APPENDIX A

THE ELECTORAL LAW OF NEW ZEALAND

A BRIEF HISTORY

Department of Justice

Wellington

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FOREWORD

Shortly after the Royal Commission on the Electoral System was established, the Secretary for Justice, Mr S. J. Callaghan, indicated that the Department of Justice was willing to assist the Commission by preparing a history of the electoral law of New Zealand. The outcome is this detailed history which has been of considerable value to the Commission in the preparation of its Report, though of course the views expressed are those of the authors. The history will also be of value as a permanent record of the way in which our system has developed.

The greater part of the history was written by Mr B. Ritchie. It is with real sadness that we record that Mr Ritchie died before he was able to finish the work. In the event, the history was completed by Mr H. G. Hoffman. Members of the Commission wish to place on record their indebtedness to the Department of Justice and to the 2 members of the Department who wrote the history

The Hon. Mr Justice Wallace
Chairman, Royal Commission on the Electoral System.

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1 The Colonial Period

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 The Provincial Period

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

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

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

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

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

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

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

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

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

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

2.6 It would be a mistake, however, to assume that the demand for self-government was to be equated with a demand for democratic government. A. H. McLintock comments on the Wellington Association that its main support "came not unnaturally from leading landowners, merchants, and professional men, since the semi-literate artisan and labouring classes had few political aspirations and fewer opportunities to satisfy them".[3] In Canterbury, John Robert Godley's concern for self-government for that province sprang from a fear that if it was not attained, the settlers would become "thoroughly and irreclaimably radical".[4]

2.7 What united the Constitutional Associations, which were mainly located in New Zealand Company settlements, was what William Fox described as a determination "to go on with our agitation for such a constitution as will satisfy us—contending for the principles of responsible government".[5]

Godley explained what he meant by "responsible government" at a public meeting in Wellington on 15 November 1850:

> There is no magic in the word "representative"; no people was ever redeemed or regenerated by the mere election of delegates. No sir, the object which the colonists of New Zealand have given their energies to obtain ... is the substance which all such forms are but methods of exercising; in a word, it is *political power* ... To give us representative institutions without full powers, is worse than a mockery and a delusion: it is a careful and deliberate provision for keeping the machine of government at a perpetual deadlock. . .[6]

This came to mean, as it had in Canada, that the members of the Executive Council, that is the Ministers of the Crown, should be responsible to the Members of Parliament as representatives of the electors, rather than to the Governor.

2.8 The Constitutional Associations tended to see Grey's apparent unwillingness to acquiesce in their demands for self-government as a selfish wish to retain power in his own hands. His arguments relative to the threat premature self-government might pose to the Maori were given scant attention. Fox jeered at "the continual recourse which he had to what Jeremy Bentham calls the 'Hobgoblin argument', by parading *in terrorem* the perils which might result from the colonists 'arousing the natives', bringing on wars, or otherwise ill treating them".[7] The Wellington Association believed that "the native race is fast becoming extinct".[8] A persistent refusal to take seriously the questions which the presence and political expectations of the Maori raised was characteristic of all the Constitutional Associations.

2.9 At the same time, in view of Grey's concern for the fate of the Maori, and especially Maori land, it is to be expected that it would be in Auckland that opposition to Grey would have been most vigorous. Before 1846 this had indeed been the case, but the muted nature of Auckland's opposition compared with that of the settlements to the

south, between that year and 1852, calls for some explanation. McLintock comments:

> For geographical reasons Auckland had always regarded its politics from a parochial point of view and logically assumed that, in any General Assembly elected on a popular basis, the strong southern settlements would almost certainly dominate the proceedings and, worse still, would in due course transfer the seat of government to Cook Strait, with an attendant loss to the north of profitable government expenditure. Political inaction, therefore, was the lesser evil.[9]

2.10 Be that as it may, a steady stream of advocates of the claims of the Constitutional Associations left this country for Britain. In 1848 Charles Clifford of Wellington visited Britain. He was followed by F. A. Weld, also of Wellington, Henry Sewell of Canterbury, and Fox. The latter, perhaps the most energetic agent of the Associations in Britain, and in fact their official representative, had been resident agent of the New Zealand Company in Nelson, and was later the Company's principal agent in Wellington. These men united in England with Wakefield to attempt to influence the British Government directly. They could also draw on the support of such bodies as the Canterbury Association and the Colonial Reform League, English societies interested in colonial questions.

2.11 With the approaching expiry of the Suspending Act and the possibility of a new Constitution Act being passed by the British Government in 1851, and the pressure being mounted on that Government by the Constitutional Associations, Grey moved to protect his own position by introducing a Bill before the General Legislative Council in October 1850, creating a Legislative Council in each of the 2 provinces. The content of this Bill largely reflected that of the Ordinance of 1848. The provisions for Maori voting in the 1848 Ordinance had, however, proved unpopular, and were replaced by a system whereby the Maori could vote on the same terms as Europeans in areas heavily populated by Europeans, while outside these areas neither Europeans nor Maori should have the vote. The Ordinance was received with mixed feelings by the settlers, and some resistance from members of the Legislative Council, including Eyre, who moved the second reading. Although the Bill was passed in 1851 as the Provincial Councils Ordinance, it was to be rendered redundant by the British Parliament's New Zealand Constitution Act of 1852.

2.12 The question of who was responsible for the New Zealand Constitution Act has received a number of answers. It has been argued that it was drafted at the home of Sir Charles Adderley by him, Wakefield, and the representatives in England of the Constitutional Associations. Equally, Sir George Grey has been given the credit for its creation on the basis of the contents of a dispatch forwarded by him to Earl Grey on 30 August 1851. However, Earl Grey appears to have begun drafting a Bill in December of 1851, before Sir George Grey's dispatch could have arrived in England. The final Act must in fact be

seen as the end result of extended negotiation among numerous parties.

