

CHAPTER 3 : MAORI REPRESENTATION

Term of reference 5: The nature and basis of Maori representation in Parliament

INTRODUCTION

3.1 Recommendations under this term of reference are significant for the status and mana of the Maori people in ways that go beyond the electoral and parliamentary systems. It is the most sensitive of all the matters we have investigated, and one on which the views of our Maori member have carried particular weight. The question of Maori representation is a very important consideration in our evaluation of various electoral systems in Chapter 2.

3.2 This term of reference requires the Commission to confront some of the most complex and difficult issues of democratic politics—those concerning minority representation. Before reaching our conclusions we explored the possibilities offered by many electoral systems. We also endeavoured to consider every aspect of separate representation, including the many variants which are possible under the Mixed Member Proportional (MMP) system and other systems. In the outcome, we are all convinced that representation in the way we suggest through MMP is clearly the best solution. We believe MMP will produce real gains for Maori people in terms of effective representation. If a minority group needs or is entitled to other protections for its rights, these must largely be found outside an electoral system based on equality of the vote. We have endeavoured to point to some of the ways in which this might be achieved in the proposal for constitutional discussions with which we conclude this chapter.

3.3 Maori are the largest single ethnic minority in New Zealand. Persons indicating they were half or more Maori at the 1981 census numbered some 279,000 or 8.8% of the total New Zealand population. In addition, there were some 102,000 or 3.3% of the total population who were part but less than half Maori.

3.4 The status of Maori in our legal and constitutional arrangements differs from that of other minority groups in 3 very important respects. First, Maori are indigenous to New Zealand. They are tangata whenua. Second, Maori tribal leaders and the Crown entered into an agreement in 1840. That agreement—the Treaty of Waitangi—marked the beginning of constitutional government in New Zealand. Under the terms of the Treaty, the Crown formally recognised the existing rights of Maori and undertook to protect them. It is in this sense that Maori people have a special constitutional status, whatever recognition the Government and the legal system may have accorded to the Treaty at various times. Third, Maori have had 4 seats in Parliament since 1867.

3.5 Maori people have retained much of their traditional culture. That culture underpins and gives expression to their status as tangata whenua. Their customs, traditions, history and socio-political institutions are formed around their relationships to one another and to the land and

other features of New Zealand's physical environment. In recent years there has been a cultural resurgence in the Maori community and a growing call for more direct control of their own economic and social development. In socio-economic terms, Maori have for many years suffered from a number of well-documented social, economic and health problems.¹ Although there have been real improvements in some areas in recent years, Maori continue to be over-represented by a considerable margin among the less privileged sections of our society.

3.6 In this chapter we will

- (a) outline the history of the present system of Maori representation (paras. 3.7 to 3.13);
- (b) briefly describe the submissions we received on this term of reference (paras. 3.14 to 3.16);
- (c) comment on the symbolic significance of the Maori seats (paras. 3.17 to 3.19);
- (d) discuss the principles relevant to Maori representation (paras. 3.20 to 3.32);
- (e) use these principles to
 - (i) assess the present system of separate representation under plurality (paras. 3.33 to 3.63);
 - (ii) examine the advantages and disadvantages of a common roll in terms of effective Maori representation (paras. 3.64 to 3.68);
 - (iii) consider Maori representation with a common roll under plurality (paras. 3.69 to 3.72), and under the Mixed Member Proportional (MMP) and Single Transferable Vote (STV) systems (paras. 3.73 to 3.88), and recommend the adoption of MMP as the best means of providing effective Maori representation (para. 3.88);
- (f) discuss Maori representation under the Supplementary Member (SM) system (paras. 3.89 to 3.91);
- (g) discuss Maori representation should MMP be rejected and plurality retained or SM adopted (paras. 3.92 to 3.98); and
- (h) comment on constitutional arrangements with respect to the Maori people (paras. 3.99 to 3.113).

Summary of the history of Maori representation

3.7 Professor M.P.K. Sorrenson's detailed account of the establishment and operation of separate Maori representation in Parliament appears as Appendix B to this Report, and includes an Annex in which Professor Robert Chapman analyses voting patterns in the 4 Maori seats from 1935 to 1984. We now summarise the main events of the history of Maori representation.

3.8 Suffrage in New Zealand was subject to a property qualification at the beginning of representative government in 1852. Only males aged

¹See, for example, *Puao-Te-Ata-Tu. Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare*, Wellington, 1986, p.15.

21 years and over who owned or leased land of a specified minimum value were entitled to vote. As the overwhelming majority of Maori at the time held their lands in common and not on an individual basis, most failed to qualify for the vote. The Maori Representation Act 1867 provided a practical solution to this problem by instituting a separate arrangement for Maori. It was also envisaged that the Maori seats would foster Maori co-operation with European institutions and laws. Provision was made for the election of 4 representatives in single-member electorates created to overlay the existing pattern of territorial representation. The North Island was divided into the Northern, Eastern and Western Maori Electoral Districts, while all of the South Island formed the Southern Maori Electoral District. Only Maori were able to stand as candidates in these districts, and only Maori males aged 21 years and over were permitted to vote within them (Maori at this time included half-castes but not those of any lesser degree of descent). Those Maori who met the property qualifications were entitled to vote in both Maori and European constituencies. Despite the special arrangements made for them, Maori were markedly under-represented from the outset, with only 4 seats for a population of about 50,000 compared with 72 European seats for a population of about 250,000.

3.9 Precedents for giving votes to males who may not have met the property qualification had been set in 1862 when the Otago gold-mining communities succeeded in gaining special representation. Similarly, Westland gold-miners were able to elect 2 representatives to Parliament under legislation passed in 1867. Like the legislation pertaining to the gold-miners, the Maori Representation Act was intended as a temporary measure. Unlike the gold-miners, the Maori did not disappear. Nor did they adjust as quickly as had been expected to the European system. Whereas special representation for the gold-mining communities was abolished in the 1870s, Maori representation was extended for a further 5 years in 1872, and extended again in 1876, this time indefinitely. After the abolition in 1893 of the provision which allowed Maori who met the property qualification to vote in a European constituency as well as in a Maori constituency, the creation of a system of dual representation based on separate electoral arrangements for Maori and non-Maori was set firmly in place. A definitional change in 1896 gave half-castes the choice of being enrolled for a Maori or European constituency. Although a European electoral roll was introduced in 1852 and enrolment was made compulsory in 1924, a Maori electoral roll was not established until 1949 and Maori were not legally obliged to enrol until 1956. The secret ballot was introduced for European elections in 1870, whereas until 1910 voting in the Maori seats was by show of hands if a poll was not demanded, and then by declaration until the introduction of the secret ballot in 1937. Voting for Maori seats was held the day before the election for European seats from 1919 until 1951. A major boundary change in 1954 extended the northern boundary of the Southern Maori district to include the lower part of the North Island. An amendment to the Electoral Act in 1967 removed the prohibition against those on the

Maori roll standing as candidates in European electorates and vice versa.

3.10 The Electoral Amendment Act 1975 made 2 changes to the Maori electoral system. First, the "Maori option" was introduced whereby all persons of Maori descent could choose after each census whether to be enrolled on the Maori or the General (formerly "European") roll. Options were conducted in 1976, 1982, and 1986.

3.11 The second, short-lived, change concerned the number of Maori seats and the setting of their boundaries. The number of Maori seats had been fixed at 4 since 1867, and their boundaries were set by Proclamation of the Governor-General (on the advice of the Minister of Justice) rather than by the Representation Commission. The 1975 Act provided for the number of Maori seats to be set after each census on the basis of the same population quota used to determine the number of General seats, and for the Representation Commission to determine their boundaries. The Maori electoral population was defined as all those opting for the Maori roll together with their children. The provision allowing the number of Maori seats to vary did not have any effect, however, for the number of Maori seats was again fixed at 4 following the change of Government at the end of 1975 and the power to adjust their boundaries was returned to the Governor-General. The Representation Commission was given limited functions in 1981 in respect of the periodic revision of the boundaries of the 4 Maori electorates.

3.12 The Labour Party has had a very strong hold on the 4 Maori seats in every general election since 1943. No other party has since come anywhere near winning a Maori seat in a general election. The closest Labour has come to losing a Maori seat since 1943 was at the 1980 Northern Maori by-election, but Labour still won 52.4% of the valid vote compared to Mana Motuhake's 37.9%. Turnout in that by-election was low at 56.5% of those on the roll.

3.13 In general, Maori participate less in the electoral system than non-Maori. Maori people are less likely to be enrolled than non-Maori, and the turnout in the Maori electorates is lower than in General electorates. In addition, the rates of informal voting in the 4 Maori seats are usually higher than the rates in most General seats, but in 1984 still averaged only 1.0% of all the votes cast in the 4 Maori seats. The proportions of votes cast as special votes are higher in the Maori seats than in the General seats, and the rates at which those special votes are disallowed (particularly for non-enrolment) are slightly higher in Maori seats than in General seats.

The submissions to the Commission

3.14 The special procedures we adopted in relation to this term of reference are described in the Preface. In the event, at least 40 Maori groups and individuals made written submissions. All but 6 of those who wanted to present their written submissions to the Commission were heard on one of the 5 marae we visited, along with many oral

submissions. Over 40% of the 804 written submissions we received referred to Maori representation.

3.15 The Labour Party submission supported the continuation of separate Maori representation, and proposed that the number of seats should vary according to the numbers on the Maori roll and their children, with the same population quota per seat being applied to both General and Maori seats. The National Party was against any increase in the number of Maori seats, and proposed that they should be abolished and a common roll instituted by the time of the 1993 general election. The Democratic Party saw an electoral system based on the Single Transferable Vote (STV) as enabling separate Maori seats to be abolished. Mana Motuhake recommended that the number of separate Maori seats should be in proportion to the "total [Maori] population", and that they should be elected by STV in 2 multi-member electorates, one of at least 6 members for the North Island and one of at least 2 members for the South Island.

