before 1993 is hardly surprising.

19. The rest of this section is based mostly on the discussion of the Electoral Reform Bill 1993 in Parliament, which can be found in *New Zealand Parliamentary Debates [NZPD]* 532:13157-77, 536:16728-41, and 537:17082-269.

20. *NZPD* 536:16737.

21. *NZPD* 536:16730, 537:17085. The quotation is from Douglas Graham, the Minister of Justice at 17085.

22. In the event, the margin between MMP and FPP was 147,955 votes, which **means that reversals by 74,978 voters would have defeated MMP.** Voters in the Maori electorates cast 62,819 votes, with 43,365 favoring MMP. If an equal number of Maori voted on the general roll, and in the same proportions, then it was arithmetically possible that a massive shift of Maori to FPP could have changed the outcome. However, even if the MMP plan had included abolition of Maori seats, it seems unlikely that the **Maori shift to FPP would have been sufficiently overwhelming. Of course,** Pakeha votes might also have been affected--in which direction on net I cannot say.

23. *NZPD* 536:16732. The quotation about grievance is also from Ryall.

24. *NZPD* 537:17106.

25. *NZPD* 537:17110.

26. *NZPD* 536:16737 and 537:17100-01.

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