2.13 Grey's dispatch recommended a 3-tier system comprising municipal, provincial and national institutions. There were to be 5 provinces: Auckland, Wellington, Nelson, Canterbury and Otago. The Provincial Councils, as in the Ordinances, would be two-thirds elected and one-third nominated. Grey now thought these institutions might become stronger in the future, and expected that they would eventually be wholly elective. He also recommended, at the suggestion of the Otago settlers, that the head of the provincial executive should have the rank of Superintendent and that other officials' positions be elective. The Governor could disallow provincial legislation.

2.14 The national Government would comprise a Governor-in-Chief, a Legislative Council, and a House of Representatives. Earl Grey had suggested an elected upper house, on the American model, which would represent provincial interests and provide for minority representation.[10] Sir George Grey's response to this was to recommend that the Legislative Council should be elected by a scheme of proportional representation. The House of Representatives could also override provincial legislation and would have the power to change the constitution, subject to Crown approval. The franchise for provincial and national elections was the same as in the Ordinance of 1851.

2.15 The Governor would retain the powers necessary to govern that portion of the native population who lived beyond the limits of European settlements.[11]

2.16 Most of Sir George Grey's recommendations found a place in Earl Grey's draft Bill. Only in 4 matters did the latter differ. It provided for the reserving of the Crown's right to disallow provincial laws. The Superintendent's office was not to be elective. Persons resident in native districts became entitled to qualify as electors. The power of disposing of Crown Lands reverted to the Governor.

2.17 At this point the Government of Lord Russell fell and it was replaced by that of Lord Derby. As a consequence Earl Grey was replaced by Sir John Pakington. The latter was at first inclined to renew the Suspending Act, but pressure from Wakefield and the representatives of the Constitutional Associations in England led him to introduce a New Zealand Constitution Bill into Parliament on 3 May 1852.

2.18 Pakington's Bill differed, in turn, in a number of ways from that of Earl Grey. A 6th province, New Plymouth, was provided for. Provincial Councils would be wholly elective, and the Legislative Council wholly appointed. The Governor was given the power of disallowing provincial laws. At the committee stage, the position of Superintendent was made elective.

2.19 The Bill met with severe criticism in the House of Commons. In particular, Sir William Molesworth and Gladstone, although the latter approved of the Bill as a whole, attacked the appointed Legislative

Council. Pakington was at first inclined to withdraw the Bill, but was dissuaded by a petition from Wakefield requesting that the Bill be passed, and that the colonists be left to remedy its defects. The Bill became the New Zealand Constitution Act on 30 June 1852.

2.20 Its contents relative to the electoral system may be summarised as follows. The franchise extended, for both provincial and national elections, to

> every man of the age of twenty-one years or upwards, having a freehold estate in possession, situate within the district for which the vote is to be given, of the clear value of £50 above all charges and incumbrances, and of or to which he has been seised or entitled, either at law or in equity, for at least six calendar months next before the last registration of the electors, or having a leasehold estate in possession, situate within such district, of the clear annual value of £10, held upon a lease which at the time of such registration shall have not less than three years to run, or having a leasehold estate so situate, and of such value as aforesaid, of which he has been in possession for three years or upwards next before such registration, or being a householder within such district occupying a tenement within the limits of a town (to be proclaimed as such by the Governor for the purposes of this Act), of the clear annual value of £10, or without the limits of a town of the clear annual value of £5, and having resided therein six calendar months next before such registration as aforesaid, shall, if duly registered, be entitled, to vote at the election of a Member or Members for the district.[12]

2.21 Because of the communal nature of Maori land ownership these conditions effectively excluded all but a few Maori from the franchise.

2.22 As in the 1846 Act, the Superintendent and Provincial Council could not pass laws on a number of matters. These included the imposition of customs, the establishment or abolition of courts, regulating the coins, determination of weights and measures, regulating the postal service, establishing laws relating to bankruptcy, wills, shipping dues, marriages, the erection of lighthouses, and criminal matters.

2.23 It was also forbidden to pass laws relating to the sale of Maori land, or imposing "disabilities or restrictions" on the Maori to which European persons would not be subjected. Maori affairs remained in the hands of the Governor.

2.24 The members of the Legislative Council, not to be less than 10, were appointed by the Crown, and their tenure was for life.

2.25 The membership of the House of Representatives was defined in Sections XL and XLI:

> XL. For the purpose of constituting the House of Representatives of *New Zealand*, it shall be lawful for the

> Governor, within the time hereinafter mentioned, and thereafter from time to time as occasion shall require, by proclamation in Her Majesty's name, to summon and call together a House of Representatives in and for *New Zealand*, such House of Representatives to consist of such number of Members, not more than forty-two nor less than twenty-four, as the Governor shall by proclamation in that behalf direct and appoint; and every such House of Representatives, shall, unless the General Assembly shall be sooner dissolved, continue for the period of five years from the day of the return of the Writs, for choosing such House and no longer.
>
> XLI. It shall be lawful for the Governor, by proclamation, to constitute within *New Zealand* convenient Electoral Districts, for the election of Members of the said House of Representatives, and to appoint and declare the number of such Members to be elected for each such district, and to make provision (so far as may be necessary beyond the provision which may be made for the like purposes in relation to elections for Provincial Councils) for the registration and revision of lists of all persons qualified to vote at the elections to be holden within such districts, and also provision for the appointing of Returning Officers, and for issuing, executing, and returning the necessary Writs for elections of Members of the House of Representatives, and for taking the poll thereat, and otherwise for ensuring the orderly, effective, and impartial conduct of such elections; and in determining the number and extent of such Electoral Districts, and the number of members to be elected for each District, regard shall be had to the number of Electors within the same, so that the number of Members to be assigned to any one District may bear to the whole number of the Members of the House of Representatives, as nearly as may be, the same proportion as the number of Electors within such District shall bear to the whole number of Electors in *New Zealand*.

2.26 The Act also defined the powers of the General Assembly to alter the legislation as it related to the elections, in Sections LXVII and LXVIII:

> LXVII. It shall be lawful for the said General Assembly, by any Act or Acts, from time to time, to establish new Electoral Districts for the purpose of electing Members of the said House of Representatives, to alter the boundaries of Electoral Districts for the time being existing for such purposes, to alter and appoint the number of Members to be chosen for such Districts, to increase the whole number of Members of the said House of Representatives, and to alter and regulate the appointment of Returning Officers, and make provision in such manner as they may deem expedient for the issue and return of Writs for the Election of the Members of such House, and

the time and place of holding such Elections, and for the determination of contested Elections for such House.