3.16 The vast majority of the non-Maori submissions on this term of reference supported the abolition of separate Maori representation, some immediately, some after a period of time, and some after other changes to the electoral system such as the adoption of a system of proportional representation. With the exception of one oral presentation, all of the Maori submissions were in favour of the continuation of separate Maori representation in Parliament. Almost all were based on the assumption that the present plurality system would continue. Although we have no doubt that many Maori would reject any proposal for the abolition of separate Maori seats under the present plurality system, we are aware that there are some Maori to whom such a proposal would be acceptable.

The symbolic significance of the Maori seats

3.17 The Maori seats have significance for Maori in ways that go beyond the issue of political representation. Before the beginning of European settlement, Maori lived in separate and politically autonomous groups. It is the Maori view that the Crown initially recognised this situation and promised to protect their autonomy through the Treaty of Waitangi.

3.18 In New Zealand's progress from colonial status to full independence, however, the relationship between Maori and the Crown changed. Although s.71 of the Constitution Act 1852 provided for the setting apart by the authorities in London of districts in which "the laws, customs, and usages of the aboriginal or Maori inhabitants of New Zealand . . . should for the present be maintained for the government of themselves, in all their relations to and dealings with each other, . . ." the provision was never implemented. The failure of successive Governments to recognise and give effect to the Treaty as the basis of constitutional government in New Zealand led, Maori argue, to the exclusion from our constitutional and political arrangements of

mechanisms through which mana Maori (Maori authority on matters of direct concern to the Maori people) might be exercised.

3.19 Although they were not set up for this purpose, the Maori seats have nevertheless come to be regarded by Maori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi. To many Maori, the seats are also a base for a continuing search for more appropriate constitutional and political forms through which Maori rights (mana Maori in particular) might be given effect. It is because of this that many Maori who opt to go on to the General roll continue to support the retention of the Maori seats. It is in this context that Maori views concerning the seats should be understood.

Maori political interests

3.20 The questions of who should have an influence on public policy, and how much, are central to the issue of minority representation, especially in countries in which different peoples live together in a single political community. The legislature is not the only institution concerned with policy-making, and is, therefore, not the only avenue through which groups can seek to influence policy. Nevertheless, it is the arena in which legislation is enacted, resources are allocated, and Government and administrative policies are subjected to close scrutiny. It is a prerequisite of democracy that all interests should be represented in these processes. Thus discussion of Maori representation should begin with a consideration of Maori interests.

3.21 The preservation of their culture and hence of their identity is, we believe, the overriding political concern of Maori people. As we noted earlier, Maori culture is formed around the Maori people's association with each other, and with the land, the seas, the forests, and the inland waters. And it is through the elements of their culture—their language, their customs and traditions, and their distinctive socio-political institutions and processes—that their identity as a people is expressed. As the continuation of their culture is the principal political objective of Maori, their cultural interests must be counted among the most important of their political interests.

3.22 Also among the interests which might be described as specifically Maori are the 2 longest-standing Maori claims: the claim to a measure of autonomy or self-determination (mana Maori motuhake), and the demand for the formal recognition of the Treaty of Waitangi and for the protection of the rights and interests which it guarantees. It is our understanding, however, that Maori do not regard the content of these claims as ends in themselves but rather as offering the most effective means of ensuring their cultural survival.

3.23 Many of the interests which we have identified here might be more appropriately described as "rights". In considering the constitutional position of Maori in the final section of this chapter, we discuss some of the other ways in which Maori rights might be

protected. Although we conclude that the burden of responsibility for the protection of these rights is more appropriately borne by arrangements outside the electoral system, we do not wish to imply there is no need for their continued political representation. Indeed, we believe the continued representation in Parliament of Maori rights and interests is essential because of the need to get protective arrangements in place, and also because of the impact that economic and social policies geared to assist Maori might have upon them, and vice versa.

3.24 Maori social and economic objectives are similar to those of other New Zealanders. All New Zealanders value their health, security of employment, adequate housing, an income they can live on, and a safe and clean environment. But although Maori may well share the same social and economic goals as other New Zealanders, it does not necessarily follow that the route they take toward the realisation of these goals should be the same. Maori social and economic circumstances differ from those of other New Zealanders. Not only are Maori as a group more seriously disadvantaged than most, but there is also a cultural dimension to their situation since cultural dislocation is at the root of many of the social problems which confront the Maori community. Thus the kinds of policies that might be required to help the Maori people promote their living standards are not necessarily the same as those required to boost the living standards of non-Maori. Indeed, requiring Maori to walk the same path may hinder both their ability to improve their social and economic circumstances and their capacity to preserve their culture.

3.25 Thus Maori interests in the socio-economic field differ from those of other New Zealanders at the level of means rather than of ends. They differ to the extent that they are inextricably interwoven with, and bound to, elements of the Maori people's culture. This presupposes the need for a balance between the socio-economic and the cultural concerns of Maori, a balance which we believe cannot be satisfactorily achieved unless the special rights and interests of the Maori people are effectively represented in the determination of public policy by representatives who are also members of the Maori community.

The principles of Maori representation

3.26 Having described the general nature of Maori interests, we must now state the principles upon which we believe Maori representation should rest. Some have already been alluded to and others are entailed in our later discussion of the present system of separate representation and of the alternatives to it. These principles constitute what we believe to be the conditions under which an important minority might reasonably expect to enjoy a just and equitable share of political power and influence in a decision-making system which is subject to the majority principle and over which the political parties hold sway.

3.27 Democracy demands that interests be given their due weight in the competition for influence on public policy, and this in turn requires that they be adequately and effectively represented. Since the identification of the individual representatives with their groups is likely to have a strong bearing upon their effectiveness as representatives, democracy also recognises the need for the direct and fair representation of diverse groups by members of those groups. However, the mere presence of a group in the legislature does not guarantee political effectiveness. Other conditions, such as the character of the electoral system and the ability of the group to exert leverage on the Government, are also important.

3.28 Maori interests should therefore continue to be represented in Parliament by MPs who are also members of the Maori community. These MPs, moreover, ought to be democratically accountable to Maori electors and should be able to serve their constituents in ways that correspond to Maori customs, traditions and expectations. In order to perform their tasks effectively, Maori MPs need to possess certain attributes—for example, fluency in the Maori language, a record of service to the Maori community, and a certain standing in their own tribes. Whether or not Maori with the appropriate background are elected, however, depends to a large extent upon the choices of candidates made by the political parties. Though candidate selection is the preserve of the parties, the Maori people ought to be permitted a strong voice in the selection of their own representatives.

3.29 Having Maori MPs, however, is necessary but not sufficient for the effective representation of Maori interests. In a democratic system, the protection of minority interests ought to be the responsibility of Parliament as a whole and not just of the MPs who happen to belong to the minority group. All MPs ought to be accountable in some degree to Maori electors. Support of the majority for Maori interests is more likely to be forthcoming if all Maori electors have an effective vote—one which carries some weight in the election of political parties to Government, and hence one for which parties will need to compete. An effective Maori vote would have an important bearing upon the ways in which Maori concerns are regarded both by the individual representatives and by the political parties.

3.30 The principles of Maori representation may therefore be listed as follows:

- (a) Maori interests should be represented in Parliament by Maori MPs.
- (b) Maori electors ought to have an effective vote competed for by all political parties.
- (c) All MPs should be accountable in some degree to Maori electors.
- (d) Maori MPs ought to be democratically accountable to Maori electors.
- (e) Candidate selection procedures of the political parties should be organised in such a way as to permit the Maori people a voice in the decision of who the candidates are to be.

3.31 These principles must be applied in a manner which meets the requirements of electoral equality and fairness to all political parties, candidates, and voters. The principles are, of course, related, although the relationships among them differ in degree from one to the other. Some, if carried to their full extent, may also be mutually incompatible. No electoral system can meet them all. The MMP system which we have recommended for New Zealand is the one which we think strikes the right balance among them.

3.32 We turn now to a detailed examination of the electoral systems we considered in the course of our inquiry. We begin by considering the present system of separate representation. We then proceed to an examination of the prospects which a common roll might hold for Maori representation, first in general terms, and then specifically under the present plurality system, and the MMP, STV, and SM systems. Before turning to the discussion of the present system of separate representation, however, we wish to make it clear that our primary focus is the *system* of separate Maori seats. We do not wish to impugn in any way the diligence or integrity of Maori MPs. Nor do we wish to suggest that political parties have always neglected Maori issues and have never developed policies acceptable to the Maori people.

SEPARATE MAORI SEATS UNDER PLURALITY

Their advantages

3.33 In terms of the principles which we have adopted, the present system of separate representation has some obvious advantages. The existence of the seats guarantees there will be members of Parliament who directly represent the Maori people in a national forum where their voices can be heard on matters of particular importance to those they represent. They are directly elected by those people, and are accountable to them. While the seats may have been established for reasons of expediency, they have nevertheless been of value in ensuring that the political interests of the Maori people were kept before Parliament, especially during the periods when Maori numbers were too small or non-Maori attitudes too unsympathetic for Maori to have been elected from within the general electoral system.

3.34 Almost all candidates for election in Maori constituencies, moreover, are fluent in the Maori language, competent on the marae, strongly committed to the preservation of Maori cultural identity, and have long and wide experience in dealing with Maori issues. They identify strongly with the Maori community in terms of both aspiration and experience, and thus understand the problems of their people in ways that non-Maori may not. They are therefore sympathetic advocates on behalf of their people in the political arena and in representing them in dealings with Government departments and other official organisations affecting Maori interests. As a result, Maori candidates, and more particularly Maori MPs, carry personal as well as tribal mana.

3.35 Separately-elected Maori seats in Parliament ensure that the political voice of the Maori people is heard by the majority, but do so in a context dominated by the major political parties. These parties contest both General and Maori seats, and must therefore include Maori in their organisational and policy-making structures. Like all other MPs, Maori MPs are accountable for all their parties' policies. They explain those policies to their constituents, and act as channels for constituents to respond to the parties' policies, proposals, and actions.

3.36 Maori groups conveyed to us the clear impression that they regard the present system of Maori representation as having been adapted to function in Maori ways. That is reinforced by the analyses of Professors Sorrenson and Chapman in Appendix B to this Report.

Their principal disadvantage

3.37 But the system has an inherent flaw, one which under the conditions that have prevailed in New Zealand has had particularly adverse effects on the ability of the Maori MPs to protect the interests of their people. It therefore overshadows and negates the advantages of the system and makes all the other limitations appear minor by comparison. That weakness lies in the fact that under the system of separate representation, the representatives of each community, Maori and non-Maori, are ultimately responsible only to the particular community that elected them.

3.38 We in New Zealand have become so accustomed to thinking of separate representation as a Maori issue that we tend to overlook the fact that the concept necessarily involves the separate representation of more than one group. Thus if Maori are separately represented, then non-Maori must be too. And if Maori MPs are primarily responsible only to their group, then by the same token non-Maori MPs must also be primarily responsible only to their group. It is not so much the separate representation of Maori that causes problems for Maori representation, but rather the separate representation of the numerically dominant non-Maori.

3.39 In a democratic system, the rule of the majority should never be without some constraint. One of the most important constraints on that rule is that majorities should be floating rather than fixed. In a healthy democracy, the majority should not be anything more than a loose grouping of minorities, and the composition of that grouping should be subject to constant change. Every group should have a real chance of being, at least some of the time, part of the prevailing majority. Thus someone who finds himself or herself in the minority on one issue may well be a part of the majority on another. Similarly, someone may on a particular issue be a part of the minority on one occasion and a part of the majority on another.

3.40 In introducing electoral separation into Parliament, separate representation also introduces political separation, a condition under which a fixed majority is most likely to emerge on issues that affect the minority community. History suggests that Parliament's overall record in

dealing with Maori issues has been unsatisfactory, and we have no doubt that this has been in part the result of decisions being taken within Parliament, and more particularly in governing parties, by a relatively fixed non-Maori majority reflecting the attitudes toward Maori interests of those they represented. Although the policies that have been emerging from Parliament in more recent years are, without doubt, more in keeping with Maori political objectives, we do not think they alter our basic argument. Recent changes in public attitudes, largely brought about by Maori pressure, have simply given the Maori MPs, their parliamentary colleagues, and the political parties more leeway for dealing with Maori matters. But the Maori MPs are still dependent upon the attitudes of the majority. In the past they had to depend on its mercy. Today they depend on its goodwill. Thus separate representation has reinforced the political dependency of the Maori people and their exposure to non-Maori control over their destiny and future.

3.41 The system of separate representation has served to isolate the Maori MPs politically by encouraging the non-Maori majority to regard Maori concerns as the sole preserve of separately elected MPs. At the same time, it has prevented Maori electors, particularly in areas where their numbers are large, from using their voting power to bring about a greater responsiveness on the part of both the individual non-Maori MPs and the political parties to the needs of the Maori community. By fostering the conditions under which Maori interests could be comfortably neglected by the general institutions of government, and by confining Maori voting power to separately elected seats, separate representation has weakened the influence of the Maori MPs. Moreover, members of the Maori community will remain powerless to rectify the situation through electoral means unless they can use their votes to make parties and Governments attentive to their concerns.

3.42 It is difficult to arrive at a precise assessment of the extent of the Maori MPs' influence on policy because much of the bargaining associated with the determination of policy in areas of concern to Maori takes place in select committees and in more informal settings—for example, in caucus committees, in contacts between Maori MPs and Government departments, and in meetings between the Maori MPs and the Prime Minister or individual Cabinet Ministers—and is for the most part concealed from public view. However, while we accept that informal bargaining and select committee work may well have resulted in some concessions to Maori interests, the effectiveness of the Maori representatives in the policy-making process should be judged not in the light of the concessions they managed to win, but more generally, in the light of what the system has allowed them to achieve. And even in the few brief periods when one of their number has held the portfolio of Maori Affairs, the policies and legislative measures which have been adopted by successive Parliaments have rarely given full effect to Maori concerns.

3.43 The deficiencies inherent in the system of separate representation have been exacerbated by the 2-party system which the plurality method of voting fosters. First, as there have only been 3 periods during which a representative elected by the Maori people has had ministerial responsibility for Maori Affairs, the MPs from Maori seats have seldom been in a position to initiate policy; and even though most of the more significant pieces of legislation were passed during these periods, the Ministers were still subject to majority constraints and were often forced to sacrifice or compromise Maori interests to the electoral concerns of the party they represented. Second, although Maori voting patterns since 1943 have assured the Labour Party of 4 safe seats, the Labour Party has been in Opposition for 29 of the 43 years since then, and Maori representatives have consequently had limited opportunities to participate in the determination of Government policy. Third, Maori MPs are sometimes said to have failed to exploit their position on those occasions when they held the balance of power between the 2 major parties. But the Maori MPs were in an invidious position. To have broken from the Labour Party in such circumstances might have seemed like a betrayal of their supporters. More importantly, by bringing down the Government, they could have triggered a non-Maori backlash against Maori.²

3.44 The Labour Party's domination of the Maori seats since 1943 has meant that neither it nor any other party has any real *electoral* incentive to commit resources to the development of policies for the Maori people, or to campaign vigorously for their votes. As in other safe seats, there is little incentive for the voters in Maori seats to go to the polls; the extent that they continue to do so is remarkable, as has been the continued willingness of National and Social Credit candidates in Maori seats to carry their parties' banners in what everyone knows is a lost electoral cause. As Professor Chapman shows in the Annex to the Sorrenson history,³ electoral behaviour in the Maori seats has adapted to the fact of Labour monopoly in various ways—the development of a Maori party, movements in and out of non-voting, varying levels of support for Social Credit. These might be signals to the dominant Labour Party about voters' opinions of candidates or policies, but their clarity as messages is blurred and the Labour Party has no pressing electoral reason to heed them. The plurality system compounds these effects by making it very difficult indeed for any party to break Labour's grip on the seats. Maori seats have therefore tended to be neglected by the parties. This in turn has weakened the ability of Maori MPs to protect and promote the interests of those they represent.

3.45 A recently published study of the political perspectives of Maori⁴ suggests many Maori are critical of their MPs' performance. We believe much of this criticism is unwarranted, for it is based upon

²M.P.K. Sorrenson, *A History of Maori Representation in Parliament*, Appendix B to this Report, pp.46, 60.

³Robert Chapman, "Voting in the Maori Political Sub-System, 1935-1984", Annex to Sorrenson, pp.83-128.

⁴Stephen Levine and Raj Vasil, *Maori Political Perspectives*, Auckland, 1985.

unrealistic expectations of the system. Neglect of the Treaty of Waitangi and of the rights and freedoms it guaranteed has meant that the Maori MPs have had to carry the full burden of responsibility not just for the protection and promotion of the Maori people's political interests but also for the protection of their constitutional rights, a function which in other countries is borne principally by the courts or other specially constituted bodies. Moreover, since they have had to bear this burden without the resources equal to the task and with the weight of the system against them, it is hardly surprising that the representation of Maori interests has been largely ineffective. We do not think the Maori MPs should be made to bear the blame for what is essentially a fundamental weakness in the system of separate representation. That weakness is one to which they, their constituents, their political parties, their Parliamentary colleagues, and Parliament itself have all been subjected, and it is one which we believe has had profoundly adverse effects upon the Maori MPs' ability to protect and promote their people's interests in the policy-making processes.

3.46 We are aware that many Maori regard the Maori seats as "their last vestige of a lost autonomy".⁵ For the reasons we have given, however, separate representation in Parliament has not fulfilled, and cannot while Maori are in a minority fulfil, the promise Maori might see in it. Nor do we think it appropriate that any minority group should have the power of veto in the legislature of a democratic nation. The onus falls rather on the electoral system to ensure conditions are present under which Maori might enjoy their fair share of political power. This does not mean the Maori people's claim to some form of political autonomy must be rejected. There are various other ways in which mana Maori can be more appropriately expressed and exercised and we refer to some of these in paras. 3.99 to 3.111.

Other disadvantages

3.47 **Non-Maori disapproval.** Many non-Maori object to separate Maori representation because they regard it as contrary to the principle of equality. Some are reluctant to acknowledge and recognise the ethnic differences in our society. Others object to any system which asks questions about ethnic origins and classifies people according to the answers. In our view, however, any democratic political system should value minority representation. If the minority happens to be an ethnic group, then ethnic representation in the legislature should also be valued. Special provisions—such as the exemption from the 5% threshold in West Germany for parties representing national minorities, separate representation in New Zealand and elsewhere, or "reserved" seats in India in which only members of Scheduled Castes or Tribes can be candidates for election—are merely means of achieving a valued end. Moreover, while the notion of separate representation might rely on an ethnic distinction, it does not necessarily entail discrimination in favour of or against that ethnic group.

⁵Sorenson, p.61.

3.48 Some people regard our present system of separate Maori representation as a form of apartheid similar to that in South Africa, though they rarely give reasons for that view. They are plainly wrong. Separate Maori representation is not a form of apartheid because the seats are within a *general* Parliament responsible for the *general* law and for supporting the *general* Government of New Zealand. Individual Maori people have a choice whether to vote on the Maori roll or the General roll, and can be candidates for election in any seat, Maori or General. In fact, separate Maori representation works in exactly the opposite direction to the measures adopted by the South African regime in respect of the non-white population. The purpose of separate Maori representation is to *prevent* the exclusion of the Maori people from the policy- and law-making processes by guaranteeing them representation in the legislature.