LXVIII. It shall be lawful for the said General Assembly, by any Act or Acts, to alter from time to time any provisions of this Act, and any Laws for the time being in force concerning the Election of members of the said House of Representatives, and the qualification of Electors and Members: Provided, that every Bill for any of such purposes shall be reserved for the signification of Her Majesty's pleasure thereon, and a copy of such Bill shall be laid before both Houses of Parliament for the space of thirty days at the least before Her Majesty's pleasure thereon shall be signified.

2.27 Grey had come to see the provincial governments as more important than the national Government, and on receiving notice of the passing of the Act, he lost no time in setting up the provincial governments. He further commented on the national Government that, "It should be borne in mind that the New Zealand General Assembly, which was to meet, was *not* the Assembly I had intended".[13]

2.28 Consequently, much to the chagrin of many settlers, he procrastinated for as long as he could, and it was not until 10 March 1853 that he issued a Proclamation announcing the electoral districts and the number of members to be elected from each district.[14]

2.29 The number of electoral districts for the House of Representatives was 24. That 1 of these districts is described as the "Pensioner Settlements" appears to indicate a concern that members should not only represent particular areas of the country but also, possibly, special groups within the community. The pensioners were retired members of the British Armed Forces who had been given land, on the condition that they should serve in the New Zealand Armed Forces should they be so required. In all, 37 members were to be returned, the City of Auckland and the City of Wellington returning 3 each, and 9 other districts returning 2 members each. It is clear from the descriptions of each electoral district attached that they did not, in total, cover the whole of the geographical area of the country.

2.30 Each person who wished to vote was required to lodge a claim at a designated Resident Magistrate's Office, or, in some cases, a Police Office. A list of these claims was to be prepared and published, by the Resident Magistrate, "or some other fit person or persons to be appointed by the Governor in that behalf",[15] in each district. Such persons then called a special meeting of the Justices of the Peace living in the district, to consider objections to any names on the list. An Electoral Roll was then prepared and published. Voters were then deemed to be on the Electoral Roll, "until the completion of the 'Electoral Roll' for the year next ensuing".[16]

2.31 The following was the means of voting:

On the day of Nomination so to be fixed as aforesaid, the Returning Officer shall preside at a meeting to be holden at

> noon at the chief Polling Place for the District, and shall declare the purpose for which such meeting is held . . .
>
> In the event of there being more Candidates than the number to be elected, the Returning Officer shall call for a show of hands separately in favour of each Candidate, and after such shew [sic] of hands, shall declare the person or persons on whom the Election has fallen, and shall return the same accordingly, unless a Poll be demanded by some one of the Candidates, or by not less than six Electors on his behalf.
>
> Every Elector for the District may vote for any number of persons not exceeding the number of persons then to be chosen, by delivering to the Returning Officer or his Deputy a Voting Paper containing the Christian names and Surnames of the persons for whom he votes, together with their place of abode and description, and signed with the name of the Elector so voting, and setting forth his own place of abode and description.[17]

Objections to the validity of the return were to be directed, in the form of a petition, to the Governor in the case of an election for Superintendent or member of the House of Representatives for reference to the General Assembly for its decision. Where the objection related to an election to the Provincial Council, the petition was referred to that body for its decision.

2.32 The conduct of the country's first elections was the cause of often bitter dissatisfaction. Bribery and drunkenness at the poll were frequently commented upon. On 30 June 1854, the House of Representatives established a Committee "to consider the expediency of bringing in a Bill for the prevention of bribery at elections".[18] On 25 July the Committee reported that a Bill would immediately be introduced into Parliament. On 11 June 1856, two Bribery and Treating Bills were introduced. The Bills were referred to the Select Committee on the Constitution Act on 12 July.

2.33 Auckland members considered their province to be grossly under-represented, and on 8 September 1854, Major J. Greenwood, member for the Pensioner Settlements, introduced a Bill into the House of Representatives which would have increased the seats for the Auckland Province from 12 to 20.[19] Greenwood's method of distributing seats was based on the provisions of the Constitution Act 1852. As a numerical means of determining electoral boundaries, it was unacceptable to many members. Although this Bill was unsuccessful, discontent simmered. W. F. Porter, member for the Suburbs of Auckland, also introduced an Apportionment of Members Bill in 1855. He outlined it as follows:

> Upon the supposition that the Province of Auckland contained three thousand electors, let one member be returned for every two hundred and fifty, allowing the same rule to apply to every other province. The Superintendent for each province, before a general election, should recommend to the Governor the

> number of districts that were desirable, with the boundaries of the same, and the number of members for each district, in accordance with the number of electors. The Governor might then proclaim the number of districts, and the number of members to be returned for each, and serve out writs in accordance with the same.[20]

2.34 On 17 April 1856, petitions objecting to the returns for all of the 6 seats in the Auckland area, were forwarded to the Select Committee on Disputed Elections.[21] The Report of the Select Committee on the Constitution of the same year criticised the conduct of the principal Returning Officer for Auckland, and Returning Officers for the Southern Division of Auckland and the Bay of Islands electorates.[22] The recommendations of these Committees were to have an important influence on subsequent legislation.