3.49 **Unwieldy size of Maori electorates.** Another disadvantage under which the Maori MPs have laboured and which has had some effect on their capacity to represent their electorates, is the large geographic sizes of the Maori electorates. Following the 1983 Representation Commission, Northern Maori covered 18 General electorates, Eastern 8, Western 17, and Southern Maori 45, including all the South Island and the lower part of the North Island from Wellington to Wairoa in the east and the Manawatu in the west. The average electoral population in the Maori electoral districts in 1983 was 7.8% higher than the average for the General electoral districts.

3.50 The sizes of the electorates probably did not matter all that much until the Second World War, for then Maori lived mainly in small rural communities within their tribal areas where there were recognised leaders. Maori MPs tended to work through these leaders, dealing with their constituents on a group rather than an individual basis. The situation is very different today. The population of Maori descent is now 3 times the size it was before the War. The increased rate of urbanisation has brought with it anonymity, the weakening of family and tribal ties, and complex social problems. Problems have also increased in relation to such traditional matters as land and fisheries.

3.51 Some recognition is given to the fact that Maori MPs have to cover much more territory than most General MPs. The electorate allowances paid to the MPs for Northern, Eastern and Western Maori are the same as those paid to General MPs from rural or predominantly rural seats, and the MP for Southern Maori receives a slightly higher allowance than those paid to the other Maori MPs. The electorate secretaries now given to all MPs have also helped Maori MPs deal with their constituency work.

3.52 In view of the problems with which they have to deal and the geographic spread of the electorates, it would be totally unreasonable to expect the Maori MPs to provide an adequate service to their constituents. Although an increase in the number of seats would probably not make any great difference to the Maori MPs' position in the House, it would alleviate some of the burden of their constituency work

and reduce their constituents' need to seek the services of General MPs.

3.53 Electorate size and the lack of electoral competition between the parties have also hampered the development of effective grass-roots party organisations in Maori electorates. That Maori electors have been disadvantaged as a result of the absence of strong party organisations is evident in lower enrolments and voter turnout at the electoral level, inadequately developed policy proposals at the central party level, and the absence of a strong base of support for Maori MPs at the parliamentary level. Moreover, although the Maori electoral boundaries include a number of General constituencies within them, many of which will have very strong party organisations, there has been little incentive for those organisations to share their personnel and resources with the Maori section of the party in their locality.

3.54 **Fixed number of Maori seats.** A fundamental problem, and one about which many Maori who made submissions to this Commission feel a deep sense of injustice, is the fact that the number of Maori seats has been fixed at 4 since 1867, irrespective of the number of General seats, the relative size of the Maori population, or (since 1976) the number electing to go on the Maori roll. There were 76 General seats in 1965, when the present system for increasing their numbers was introduced. There will be 93 General seats at the next general election. Provision was made in 1975 for the number of Maori seats to vary according to the number choosing to go on the Maori roll, but, as we have noted, this legislation was repealed in 1976. It is coincidental that there would have been about 4 Maori seats if their number had been determined on the basis of recent Maori options, though it cannot be assumed that the results of those options would have been the same had it been known that the number of seats would vary accordingly. We return to this point in our discussion and recommendations as to what might happen if MMP is not adopted (paras. 3.92 to 3.98). But we note here that even if the number of seats increased as a result of being made proportional to the numbers on the Maori roll, all the serious disadvantages of separate representation would remain.

3.55 **Unsatisfactory administrative arrangements.** A system of separate Maori representation requires some method of determining who is eligible to vote in those separate seats and who is not. That immediately introduces problems of the definition of "Maori" for electoral purposes. We consider that the present use of self-identification is the most appropriate. We see no practical alternative to the present system of a periodic Maori option, though we recognise it often divides families and has not improved overall Maori enrolments. Because it can be used for tactical purposes by Maori who happen to live in marginal General seats, some see it as having an implicit bias against the Maori roll. Some submissions suggested this bias might be overcome if all voters of any degree of Maori descent were automatically placed on the Maori roll at the time of each option and then had to opt to change to a General roll. We do not favour this suggestion. In our view,

the law should give the choice and then be neutral about how people exercise that choice. Moreover, even if the option were operated in that way, it is likely the results would be similar to those under the present system. Nor would it overcome the other difficulties outlined earlier in this paragraph.

3.56 At present, electoral registration details do not include information about which electors on the General roll are Maori or descendants of Maori, and hence there is no way of knowing which are entitled to exercise the Maori option. When the option is not combined with a roll revision, cards have to be sent to all registered electors on both the Maori and the General rolls, and those who are not entitled to exercise the option are instructed to "do nothing with this card". Sending an option card to all electors is expensive, and causes confusion among some voters. These problems are reduced when the option is combined with a roll revision as in 1986, for both then use the same form and only those entitled to exercise the option are asked to complete the option part of the form. Where a Maori option is not combined with a roll revision, there would be less expense and confusion if cards were sent only to those entitled to exercise the option, and we note that our recommendation 19 (a) (para. 5.45) may enable those voters to be identified.

3.57 Two problems arise because the results of the option affect the drawing of the boundaries of General seats. First, although many submissions made to us by people of Maori descent suggested their option to change rolls should be open at any time, or be available close to an election, we see no satisfactory way of doing either without disturbing the basis of equality of population in setting constituency boundaries. Second, since those boundaries are based on total population rather than adult population, there has to be a way of calculating the distribution of children where 1 parent is on the Maori roll and another is on the General roll (see para. 5.47).

3.58 Many Maori voters take advantage of the opportunity to change the type of roll they are on. At the 1986 option, for example, 21,539 voters changed from one roll to another, resulting in a net increase (among those who returned their cards) of 973 to the numbers on the Maori roll. There appeared to be no greater tendency to remain on or change to the General roll in marginal seats. At the end of the 1986 Maori option and roll revision, there were 1,920,256 voters enrolled on the General roll and 70,564 enrolled on the Maori roll.

3.59 Other administrative consequences of separate seats concern the enrolment of electors and the casting of votes. The history of the administrative arrangements for these matters in the Maori seats compared with those for the General seats is, on the whole, a sorry one, though we do not go so far as to suggest there has been any official policy of discrimination. There have been major improvements in recent years. There are still grounds for concern, however. In our view, any differences which make it more difficult for Maori to enrol and cast valid votes are unacceptable. The need for a Maori perspective in electoral

administration is recognised in our recommendation 62 (paras 9.127 and 9.129) for an independent Electoral Commission with the Secretary for Maori Affairs as one of its 4 members.

3.60 Maori are among those who are particularly likely not to be registered as electors on any roll, Maori or General. The precise number in this category is not known, but it is probably between 40,000 and 60,000 (see para. 5.48). The results of the 1986 roll revision and Maori option have also shown that Maori may not stay on the rolls to the same extent as other voters. For instance, 94.8% of those on the General roll returned the cards sent to them, compared with 85.3% of those on the Maori roll. Moreover, the final Maori roll total at the end of the revision period was 86.5% of the previous roll total, whereas the final General roll total was 93.5% of the previous roll total. Though it may be argued that there is no incentive to maintain a presence on the Maori roll while there is a fixed number of Maori seats, these figures are in respect of Maori who have nevertheless at least once made the decision to be on the Maori roll. They add point to recommendation 46 (a) (para. 9.54) that a proper statistical analysis of registration data be undertaken. That will benefit all sections of the community who are under-enrolled at present. It has a particular urgency, however, with respect to the Maori people. We also consider more use could be made of local Maori organisations in assisting electoral officials to enrol Maori voters and to provide information about the electoral system. Many Maori who made submissions to us, for example, were under the impression that Maori voters were taken off the Maori roll following a change in General electoral boundaries. Whatever may have happened in the past, this is *not* now the case.

3.61 At present, a voter on a Maori roll voting within the boundaries of that electorate has to attend one of a number of designated polling places in order to cast an ordinary vote. Such a voter has had to cast a special vote if he or she attends a polling place not so designated, even if it was still within the boundaries of the Maori electorate for which he or she was enrolled. Maori casting special votes run an increased risk of having their votes disallowed. We understand a Tangata Whenua vote is to be introduced whereby Maori voters at ordinary polling places for General electorates within their own Maori electorate will be able to vote without all the complications of the special vote procedure (see 9.85 and 9.86). This will be a considerable improvement over previous practice and should eliminate the problems which previously faced Maori people.

Conclusion

3.62 A major test of any electoral system in New Zealand must be its capacity to provide for the effective political representation of Maori interests on the basis of the principles we previously identified (para. 3.30). As we have seen, the present system of separate representation does fulfil some of those principles (paras. 3.33 to 3.36). It provides for the representation of Maori interests by Maori who are democratically accountable to Maori electors, and it allows political parties to select

candidates in ways that correspond to Maori custom and tradition. These advantages are ones on which Maori place high value. But the system falls far short of ensuring Maori electors have an effective vote or that all MPs are in some degree accountable to Maori electors (paras. 3.37 to 3.46). It is the system's deficiencies in these 2 areas that have made it extremely difficult for the Maori MPs to adequately protect and promote Maori rights and interests.

3.63 Moreover, the plurality method of voting and the 2-party system which it encourages have compounded these deficiencies. Precisely because the Maori seats are so safe for Labour, there is little *electoral* incentive for party competition, and hence for any serious policy development in response to Maori concerns. Labour's long periods in opposition over the last 4 decades have removed Maori MPs from positions where they could exercise direct influence on policy and decisions. In short, 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.

A COMMON ROLL?

3.64 As the system of separate Maori representation has proved to be largely ineffective, we must now consider the prospects for Maori representation offered by an electoral system based on a common roll. Those prospects will depend largely upon the type of electoral system under which the common roll operates. Should the system be one which provides fair representation for minorities, the immediate and longer-term gains could be very substantial and the losses relatively minor. Conversely, if the system is one which suppresses or ignores the presence of minorities, the immediate losses may well outweigh any of the longer-term gains.

3.65 An appropriate electoral system based on a common roll would provide Maori electors with a more effective vote and with the assurance that all MPs and not just Maori MPs were in some degree accountable to Maori electors. As a result, all MPs would be forced to compete for Maori votes at election time, and the political parties would therefore be under some pressure to give greater attention to Maori interests and concerns in the development of policy and to pursue those interests more vigorously while in office. They would also be under some pressure to offer Maori as candidates, to service Maori constituents in ways that met their expectations, and to target Maori electors in their canvassing and other electioneering processes.

3.66 An electoral system with a common roll would, we think, also offer Maori more scope for developing their potential voting strength in ways they themselves might choose. As their ranks would no longer be split between 2 rolls, Maori voters would form a large minority within the electoral system. Persons of Maori descent made up about 9% of the total population of voting age at the 1981 census. Were Maori voters organised in ways similar to black voters in parts of the United States, their votes could have a substantial impact on the fortunes of the

political parties. An organised Maori vote could therefore have a positive effect on the way in which Maori issues are perceived by the parties. And in the event that Maori were to become dissatisfied with the performance of the existing parties, their vote, if it were organised, could be marshalled behind a Maori party.

3.67 Depending on the nature of the common roll system, however, there could be disadvantages. As Maori would lose their guaranteed representation, it is possible there would be no Maori elected to Parliament. And even if Maori were elected, they and their non-Maori colleagues might well consider themselves to be more accountable to non-Maori voters. Non-Maori are the majority, and as such their votes carry more weight. Under these circumstances, a common roll could work against effective Maori representation.

3.68 Although we recognise there could be some losses associated with the adoption of a common roll, the type of electoral system adopted can, in our opinion, minimise these losses to the extent that they are greatly outweighed by the benefits which would result. Accordingly, the Commission is convinced a common roll would give the Maori people a much fairer share of political power, and a greater chance of achieving influence over public policy, *provided that*

- (a) the electoral system allows the advantages of the common roll to be fully or largely attained; and
- (b) the electoral system enhances the chances of the election of Maori MPs who reflect Maori points of view.

In the next sections, we examine 4 different electoral systems — plurality, MMP, STV, and SM — from the point of view of how well they realise the potential advantages of a common roll and the principles we have set out.

A COMMON ROLL UNDER PLURALITY

3.69 The proposal that there should be a common roll under our existing plurality electoral system receives wide support among non-Maori, and is also endorsed by some Maori. Maori form a substantial proportion of the population in some areas of the country, and it can be expected they would have considerable electoral impact in these areas. Everyone, Maori and non-Maori alike, would have ready access to a local MP. All the parties would have to compete for Maori votes, and would thus have to develop policies attractive to Maori voters and to select some Maori candidates. The evidence since Maori began to stand for election in General seats suggests that, once a Maori candidate is selected for a major party, being Maori is in itself no significant electoral disadvantage. Indeed, most of the successful Maori candidates for General seats have been in constituencies where Maori do not form large proportions of the population.

3.70 These attractive features of a common roll under plurality must be weighed against the disadvantages of the plurality system and the uncertainties of its operation in such a different context.

- (a) There would be no guarantee that any Maori would be elected to Parliament, although the chances would improve if there were significantly more seats in Parliament, or if the Maori population grew rapidly or became more geographically concentrated.
- (b) Those Maori who were elected might belong to parties which most Maori voters did not support.
- (c) Parties might tend to select Maori candidates who were acceptable to them or to the non-Maori population of a constituency rather than particularly to Maori voters.
- (d) The extent to which an MP, Maori or non-Maori, could concentrate on the problems and interests of Maori people, either in general or within that constituency, would be limited by that MP's need under plurality to win electoral support across a range of people and would thus depend on the general climate of opinion within that electorate. Hence the responsiveness of MPs to Maori interests and concerns could be limited in some places.
- (e) It would be very difficult for Maori voters to hold an MP accountable for his or her performance in relation to Maori concerns.
- (f) The plurality system means it would be virtually impossible for a Maori party to succeed even if the major parties were seen to be neglecting the needs of the Maori people.
- (g) Although the boundaries of all seats would need to be redrawn to take account of the extra population that would have to be included, analysis suggests many Maori voters would be in seats which are already reasonably safe for the major parties. Their electoral impact would thus be muted, and the electoral incentive for the parties to take account of Maori interests would be weak.

3.71 We do not consider a system of "reserved seats" such as that used in India (see para. 3.47) would overcome these problems. Although there would be Maori MPs in the House, they would still have to win wide support among non-Maori. Many Maori would not be in a reserved seat, and changing electoral boundaries could be disruptive to incumbent and aspiring MPs in reserved seats and those non-reserved seats adjacent to them.

3.72 In summary, although the major parties and many MPs would have to pay more attention to Maori issues under plurality with a common roll, we consider the plurality system of election under present circumstances is not the best context in which to implement a common roll. It is possible, however, that a common roll under plurality might provide effective Maori representation if Maori numbers were greater than they are now, or if the change to a common roll were combined with some other ways acceptable to the Maori people of protecting their rights and interests. We return to this in paras. 3.92 to 3.111.

A COMMON ROLL UNDER MMP AND STV

3.73 We discussed various proportional electoral systems in paras. 2.84 to 2.99 and ruled out all except MMP and STV which we then

subjected to closer scrutiny. Our descriptions of how each should be implemented in New Zealand are at paras. 2.116 and 2.117, and include suggestions for Maori representation. Each is likely to have a different focus with respect to Maori representation, since MMP is based on national lists whereas STV is based on multi-member constituencies. We now give our reasons for the form of Maori representation we suggested under each, and our evaluation of them in terms of effective Maori representation.

Maori representation under MMP

3.74 There are many different ways of providing for Maori representation under MMP, some quite complex. In the form of Maori representation we have proposed for MMP, there would be no separate Maori constituency or list seats, no Maori roll, and no Maori option. The Representation Commission would be required to take "community of interest among the members of Maori tribes" into account in determining constituency boundaries, and its membership would be changed to enable it to do so. All New Zealanders would vote in the same way for the party they wished to govern, and for a constituency MP.

3.75 We have suggested the 4% threshold be waived for parties primarily representing Maori interests whereas other parties would have to win that proportion of the list vote or at least 1 constituency seat in order to be entitled to any list seats. If the threshold is waived, then under the modified Sainte Laguë method of allocating seats in MMP (see Addendum 2.1), and assuming 2,000,000 votes and a total of 120 seats, a Maori party would be sure to win 1 list seat with about 25,000 votes, 2 list seats with about 37,500 votes, 3 list seats with about 42,000 votes, and 4 list seats with about 58,800 votes. The 4% threshold applied to all other parties would require about 80,000 votes, but any party reaching that threshold would be guaranteed at least 5 list seats. A Maori party reaching the 4% threshold would win seats on exactly the same basis as any other party, and would have no more seats than its percentage of the vote justified. Our suggestion that the 4% threshold be waived for Maori parties is intended to provide further incentives for other parties to take proper account of Maori concerns, and to enhance the chances of the Maori people mounting a successful electoral challenge if they become dissatisfied with the performance of the existing parties. There may also in time come to be a case for the 4% threshold to be waived for parties primarily representing other significant minority ethnic groups within the community.

3.76 Unlike under the plurality system, parties under MMP win seats in close proportion to their shares of the list vote. The more list votes parties receive across the whole country, the more seats they win. It is therefore in their interests to win as many votes as possible, no matter where they might be cast in the country, and to compete strongly with each other to do so. The votes of Maori people would thus be electorally significant to all parties. There would be active party competition for

Maori support and for list and constituency votes. We think parties would be compelled to select Maori candidates both for high list places and in winnable constituency seats. The possibility of success for a Maori party—heightened by the waiver of the threshold—would further ensure that all the major parties tried to win Maori votes. They would thus have to seek and encourage Maori membership and give those members an effective and more independent role to play within their organisations, particularly with respect to candidate selection and policy-making. Even though there would be no guaranteed Maori representation, it is likely there would always be substantially more Maori MPs than at present and that they would be spread across several parties, Government and Opposition. Maori issues and Maori concerns would be effectively represented within the New Zealand political system. That benefits non-Maori as well as Maori by encouraging mutual understanding and by lessening the degree of division within our country.

3.77 We expect Maori political participation would rise under an MMP system. There would be strong incentives for Maori to become involved politically in established parties or in a Maori party. The common roll within the constituencies, moreover, would place Maori people within reach of the local activities of the political parties, and we would thus expect the enrolment and turnout of Maori voters to be higher than under our present system. Maori voters would have a local constituency MP to whom they could appeal for assistance. It is likely that some constituency MPs would be Maori, and Maori voters in those constituencies would be able to seek their assistance on Maori matters. All Maori voters would also have access to several Maori MPs elected from different parties' lists.

3.78 We recognise that any proposal for Maori representation through nationwide lists may carry some disadvantages. Since Maori representation through the lists depends on each party's entitlement to list seats and the positions in which Maori candidates are placed on the lists, it is possible for the Maori people to be represented in Parliament by Maori MPs from parties that most Maori did not support. Nor are MPs from a party list directly accountable to those they represent. However, although we would not expect the structure of Maori organisations within parties to change markedly under MMP, we would expect them to play a much more significant role, and to be given some degree of autonomy in respect of candidate selection and in seeking and responding to Maori opinion. A further potential disadvantage is that, although there may be Maori elected in the constituencies, Maori list MPs who were not constituency candidates or were not from a Maori party may be without a firm territorial base. On the other hand, political parties may well consider it to be in their interests to select Maori list candidates with a view to achieving a reasonable geographic or tribal spread, although this may not be reflected amongst those who are elected unless these candidates are high on the lists. The Maori list MPs from the various parties may, of course, decide to divide the country so

that each could concentrate on constituency work in a particular geographic area, but party differences in the Maori community, though less marked than in other parts of society, could possibly make it difficult to achieve such an agreement.