2.35 Another cause of complaint was touched on by Edward Gibbon Wakefield, now member for Hutt District, speaking in the first Parliament:

> We have not been brought here for the purpose of making speeches to each other, or for that of discussing abstract principles of government, though such discussion may be necessary as one means towards very different ends. We are here to reflect the well-understood wishes of the people, to represent their wants, to give effect to their settled desires. Such are the objects, and, speaking generally, the only objects of all representation ... Whenever representation works properly, it occasions a popular influence in all the processes of government, as well legislative as executive. Can any one cite an instance of representation working undisturbed without making the popular voice prevail in all the measures of government, and producing that effect by means of the representative body?[23]

Wakefield is here alluding to the question of responsible government. The right to responsible government was argued from a number of points of view besides that of Wakefield. For instance the member for the Bay of Islands, Hugh Carleton, formerly a member of the Auckland "Senate", in speaking to Greenwood's Bill commented:

> That Assembly will have to undo what Governor Grey has done; it will have to provide for what he has left undone: it will be called upon to make a fresh apportionment of the representation among the provinces; to form afresh the electoral districts, which are now mapped out with the most consummate art so as to throw parliamentary influence into the hands of the Government; to consider the franchise, with a view to representing education as well as numbers.[24]

The allusions here are not only to the franchise of the 1846 Constitution Act, but also to the fact that Grey had not only delayed the calling of the national Government till the last possible moment, but had left the country 5 months before the House of Representatives had first

met. In the event, however, the transition to responsible government was to prove relatively easy. The matter had not been touched on in the 1852 Constitution Act, and could be achieved administratively. It was granted by Governor Gore Browne without resistance in 1856.

2.36 On 25 July 1856, Stafford, who was now Premier, took further steps to strengthen the House of Representatives. A motion was moved in Parliament the purpose of which was to persuade the Imperial Government to place in the hands of the New Zealand Government the power of determining its own form of parliamentary system. Only the most fundamental sections of the Act relative to the existence of the General Assembly and the provincial Governments were to be preserved as unalterable.[25]

2.37 The consequence of this resolution was the passing by the British Parliament of the New Zealand Constitution Amendment Act 1857. This Act endorsed the resolution with only a few exceptions. It did in particular add Section 73 to those listed by the House of Representatives as unalterable. This kept the sale of Maori lands in the hands of the Crown. The Act also specifically mentioned Sections 67, 68, and 69 of the original Act, as repealed.

2.38 In 1858, several Bills were presented to Parliament by Stafford and C. W. Richmond, who was Colonial Treasurer, which were intended, with the remaining sections of the Constitution Act, to supersede Grey's Proclamation of 1853, and provide the country with a complete body of law related to elections. These Bills were an Electoral Laws Repeal Bill, a Representation Apportionment Bill, a Qualification of Electors Bill, a Registration of Electors Bill, a Regulation of Electors Bill, an Election Petitions Bill, a Corrupt Practices Prevention Bill, and a Provincial Elections Bill. The last Bill, its contents being outside the terms of reference of this paper, will not be further discussed. An Election Writs Bill was passed separate from these.

2.39 On 13 April 1858 a Select Committee on the Electoral Bills was appointed to examine all but the first of these Bills. Members of the Committee included not only Richmond but Carleton, Weld, J. Hall, and Dr D. Munro. The consequence of the deliberations of this Committee was a rather more conservative series of Acts than Stafford and Richmond had originally planned. In its Report of 2 July of the same year, the Committee adopted the following resolutions:

1 That an apportionment of Representation based upon the number only, of the Registered Electors in the respective Electoral Districts, does not meet the requirements of the Colony.
2 That in regulating the extent of the Electoral Districts under any new division thereof, the proportionate numbers of Electors, as proposed by Electoral Bill No. 2 [the Representation Apportionment Bill], ought not to be solely considered.
3 That a self-adjusting system of apportionment as provided for in the Electoral Bill No. 2 is not required, and that any such change of apportionment, as might from time to time appear advisable ought to be provided for by special enactment, *pro re nata*.

4 That the number of the Representatives ought to be considerably increased, after purification of the Roll, but without further unnecessary delay.
5 That means ought to be devised at some convenient future time, for giving a fitting influence to Education in the Representation of the Country.
6 That in any re-adjustment of the Representation of the Colony, regard, as far as possible, be had to the representation of Minorities.
7 That it is inexpedient to discontinue the practice of open voting, and that, in the opinion of this Committee, secret voting is calculated to produce greater evils than those which it is intended to remedy.
8 That the unrepresented state of certain important Districts, renders it advisable that Members should be assigned to them forthwith; but that the actual Election of such Members should not take place until after the purification of the Electoral Roll.
9 That the Districts referred to in the preceding resolution are the following: the Southern part of the Southern Division of the Province of Auckland; the District of Hawke's Bay; the District of Amuri; the District of Murihiku—each to have one Member.
10 That it is desirable to make specific provision for the representation of the gold-digging population, under convenient regulations to be enacted for that particular purpose.[26]

2.40 The Electoral Laws Repeal Bill repealed sections of the Constitution Act relating to the qualification of electors, and the Governor's power to establish electorates. It also repealed the Governor's Proclamation of 1853. It was, however, discharged on 18 August 1858, presumably as redundant.

2.41 The Representation Apportionment Bill provided for the division of the colony into electoral districts every 3 years. In 1860 the number of members to be elected would be increased to 42, and in 1863, 50 members would be elected. No more than 3 members were to be elected to represent any one electoral district. The number of members for each electoral district would be determined by dividing the number of electors in an electoral district by the number obtained by dividing the total number of registered electors in the colony by the number of members in the House of Representatives.[27] This method was identical with that of the Constitution Act 1852.

2.42 The first 3 resolutions of the Select Committee were opposed to the content of this Bill. The Select Committee, further, on Carleton's motion, amended the Bill so that electoral boundaries would be determined "In the year 1863 and henceforth in every 5th year".[28] It did however express support for multi-membered electoral districts. The sixth resolution of the Select Committee, relative to the representation of minorities, was essentially a demand for multi-member electoral districts.

2.43 Richmond, in introducing the Bill's second reading, argued that it was introduced, "not as affirming any supposed abstract principle of right, but merely as a fair practical rule . . .".[29] It would protect the colony against "two mischievous devils", the provincial devil, and the democratic devil.[30] Even so Carleton, Weld, Munro, Hall and J. Ollivier, all members of the Select Committee, attacked the Bill. Carleton commented:

> There were two capital objections to the Bill: the first of these was, that it provided for the representation of numbers, as distinguished from that of classes; the second was, that the Bill delivered over the rural interests into the power of the towns. He need scarcely argue that the manifest tendency of representation according to numbers only was to give a preponderating control to the most numerous class—virtually to lodge the supreme power of the State in the hands of that class—to enable the lower or operative class, in fact, to overwhelm all other classes.[31]

2.44 Nevertheless the Bill was passed in the House of Representatives. The Bill which was introduced into the Legislative Council reflected the fourth recommendation of the Select Committee, in that it provided for an increase in the number of members of the House of Representatives to increase to 50 as early as 1860. It also allowed for the colony to be divided into electoral districts in 1860, 1865, and 1870.[32] This Bill was defeated in the Legislative Council. Dr G. Menzies commented that ". . . he thought there were classes of superior intellectual capacity and of large stake in the country which were entitled to more than the share of representation that would fall to them in the proposed Bill".[33]

2.45 Thus, the Representation Apportionment Bill came to nothing. With its demise it was briefly replaced by the Wairarapa and Hawke's Bay District Electoral Bill of 1858. This Bill divided the Wairarapa into 2 electoral districts, Wairarapa and Hawke's Bay, which had just become a province. It in turn was superseded by the Electoral Districts Bill. When that Bill was passed in the same year, it retained the districts defined in Grey's Proclamation of 1853, and, following the ninth resolution of the Select Committee, created 4 new districts, Marsden, and the Counties of Hawke, Cheviot, and Wallace. The number of members of the House of Representatives was increased to 41.

2.46 Thus the law relative to electoral districts came to reflect extremely closely, if by a roundabout way, the recommendations of the Select Committee. The Electoral Districts Act was intended to be a temporary measure. In fact, electoral boundaries were to be altered 7 times between 1858 and 1887.

2.47 The Qualification of Electors Bill proposed to assimilate the household qualifications of town and country by conferring the franchise on £5 householders in towns. The Select Committee recommended that the distinction between town and country should be maintained and in resolution No. 5 that an educational qualification be introduced. Carleton

repeatedly pleaded for an educational qualification along the lines of that provided for in the 1846 Constitution, and resolution No. 5 undoubtedly owed much to him. He looked to elections that would "be decided by the more intelligent members of the community—by those few who really took an interest in the public affairs of the colony".[34] The eventual Act left the qualifications for voting as they were in the Constitution Act of 1852, and ignored the recommendations concerning educational qualifications. Thus the distinction between urban and rural districts was preserved, to the advantage of the latter.

2.48 The tenth resolution of the Select Committee, to the effect that special provision be made for the representation of gold miners, was a response to the discovery of gold in the Coromandel in the 1850s. Though the recommendation was not taken up on this occasion, it touched on a problem which was later to be of some importance.

2.49 The Registration of Electors Bill reflected primarily the dissatisfaction felt with the appointment of Magistrates to draw up the rolls. As early as 13 September 1854, Carleton had said in Parliament, "That it is highly desirable that any revision of the electoral rolls should be effected by Revising Officers appointed for that purpose in each province, instead of by the Bench of Magistrates".[35] And in 1856, the Select Committee on the Constitution Act recommended, "That no Resident Magistrate should be Returning Officer, *virtute officii*, but that such officers should be specially appointed".[36]

2.50 The Bill also provided for the appointment of Registration Officers who would draw up a list of voters for each electoral district. It also provided for the appointment of Revising Officers, who would hold courts to handle objections relative to the list of voters. From the list delivered by the Revising Officer to the Returning Officer the Electoral Roll would be prepared. Rolls would be revised annually.

2.51 The appointment of a Returning Officer was allowed for in the Regulation of Elections Bill. In its original form this Bill had introduced the secret ballot and a system of written nominations. The Select Committee, in resolution No. 7, had disapproved of the adoption of a secret ballot.

2.52 Richmond, in arguing for the secret ballot, raised, if he did not answer, a number of questions of some theoretical importance. The first was that of whether a vote is a right or a privilege. For Hall, speaking in the debate on the second reading there was no problem. The franchise "... was a public trust, and not the individual right and exclusive property of the voter ...".[37] Therefore it should be public. Richmond admitted the validity of this principle in introducing the Bill, but it is not clear whether this, like his unwillingness to commit himself to the principle of the numerical division of electorates, is not the tentativeness of someone unwilling to commit himself too deeply to what he knew to be a lost cause.

2.53 Where however he spoke of the secret ballot as a defence against party he perhaps spoke with more conviction:

> The ballot would also tend to check the influence of faction, party feeling being in a great measure kept up by the cry for consistency ... Secret voting would certainly tend to discourage that party faction ...[38]

2.54 Richmond made no claim that it would reduce the bribery at elections. In fact, Monro reflected the views of most of those who opposed and defeated this part of the Bill when he claimed that it would have exactly the opposite effect: "The system would lead to and encourage falsehood. He could conceive of a man who might wish to conceal his opinions protesting and speaking white until he went to deposit his voting paper, and then voting black. It would thus lead to hypocrisy and dissimulation".[39]

2.55 The eventual Act defined a form of election very similar to that in Grey's 1853 Proclamation, except that the procedure for polling is set out in more detail. Section 15 reads in part:

(2) When an elector tenders his vote, the Deputy Returning Officer or Poll Clerk to whom the same is tendered shall state explicitly in alphabetical order the names of the several candidates, and shall then inquire of the elector for which of the said candidates he intends to vote.

(3) On such candidate or candidates being named by the elector, the Deputy Returning Officer or Poll Clerk shall enter the vote accordingly in a Poll Book to be kept for that purpose, and the elector shall affix his signature to the entry: Provided always that when the elector affixes his mark, it shall be witnessed by the Returning Officer, Deputy Returning Officer, or Poll Clerk.

2.56 In their final form the Regulation of Elections Bill, and the Corrupt Practices Prevention Bill, came to concern themselves primarily with the "hypocrisy and dissimulation" which were seen as surrounding the early elections and which fuelled the resistance to the secret ballot.