3.79 We do not regard these difficulties as significant compared to the advantages we are convinced would be brought by the system of Maori representation we have suggested for MMP. We are certain Maori representation under MMP would be much better than under the plurality system with or without separate Maori electorates. We have no doubt the Maori people would use the flexibility and opportunities of MMP to ensure that their interests were adequately and effectively represented. MMP would also help to reduce the division in our electoral system that has served to limit the effective representation of Maori rights and interests. By giving Maori an effective vote and by providing the conditions under which they can expect to enjoy a just and equitable share of political power, the MMP system can also be expected to foster and encourage the growth of understanding between Maori and non-Maori and the desire on the part of both to look to the common interest.

Maori representation under STV

3.80 An STV system for New Zealand is described in para. 2.117. That system was based on a common roll, and had no special provisions for Maori representation save that similar to MMP concerning the membership of the Representation Commission and the criteria it would be required to take into account. In order to assist our examination of Maori representation under STV, we prepared a trial set of boundaries for 5-member STV constituencies and calculated the approximate Maori populations in each constituency. The results are in Addendum 3.1.

3.81 Although it would be possible to have a separate multi-member Maori constituency elected by STV, we do not consider such an arrangement would overcome the disadvantages inherent in any system of separate representation. In our view, the STV system with a common roll would be more likely to result in effective Maori representation. Representatives would remain accountable to those they represent, even with a party box option, since voters could still choose to express preferences for individual candidates, whether within a single party or across several parties. Where a group of voters was cohesive and numerous enough to form a significant proportion of a quota, they could have a very important influence in electing their favoured candidates or party. Moreover, that possibility would provide political parties with very powerful incentives to select candidates who would appeal to those groups and, under the STV system we have described, to put them high on the party's list to discourage those groups from numbering their own preferences to promote those candidates in the order.

3.82 In constituencies where Maori made up a significant proportion of the population, parties would find it in their interests to be sensitive to

Maori views and concerns. They would be under pressure to select Maori candidates who would be likely to be local and thus to have the necessary standing and background to appeal to local interests and enable the MPs to be effective representatives on their behalf. They would need to develop policies acceptable to Maori people. Indeed, all parties and candidates in those constituencies would find it necessary to take notice of Maori opinion. They would compete with each other in the knowledge that Maori dissatisfaction could lead to the nomination of an all-Maori ticket and the drawing off of a sizable section of the vote in some constituencies, with some prospects of success. On the other hand, Maori would have powerful incentives to maximise their political and electoral impact by organising themselves, by acting cohesively, and by insisting the political process respond to their views. To a large extent, their political effectiveness would be in their own hands.

3.83 It is not possible to be certain about how many Maori MPs there might be under STV with a common roll. It is apparent from Addendum 3.1 that those who might identify with Maori interests could be a sizable proportion of the population in many likely constituencies in the North Island. In other North Island constituencies and in all those in the South Island, the Maori vote in itself is unlikely to be strong enough to have a direct influence in electing MPs who would owe a major electoral debt to the Maori people, or who might be able to concentrate on Maori constituency matters. Parties could still choose to select Maori candidates in those constituencies and put them in high positions, but the benefits of STV for the Maori people outlined above may not apply to those voters except in respect of general party policies. Maori in those areas would, however, still have MPs whom they could expect to act on their behalf, both in terms of their relations with Government agencies and in respect of their views on party policy. Maori voters would have a choice of MP to whom they could go, and could vote to support those candidates and parties they believed to be most sympathetic to Maori concerns.

3.84 We conclude that STV offers an attractive form of Maori representation. Although it would not guarantee there will be Maori MPs in Parliament, it would offer Maori in some parts of the country a good chance of electing Maori MPs, and largely on their own terms. More Maori voters would contribute to the election of an MP, whether Maori or not, than under plurality. STV would allow a direct relationship between Maori voters and their representatives, and permit local and tribal concerns to be reflected in the selection of Maori candidates and MPs. It would encourage political parties to listen to the concerns of Maori people. Maori people would have real incentives to participate in politics. STV would allow a Maori party some chance of success in some constituencies. Its biggest drawback is that it would not guarantee Maori representation to all Maori in New Zealand, and this has to be offset against its advantages. Weighing all factors, we consider the form of STV we have suggested would provide for the effective political representation of the Maori people.

Conclusion: comparison of Maori representation under MMP and STV

3.85 Either of the MMP or STV systems we have suggested would produce more effective Maori representation than is possible under plurality with separate seats. Their major advantages are those of a common roll in a context which ensures that political parties would see it as in their interests to select Maori candidates for winnable seats, and hence that there would be Maori MPs able to look to Maori interests. Parties would need to develop policies acceptable to the Maori people. Both systems are much more sensitive to individuals' votes than plurality. Both enable tribal interests to be taken into account in drawing constituency boundaries. Both make it possible for a Maori party to win seats. Both eliminate the need to continue with a Maori roll, a Maori option, and different voting arrangements. Both would be of real benefit in helping break down separateness and division within our community in the sense of encouraging Maori and non-Maori to look to the interests of the other.

3.86 The essential differences between MMP and STV arise out of their different conceptions of Maori representation and their different ways of ensuring its effectiveness. MMP is based on a conception of Maori representation primarily (though not exclusively) through the nationwide lists, and puts the onus on the political parties to see that Maori are adequately represented, though it does so while making it in the parties' electoral and political interests to ensure that they are. It also gives a very strong incentive to the parties to appeal through their policies to Maori voters on a nationwide basis. STV, on the other hand, is based on local constituencies and a similar self-interest on the part of the parties to see to it that they provide for effective Maori representation.

3.87 We regard MMP as more likely than STV to ensure there are Maori MPs elected to Parliament, and that the parties appeal for Maori votes through the country. MMP thus gives Maori a greater chance of gaining more influence over policy. Under MMP, all Maori in New Zealand, no matter where they lived, would vote for the party they favour, and hence would have a part in electing Maori list MPs. They would have access to those Maori MPs, but would still have a local MP to go to should they wish to do so. If the 4% threshold is waived under MMP, and because list votes count nationally, a Maori party would have a good chance of winning list seats. Under STV, on the other hand, a Maori party would have to reach quotas within particular constituencies. The enhanced prospects of a Maori party under MMP mean that non-Maori parties have a greater incentive than under STV to acknowledge Maori concerns and protect Maori interests. We conclude that MMP offers better prospects for effective Maori representation than STV.

3.88 In Chapter 2 (para. 2.185) we said the MMP system should not be introduced unless there is majority approval at a referendum, which we recommend should be held at or before the general election after next. In our view, there should be no change to the present system of

separate Maori representation until the decision is taken on whether or not to change to MMP. Further, MMP would in our view be such a significant improvement over plurality in terms of effective Maori representation that it can be introduced without awaiting the constitutional review which we shortly discuss.

Recommendations:

- 3. The Mixed Member Proportional system should be adopted as the best means of providing effective Maori representation.
- 4. There should be no change to the present system of Maori representation prior to a decision on whether or not the Mixed Member Proportional system should be introduced.

MAORI REPRESENTATION UNDER SM

3.89 Because we suggested in Chapter 2 that SM should be considered if MMP is not adopted, it is necessary to examine Maori representation under that system. The SM system uses a number of supplementary seats which are allocated to parties in proportion to their votes, but SM differs from MMP in not being designed to achieve overall proportionality of all seats between the parties. The version of SM we consider most suitable for New Zealand is described in detail in para. 2.101. We suggest no special provisions for Maori representation: there would be no guaranteed Maori list or constituency seats, no Maori roll, and no option. All voters would vote for a constituency member and for a list. Under this system, it would be in the parties' interests to develop policies which responded to Maori concerns and to compete for Maori constituency and list votes. They would thus have an incentive to select Maori candidates for constituencies and particularly to put Maori in high positions on their lists. There would be an effective 5% threshold (see Addendum 2.1) for all parties to win a list seat, including a Maori party. While this system does not guarantee Maori candidates would be elected to Parliament, it makes it likely they would be. Maori candidates high on major parties' lists would be almost certain of election, and hence it is likely that a governing party would have some Maori MPs.

3.90 This system has the same disadvantages as all nationwide closed list systems outlined in para. 3.78. More serious, however, is the fact that fewer Maori would be elected through the lists under SM with 30 list seats than under MMP with 60 list seats. In addition, a separate Maori party would have little chance of success in either the constituencies or the lists.

3.91 We consider, however, that should SM be implemented in New Zealand, the version we have described would provide better representation for Maori people than plurality, with or without separate Maori seats. We do not, however, regard SM as the best alternative electoral system for New Zealand, either in terms of the criteria we discuss in Chapter 2, or in terms of the principles we identified in para. 3.30.

MAORI REPRESENTATION IF MMP IS NOT ADOPTED

3.92 Although we have recommended that MMP be introduced in New Zealand, we also need to consider Maori representation in the case where MMP is rejected. The matters we discuss in this section relate only to that eventuality, and we do not repeat our previous discussion of the Maori option, the enrolment of Maori voters, and voting in Maori electorates (paras. 3.55 to 3.61).

3.93 We recommend below (para. 3.111) that there be a review of the constitutional position of the Maori people within New Zealand, whatever changes are made to the overall electoral system. That constitutional review has particular importance if MMP is not adopted. Our conclusions on the various possibilities are as follows.

3.94 First, if MMP is rejected and plurality is retained (or if SM is adopted), then the conditions under which a common roll could be introduced should be on the agenda at the constitutional review, and the agreement of the representatives of the Maori people should be obtained before any changes are made to the present system of separate representation.

3.95 Second, we must consider the possibility that plurality is retained and either there is no constitutional review, or no agreement can be reached about the system of Maori representation. In either event, we consider separate Maori seats should continue, the Maori option should be maintained, and the number of seats should be set on the basis of the number choosing to go on the Maori roll and their children according to the same population per seat as is applied to General seats.