2.57 In particular, the two Bills reflected the concerns of the two Select Committees of 1856 already mentioned. The Select Committee on Disputed Elections recommended, "1st. To make bribery, treating, intimidation, and personation penal, and make void any vote induced by such means; and, if effected with the previous knowledge or connivance of the sitting Member, to disqualify him for re-election during the continuance of the then Assembly", and "3rd. To require the Returning Officer or Resident Magistrate to perform the duties imposed on him by the Standing Orders".[40] The Select Committee on the Constitution Act also recommended a Bill to combat bribery. It was, it is to be remembered, to this Committee that the two Bribery and Treating Bills of 1856 mentioned earlier were referred.

2.58 The Regulation of Electors Bill contained provisions relating to personation, bribery, treating, and intimidation. Drunkenness and disorder were to be countered by sections which dealt with the sale of liquor and the use of public houses during elections.

2.59 The Electoral Petitions Act followed closely the recommendations of the Select Committee on Disputed Elections. In particular, a bond was required of petitioners, and the legal position of the committee appointed to hear petitions was greatly strengthened.

2.60 While the legislation passed in 1858 laid the foundation for this country's electoral law, it was ineffectual in preventing a proliferation of minor amending statutes over the next 2 decades.

2.61 Fears expressed concerning the stability of the law relative to electoral districts proved well founded. The Electoral Districts Act of 1858 was admittedly passed only as a temporary measure. Rapid changes in the numbers, distribution, and the nature of the population over the next few decades further complicated matters for the Government. Even so, the improvisatory nature of much of the legislation of the period is remarkable.

2.62 The Representation Act of 1860, which replaced the Electoral Districts Act, was introduced by Stafford as the response to a promise of 1858 to "apportion the representation of the whole colony"[41] as the Select Committee's resolution 8 had recommended. This was achieved by creating 43 electoral districts electing 53 members. Only Wellington City remained a 3-member seat, and there were 8 2-member seats. This increase in numbers reflected in the distribution of seats an increase in population in the South Island, for, as Stafford commented, "Ministers had started on the population basis as the first criterion".[42] Thus, whereas members for the North and South Islands had numbered 25 and 16 in 1858, in 1860 they numbered 29 and 24 respectively.

2.63 There were two main reasons for the increase in population in the South Island. Cumberland and Hargreaves have commented:

> Between 1856 and 1876 more than eight million acres of land were sold by the provincial governments, two and a quarter million acres were given away under a variety of systems of free grant, and by 1881 over twelve million acres of Crown land were leased as great mountain sheep runs, mainly in Canterbury and Otago. The pastoral age had begun and the tide of settlement and economic development flowed swiftly south to the Middle Island.[43]

2.64 The other cause was the discovery of gold. This had been found at Coromandel and Nelson as early as 1852. The major discoveries, however, were in Otago in 1861, and in Westland in 1865. By 1864 the miner population of Otago was 16,000. By 1866, that in Westland was estimated at from 35,000 to 50,000.[44] A smaller discovery was also made in the Thames region.

2.65 The increase in the number of members in the 1860 legislation reflected the resolution of the 1858 Select Committee that there should be more members. It also, however, reflected a trend of solving problems by increasing the number of members rather than altering boundaries.[45] The new district of Collingwood reflected this increase in the South Island numbers, and the principles upon which the

Government acted. Weld, who was to introduce much of the electoral legislation of the next few years, commented that "We have made a district of Collingwood, so as to include the gold fields, (Massacre Bay) separating from it the neighbouring agricultural district of Motueka . . .".[46] Coinciding with the creation of the Collingwood seat, the passing of the Miners Franchise Act gave the vote to all miners who had held a miner's right for at least 3 months. In introducing this legislation in the Legislative Council for its second reading, H. G. Tancred "referred to the Ballarat riots as an instance of the evil resulting from withholding the franchise from this class . . .".[47]

2.66 Such was the concern about the growth in the number of miners in the South Island that the Representation Amendment Act of 1862 allowed for the election of 2 members to represent the goldfields of Otago. The Miners Representation Act of the same year, which replaced the Miners Franchise Act, entitled miners who had held miners' rights for 6 months to vote for these members. Miners who held the appropriate property rights were also entitled to vote in other electoral districts.

2.67 The Representation Amendment Act also allowed for the effect the Otago gold rush was having on the population of that province, as a whole, by dividing the 2-member City of Dunedin district in two. The Dunedin and Suburbs North, and Dunedin and Suburbs South districts each returned 2 members.

2.68 The most drastic re-drawing, to date, of electoral boundaries to accommodate the growing South Island population was, however, the Representation Act of 1865. Thirteen South Island districts, all except those in the Nelson and Picton areas, and the City of Christchurch and Lyttelton, were abolished, and replaced by 29 new districts. The number of members was now 70, and the South Island had a majority in the House of Representatives. In 1867, as a consequence of the influx of gold miners, the 2-member Westland seat was divided into Waimea and Westland, each returning 2 members, in the Westland Representation Act.

2.69 In the same year the Maori Representation Act introduced 4 Maori seats into the House of Representatives, bringing the total number of seats to 76.

2.70 In 1862 responsibility for Native Affairs had passed to the House of Representatives. In that year, G. E. Fitzgerald, member for Ellesmere, tried to outline an appropriate policy. He moved 5 resolutions:

1 That, in the adoption of any policy or the passing of any laws affecting the Native race, this House will keep before it, as its highest object, the entire amalgamation of all Her Majesty's subjects in New Zealand into one united people.
2 That this House will assent to no laws which do not recognize the right of all Her Majesty's subjects, of whatever race, within this colony to a full and equal enjoyment of civil and political privileges.

3 That a recognition of the foregoing principle will necessitate the personal aid of one or more Native chiefs in the administration of the Government of the colony, the presence of members of the Maori nobility in the Legislative Council, and a fair representation in this House of a race which constitutes one-third of the population of the colony.
4 That the same principle ought to be respected in the constitution and jurisdiction of all legislative bodies subordinate to the General Assembly, and all Courts of law within this colony. . .
5 That a respectful address be presented to His Excellency the Governor, praying that His Excellency will be pleased to cause such steps to be taken as he may be advised will bring the policy above indicated into operation with the least possible delay.[48]

Fitzgerald succeeded in getting the first two resolutions passed. The third, however, was defeated by 20 to 17, and the others were withdrawn.

2.71 The next move towards the enfranchisement of the Maori was the Report of the Select Committee on Representation, chaired by Major J. L. C. Richardson, which was released on 18 November 1863. This Report recommended that 13 new seats be created, 10 South Island European seats, and 1 North Island European seat. It also recommended,

> having regard to the assumption by the Colony of full responsibility in Native Affairs, it would be just that two Members should be especially chosen to represent the Natives; such Members to be persons of European descent, duly qualified as required by the Constitution Act to be elected to the House—one of them representing the Natives of the Northern portion of the North Island, and the other representing the Natives in the Southern portion.[49]

2.72 On 19 November, Richardson introduced a Bill into the House of Representatives providing for the implementation of these recommendations. During the debate, in answer to an enquiry as to who had moved that the Maori should be represented, Stafford stated that "he was that member, and that in a Committee of ten the proposition was unanimously adopted".[50]

2.73 It soon became obvious, however, that the interest of the Bill lay less in the Maori seats than in the distribution of the seats between the North and South Islands. Assuming that the Maori seats were North Island seats, the totals were 32 seats for the North Island, and 38 seats for the South Island. Trying to save something from the turmoil this caused, Stafford moved on 26 November that there be a readjustment of boundaries before the next election, each Island to have the same number of seats. This was defeated, and the Select Committee's recommendations were not adopted.

2.74 In 1865, G. Graham, member for Newton, moved unsuccessfully that ". . . in order to secure the better government of the

aboriginal natives of New Zealand it is convenient to confer on them the elective franchise".[51] The qualification for voting should be a manhood qualification, there should be 5 members, and the Maori should be represented by Europeans qualified to sit in the House of Representatives.

2.75 In the same year, Fitzgerald introduced two Bills of related importance, the Native Rights Bill, and the Native Lands Bill.

2.76 The first provided that every Maori was to be deemed a natural-born subject of the Queen. Provision was also made for the Supreme Court and other law courts to have the same jurisdiction over Maori property, "and touching the titles to land held under Maori Custom and Usage. . .",[52] as they had over European property.

2.77 The Native Lands Bill established the Native Land Court and defined its place in such a legal structure. Fitzgerald commented:

> Native land shall be dealt with by our law; the Supreme Court having authority over all persons and property, but, in the case of titles to land held under the Maori proprietary tenure, sending down any case to the Native Land Court for trial.[53]

2.78 The Bill also provided for titles of Maori land to be ascertained, and the issue of Crown titles. This had disturbing constitutional consequences. A Maori who possessed a Crown grant for his land was no longer obliged to sell it to the Crown, as provided for by Article 2 of the Treaty of Waitangi. This made Maori land much more accessible for purchase by European settlers.

2.79 The Native Lands Bill also altered Maori qualifications for voting. From the beginning of elected government a small number of Maori had possessed the necessary property qualification to vote. In general, however, the status of Maori land, relative to voting qualifications, was a matter of some uncertainty. In 1859, the Law Officers of the Crown in England had been consulted as to whether Maori land ownership constituted a valid qualification to vote under the Constitution Act. The Crown Law Officers ruled,

> that Natives cannot have such possession of any Land, used or occupied by them in common as Tribes or Communities, and not held under Title derived from the Crown, as would qualify them to become voters. . .[54]

With the issuing of Crown grants for land, however, this situation could be changed, and the Maori would acquire voting qualifications equal to those possessed by Europeans. This, at least, many Europeans believed or professed to believe.

2.80 These were the politically, and militarily, disturbed years of the Land Wars. From 1861 to 1866, there were 6 Governments, and since 1861 the European settlers and the Maori had been at war. Bitterness over the loss of land, the declining population, increasing poverty, and isolation from political decision-making, fuelled Maori distrust of the European settlers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.90 The *New Zealand Herald* commented that Crown grants would

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

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

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

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

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

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

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

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

was required to correct the boundaries of most of the electoral districts, as defined in the schedule of the 1870 Act.

2.93 In the new Parliament 30 members came from the North Island, and 44 from the South Island. The Gold Field Electoral Districts were abolished. However, the Qualification of Electors Act of 1870 and the Miners Right Extension Act of 1872 preserved the validity of the miner's right as a qualification for voting within the ordinary European electoral district in which that person's goldmine was situated.

2.94 Two other important acts of 1858, the Registration of Electors Act and the Regulation of Elections Act, were both repealed and replaced by new Acts of the same name, in 1866 and 1870 respectively. The alterations in the new Registration of Electors Act were mainly minor, concerned with speeding up the process of validating property qualifications, although the appointment of Revising Officers was now placed in the hands of Judges of the Supreme Court.

2.95 The Regulation of Elections Act 1870 not only replaced the earlier Act of the same name, but also the Corrupt Practices Act of 1858. While, like the earlier Act, it provided for election by show of hands, the procedure it outlined in the event of a call for a poll was quite different. Not only were booths to be provided:

> Each booth shall be so divided or arranged that there shall be in the same one or more inner compartments opening only into that part of the booth in which the ballot box is kept and the Returning Officer or his Deputy shall provide in every such compartment pencils or pens and ink for the use of the electors and shall also provide for each booth a ballot box having a lock and key and with a cleft or opening therein capable of receiving the ballot papers herein mentioned.[66]
>
> If any person shall knowingly and wilfully enter any of the compartments aforesaid while any other person shall be therein or if any person being in any such compartment shall wilfully remain there for a longer time than such as shall be reasonably required for the purpose of striking out the names from his ballot paper or if any person shall otherwise wilfully obstruct or unnecessarily delay the proceedings at any such polling he shall on conviction forfeit and pay for every such offence a penalty not exceeding £50.[67]

2.96 These 2 sections, which introduced the secret ballot into New Zealand's electoral system, were largely the culmination of the work of W. H. Reynolds, member for Dunedin City. Bills providing for the secret ballot were unsuccessful in 1858 and 1865. Reynolds introduced Bills to the same end in 1867, 1868, and 1869, and although they were unsuccessful, this pressure was in the end responsible for the inclusion of the secret ballot in Fox's Government Bill of 1870. The actual legislation was based on that existing in Victoria.[68]

2.97 The Act also provided for the appointment of 1 scrutineer each by the candidates standing for election. Clearly, much of the concern

about misconduct at elections had diminished by 1870. The Act gave the Returning Officer power to demand a declaration against bribery, and penalties were provided against personation. It was also provided that no polling booth should be in a house licensed to sell alcoholic drinks, but the concern, again, over alcohol consumption had obviously all but disappeared. The stress in the Act was on ensuring orderly administrative procedures, and basically laid down the form of the electoral process, as experienced by the voter to the present day.