3.96 We acknowledge at once this is a poor solution in that, notwithstanding the move from a fixed number of Maori seats, it perpetuates the electoral system which we regard as a particularly unsatisfactory form of Maori representation. It would continue an undesirable degree of division within our electoral arrangements. Indeed, if the number of Maori seats were to be determined on the basis of the number opting to go on the Maori roll, the option would become much more important in terms of the mana of the Maori people and in electoral terms for the parties, and would create undesirable pressures within the Maori community. Nevertheless, because of the problems of a common roll under plurality (paras 3.69 to 3.72), in our view there is no choice but to continue separate representation until the Maori community grows to a size when it could achieve effective representation under a common roll. If the separate seats continue, we see no alternative in fairness and logic, as well as under Article 3 of the Treaty, to allowing the number of Maori seats to vary according to the numbers on the Maori roll. It is neither fair to fix the seats at 4 nor to allow their number to be determined in any other way than by those who choose to go on the Maori roll plus their children.

3.97 In our view, if the number of Maori seats rose to 10% or more of all the seats in Parliament, that would be evidence that Maori would have considerable electoral impact under plurality with a common roll,

and hence would be grounds for a review of separate Maori representation. The seats could, however, by that stage be very difficult to remove. On the other hand, we consider a very small number of Maori seats would be evidence that Maori people no longer felt a strong need for separate representation, and in any event would make it impossible for those MPs to represent the Maori people adequately. We therefore consider the question of the continuation of separate Maori representation should also be reviewed if the seats are allowed to vary but the number opting to go on the Maori roll and their children is insufficient to justify 4 seats.

3.98 Should separate Maori seats be abolished under plurality and a common roll instituted, we consider the criteria the Representation Commission must take into account in drawing boundaries should require it to have regard to "community of interest among the members of Maori tribes", and that its membership should be changed to enable it to do so. (see para. 5.45.)

Recommendations:

- 5. Should the Mixed Member Proportional system be rejected the system of Maori representation should be considered at the constitutional discussions referred to in recommendation 7.
- 6. Should the Mixed Member Proportional system be rejected but no agreement be reached with the Maori people about the system of Maori representation, the separate Maori seats should be retained. Their number should be set on the basis of the number of electors of Maori descent who choose to go on the Maori roll, plus their children, using the same population quota as is applied in General seats. Separate representation should be reviewed if either the number of Maori seats grows to more than 10% of the total number of seats in Parliament, or falls below 4.

CONSTITUTIONAL ARRANGEMENTS

3.99 Insofar as they have come to be regarded by many Maori as the principal expression of their constitutional position in New Zealand, the Maori seats in Parliament are a powerful political symbol. As the symbolic aspects of politics sometimes override more substantive considerations, the Commission believes the abolition of the seats could arouse strong feeling in the Maori community. The Commission therefore considers any recommended changes to the present electoral system should not only offer Maori better electoral and political prospects than those they enjoy at present, but should also include proposals for dealing with the constitutional issue which the abolition of the Maori seats raises. That issue arises in any event because, as we have intimated in para. 3.23, the electoral system cannot be relied upon as the principal mechanism for the protection of all the rights and interests of a minority. Other arrangements are needed.

3.100 The Maori claim to the formal recognition of the Treaty of Waitangi is one of the longest-standing of all Maori claims. It has been given greater weight in recent years by developments in other countries, notably in Canada and the United States, in respect of the rights of their indigenous peoples. Many New Zealanders, however, have little understanding of the Treaty's constitutional significance and do not appreciate the issues involved in the Maori claim or the implications which the claim has for our constitutional and political arrangements and for society as a whole. The lack of an authoritative body of opinion on the interpretation and application of the Treaty has been a major problem in this respect. That problem, however, was corrected in 1975 with the establishment of the Waitangi Tribunal, the findings of which are beginning to lay the foundations for the development of a fuller understanding of the Treaty and of the guarantees that it gave the Maori people.

3.101 The debate over the Treaty turns in large part upon precisely what the Treaty guaranteed. The Waitangi Tribunal has said: "The Treaty represents the gift of the right to make laws in return for the promise to do so so as to acknowledge and protect the interests of the indigenous inhabitants".⁶ The Chairman of the Waitangi Tribunal has described the Treaty as being directed toward

assuring the place of Maori people in the life of the country as a fundamental basis for annexation and European settlement. On that basis the Treaty is not just a potential source of particular legal rights for the indigenous people, but a political statement of policy.⁷

In other words, the Treaty is also a source of Maori political, social and economic rights and interests. Under Article 2 of the Treaty, the Queen consented to the continuation of "te tino rangatiratanga o o ratou wenua o ratou kainga me a ratou taonga katoa", which can be translated as "all the chieftainship of their lands, their villages, and all things highly prized by them". In the English version, the Crown "confirms and guarantees" to the Maori people

the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession.

But what should be included in the concepts of "rangatiratanga" and of "a ratou taonga katoa" have not yet been settled. The definition of Maori Treaty rights has instead been left to ongoing discussion and decision, drawing upon the findings of the Waitangi Tribunal in recent years.

3.102 The Commission accepts that the signing of the Treaty marked the beginning of constitutional government in New Zealand, and that it recognised the special position of the Maori people. Although we

⁶Motunui Finding (1983), para. 11.3, p.65.

⁷E.T.J. Durie, "The Waitangi Tribunal: its relationship with the judicial system", *New Zealand Law Journal*, July 1986, p.236.

understand and appreciate why Maori place such a high premium on the Maori seats, we do not think they are or ever have been an appropriate means of securing the Maori constitutional position. First, the seats were intended to serve other purposes, which we have referred to in para. 3.8. Second, the seats were never more than a temporary arrangement. Third, the protection of constitutional rights should not be the sole, or even the major, responsibility of persons who by the nature of their positions must be involved in the party political system. In other democratic countries, the principal onus for the protection of these rights falls upon bodies outside the electoral system. Fourth, in limiting the influence which they could bring to bear on policy, the method by which the Maori MPs are elected served to change the initial relationship that the Treaty established between the Maori people and the Government by making Maori almost totally dependent on the political forms and traditions of another culture. Thus while the Maori seats may well be the principal symbol of Government's recognition of the Maori people's special standing, their tenuous nature, in our view, makes them an unsatisfactory means of recognising the constitutional rights of the Maori people.

3.103 The Maori people's position would be much more secure if our constitutional and political systems were to reflect the diversity in our society and, more particularly, the special position of Maori. We believe the electoral system we have recommended for New Zealand does this by accommodating the Maori people on their own terms and by permitting them the opportunity to develop electorally and politically in ways they themselves choose. It is also a system through which they can at the same time reasonably expect to attain a just and equitable share of power and influence over public policy.

3.104 Beyond that, the constitutional position of Maori and the protection of Maori rights are issues which need to be addressed in a comprehensive way by the Maori people, Parliament, and the Government, acting together. They are issues which must be examined whether or not the present system of Maori representation is to change. The abolition of guaranteed Maori representation under any circumstances, but more particularly under plurality, would make them even more important and more urgent, given Maori views about the constitutional and symbolic role of the seats referred to in this chapter. These matters are, however, essentially outside our terms of reference. We have not had adequate opportunities to investigate them in the detail they require, and in any event they should be explored through a differently constituted body. Accordingly, we now confine ourselves to a brief and general indication of matters that might be examined and to a general recommendation about the process that we consider should now be undertaken. We note too that similar reviews of the constitutional, political, and legal status of indigenous peoples are taking place in other democratic countries. Canada is currently addressing the matter in respect of its native peoples. The United

States initiated a similar review in 1981. Australia has begun to consider legal recognition of Aboriginal customary rights.

3.105 The various ways in which the protection of mana Maori, and the rights, and constitutional position of the Maori people have been addressed in the course of our history suggest some of the possibilities that might now be examined. The definition of the rights of Maori is of critical significance to the success of constitutional talks. In our view, both Maori and non-Maori should generally understand the consequences of the measures to be adopted before specific steps are taken. The approaches we now describe are not mutually exclusive and do not exhaust the possibilities. We do not pass judgment on any of them, but merely mention them here to draw attention to the range of measures that have been used, and to encourage Maori and pakeha alike to begin to think of ways they might be improved or supplemented.

3.106 First, it is clear from the Sorrenson history that the Maori desire for a measure of self-determination has been a constant theme in Maori-pakeha relations since the Treaty was signed.⁸ Parliament could respond by devolving some of its own functions and finance to local, regional, or national Maori organisations which could then fulfil those functions effectively in ways that took proper account of traditional structures and methods of decision-making. The Maori Councils Act 1900, for example, had as its title "An Act to Confer a Limited Measure of Local Self Government upon Her Majesty's Subjects of the Maori Race in the Colony". More recently, the Maori Welfare Act 1962 gave District Maori Councils and the New Zealand Maori Council a number of general functions concerning the social and economic advancement of the Maori people. We note that the Council's role as advocate for the Maori people was strengthened considerably in 1980 when the Government withdrew its draft Maori Affairs Bill and invited the Council to submit its own draft. We note too that, as a matter of policy, the Government has begun to devolve some responsibilities to Maori authorities. Greater Maori control at the tribal or the hapu level over their development and growth might achieve more than a system of separate representation.

3.107 A second possibility is the inclusion in particular Acts of Parliament of provisions that the Act does not override any of the rights recognised in the Treaty. Section 88(2) of the Fisheries Act 1983, for example, provides that "Nothing in this Act shall affect any Maori fishing rights", and a recent High Court decision⁹ has held that the other provisions of the Fisheries Act accordingly do not apply to Maori exercising a customary Maori fishing right. That raises questions about the mana of the tribes and their powers over their own members and over members of other tribes.

3.108 Third, an independent statutory body can hear complaints that rights acknowledged under the Treaty are not being, or have not been, observed and, if so, have the power to recommend remedial

⁸See, for example, pp.12, 15-16, 26-8, 30, 38-9, 44, 51, 60-1.

⁹*Te Weehi v Regional Fisheries Officer* (1986) 6 NZAR 114.

action or compensation. That is the approach adopted with the Waitangi Tribunal. In some respects, it is a uniquely New Zealand solution which allows problems to be addressed on an issue-by-issue basis and gives time for public opinion to change. If, however, the Tribunal is to achieve results, its recommendations will have to be finely judged and Governments will need to show willingness to accept and implement them.

3.109 Fourth, the Treaty might be given the status of supreme law as proposed in the draft Bill of Rights. Any law passed by Parliament would then be invalid if it contravened the Treaty, and any action by Government which infringed the rights of the Maori people under the Treaty would to that extent be beyond its powers.

3.110 Fifth, the constitutional position of the Maori people might be more formally recognised in our legislative processes and institutions. Some of the submissions we received (for instance from the New Zealand Maori Council) suggested changes that went beyond the electoral system to the structure and functions of the legislature and the wider constitutional system.

3.111 It is not for us to suggest which approaches are best or should be followed. We are convinced, however, that it is time the questions were addressed in a comprehensive and systematic way. We recognise the effective protection of Maori rights and the appropriate recognition of the constitutional position of the Maori people will not be easy to resolve. But the issues will not become any easier as time passes, and we think it desirable to face the problems before their resolution becomes even more difficult. They will not be solved once and for all, and there will, in our view, need to be ongoing processes under which the issues can continue to be handled in the light of experience, and new solutions devised as new problems arise. We think it vital that there be a commitment by Parliament and Government to establish and co-ordinate mechanisms and processes which adequately recognise the constitutional position of the Maori people and which have the support of the Maori people themselves. It is particularly desirable that these mechanisms and processes have the support of all parties in Parliament, and that the Maori participants in any discussions are chosen on a widely-representative basis.

Recommendation:

- 7. Parliament and Government should enter into consultation and discussion with a wide range of representatives of the Maori people about the definition and protection of the rights of the Maori people and the recognition of their constitutional position under the Treaty of Waitangi.

CONCLUSION

3.112 In concluding our examination of the "nature and basis of Maori representation", we point out that the question of the continuation or abolition of the present system is as important to non-Maori as it is to

Maori. The parliamentary debates in 1867 suggest many MPs saw the introduction of the seats principally as a means of fostering Maori co-operation with European institutions and laws and not as a means of providing the Maori people with effective political representation. The system, moreover, has given rise to a situation in which a separately elected non-Maori majority has exerted an unduly large measure of influence over the shape and direction of policies affecting Maori. We do not think that non-Maori can escape their responsibility now by regarding the issue of Maori representation as a Maori one and leaving it to the Maori people alone to decide. In this Report, we recommend an electoral system which we are convinced can give Maori a more just and equitable share of influence over policy, and which will also have important general benefits for our political system as a whole. We also suggest a process for dealing with long-standing questions of the constitutional status of Maori which we consider ought to be undertaken whether or not there are to be major changes to our electoral system. We believe these issues are of concern to *all* New Zealanders and not just to Maori.

3.113 The MMP system with a common roll offers what we consider to be optimal conditions for the effective representation of Maori interests. It also offers Maori considerable scope for developing their potential voting strength and for charting their own political future. But in the end it is Maori themselves who must determine how much influence they and their representatives are to have in Parliament and in the wider political system. No matter how good the electoral system is, it will not work to their advantage unless the Maori people commit themselves to participation within it.

Addendum 3.1: trial STV constituencies

The 5-member STV constituencies shown in Figures 3.1 and 3.2 give some impression of their size and general nature based on provisional 1986 census figures, and assuming a total of 120 MPs and a 5% tolerance. The location of these constituencies is of no particular significance.

Table 3.1 shows approximate figures for those 18 years of age and over who are of Maori descent, and those who are half or more Maori, as percentages of the total population 18 years and over in each of the trial STV constituencies. It also shows the approximate proportions of the total population 18 years and over who were on the Maori roll in 1984, although we stress that these roll figures are for the present 4 Maori electorates and thus do not include Maori on the General roll or who were not enrolled at all. They can give no indication of likely voting patterns under STV.

Table 3.1: Maori as approximate percentages of total population 18 years and over in trial STV constituencies

(See Note)

Constituency		Maori descent, 18 yrs & over %	Half or more Maori, 18 yrs & over %	Those on the Maori roll %
1.	Northland	20.3	15.0	9.5
2.	North Shore	4.5	2.5	1.1
3.	Rodney	8.1	5.1	2.7
4.	West Auckland	7.1	4.8	2.8
5.	Auckland City	7.3	5.1	3.0
6.	South Auckland	12.7	10.0	4.8
7.	Papatoetoe	14.4	11.6	5.3
8.	Hauraki	12.2	8.8	4.2
9.	Hamilton-Waikato	13.3	10.4	4.8
10.	Bay of Plenty	18.3	16.3	9.3
11.	East Cape-Hawke's Bay	23.3	18.8	8.4
12.	Otorohanga-Tokoroa	20.9	16.7	7.5
13.	Wairarapa	12.8	9.6	4.2
14.	King Country-Taranaki	12.2	8.6	4.8
15.	Wanganui	10.3	7.4	3.6
16.	Manawatu	10.6	7.4	3.7
17.	Hutt Valley	8.4	5.9	3.2
18.	Wellington City	5.4	3.7	2.0
19.	Marlborough-West Coast	4.4	2.0	1.0
20.	Kaikoura	3.4	1.6	0.9
21.	Christchurch City	3.9	2.0	1.0
22.	South Canterbury	3.3	1.6	1.0
23.	Otago	2.6	1.2	0.6
24.	Southland	5.7	3.0	1.4

Sources: 1981 census, 1984 electoral roll information.

Note: This Table is for illustrative purposes only. It gives an indication of the likely percentages of the population who belong to one or other of the 3 Maori categories. The figures are approximate only as they are based on source data from 2 different years.

Figure 3.1
18 Trial STV Constituencies

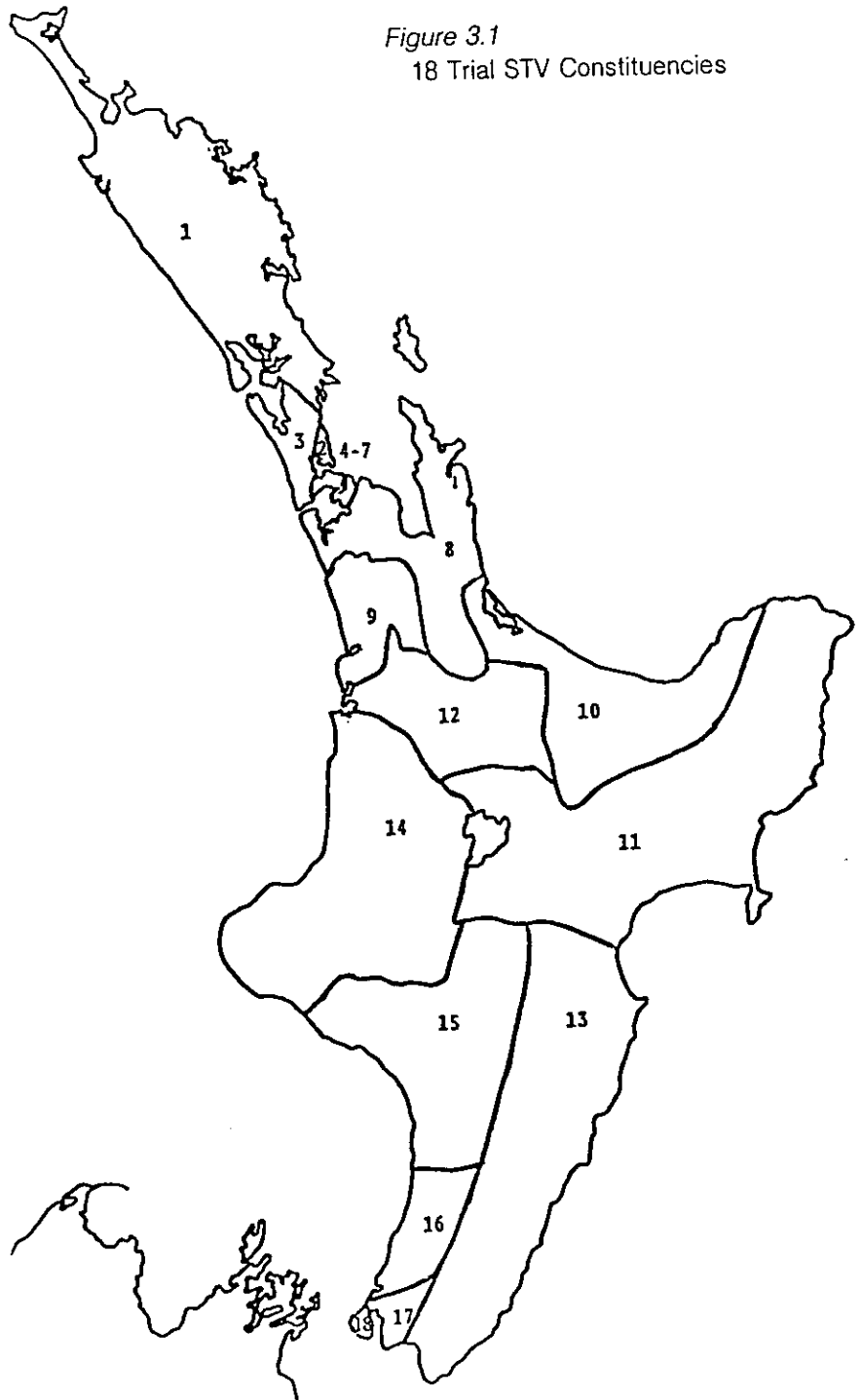


Figure 3.2
6 Trial STV Constituencies