3 Uncertain Years

3.1 With the passing of the Abolition of the Provinces Act in 1875 the central Government acquired greater power and responsibilities and it was to be expected that the structure of Parliament and the electoral system would be re-examined.

3.2 The most immediate response to the increased importance of the House of Representatives was the Representation Act of the same year. This increased the number of European members to 84. The Bill, however, was promoted as a temporary measure until electoral districts could be brought into line with other administrative divisions of the country being created in response to the abandonment of the Provincial Councils. Consequently most of the districts were left unchanged, only a few new districts being created in heavily populated areas.

3.3 Two issues were raised in the debate on the Bill's second reading that were to result in the most significant pieces of legislation during the next 20 years. The first was, inevitably, the question of the appropriate grounds for representation. Sir George Grey remarked of the Bill that "What we hoped for in this Bill was a true representation of population; but nothing of the kind has been given us".[1] He argued that new seats had been created on the grounds of wealth alone. Bowen, who had introduced the Bill, replied:

> If we were to attempt to place the representation of this country on a purely population basis, the effect would be to throw the whole of the representation, or the greater part, into the power of a few centres, and to leave very large districts almost wholly unrepresented.[2]

3.4 The other issue was that of the apparently interminable changes which were necessary to adapt the representation to the changing population. To criticism that the Bill did nothing to solve this problem, Bowen replied:

> In my opinion, no Parliament can be dissolved without redistribution, when a country is growing and changing, . . . and where the population in some places has increased absolutely 50 per cent during the life of one Parliament. I say it is necessary to reform the representation of Parliament every five years, as long as this is the case.[3]

3.5 The Registration of Electors Act of the same year, was introduced as a Private Member's Bill, this time by M. J. Stewart,

member for Waitaki. This Bill, in Section 3, made "the Clerk of every governing body", which included municipal corporations, highway boards, etc, responsible for preparing lists of voters. Qualification for appearance on such lists was payment of a rate struck by such body in respect of rateable property. One consequence of this legislation was that it took responsibility for a person's appearing on the roll (except in the case of those exercising the lodgers' franchise) out of the hands of the voters, and placed it in the hands of the Government. To this extent the legislation may be seen as supporting the view that voting is a right rather than a privilege, and as such potentially egalitarian.

3.6 The third statute of 1875, the Lodgers Franchise Act, also introduced as a Private Member's Bill, by E. J. Wakefield, member for Christchurch East, gave the vote to a person who:

> As a lodger has occupied in the same electoral district separately and as a sole tenant, for twelve months preceding the last day of December in any year, the same lodgings, such lodgings being part of one and the same dwelling house, and of a clear yearly value, if let unfurnished, of ten pounds or upwards . . .[4]

This legislation was promoted on the ground that "Although they [lodgers] were neither freeholders, leaseholders, nor householders, still it was a more conservative class".[5] Nevertheless, the Act, which reflected Imperial legislation of 1867 in its widening of the franchise, was a move in the direction of universal manhood suffrage.

3.7 Apart from the creation of the miner's right, the Lodgers Franchise Act was the first extension of the European franchise since the Constitution Act of 1852. It was, however, a consequence of pressure which had been growing for some years for the introduction of universal manhood suffrage. As early as 1870, C. E. Haughton, member for Hampden, moved a number of resolutions in Parliament giving the right to vote to males over the age of 21 years.

3.8 Haughton's resolutions were not taken up, and the following year W. Gisborne, member for Egmont, introduced a Qualification of Electors Bill which provided for males over 21 years to have the vote, who had a salary of over £100, or were occupants of a room or lodgings in the electorate, and paying £40 for board and lodging, or £10 for lodging only, or were enrolled on the voters' or ratepayers' roll, or entered in the rate-book of any city, town, borough, highway district or road district. This Bill was no more successful than was Haughton's, but its contents were to determine the contents of subsequent legislation.

3.9 With a change of Government in 1873, Reynolds had become a member of Fox's fourth Government, and taken over responsibility for electoral reform. He worked as energetically for universal male suffrage as he had for the secret ballot. In 1873 he introduced an Electoral Bill, a Regulation of Electors Bill, and a Provincial Electors Bill. These, however, were quickly discharged. In the following year he introduced a Qualification of Electors Bill. This allowed for 2 new qualifications for voting above those already existing. These were that the franchise was

given to every male person over 21 years who was a natural-born British subject and who had resided in New Zealand for 6 months prior to the last registration of electors, and to any naturalised denizen subject over 21 years of age, who had the same residential qualifications and had been naturalised or made a denizen for a number of years to be determined. The Miners Representation Acts would be repealed when the new electoral rolls came into force in 1875.

3.10 Section 8 of the Bill stated that so long as the Maori Representation Act 1867, or any amendment of it, remained in force, "no aboriginal native of New Zealand shall be entitled under the provisions of this Act to be registered as an elector, or to vote at an election". This Bill was also discharged.

3.11 Reynolds tried again in 1875 with another Qualification of Electors Bill. This Bill changed the additional qualification from that of the previous year. Now voting would be available to any male person over the age of 21 who was a natural-born or naturalised subject, who had been in New Zealand for 1 year before the last registration of electors, and had resided in the electorate in which he wished to vote for 1 year. The provisions relative to the miners and the Maori remained the same.

3.12 Wakefield, commenting on this Bill when introducing the second reading of his Lodgers' Franchise Bill, described it as "so mixed up with questions relating to miners' rights and Maori votes that the House had been unable to agree to it".[6] Certainly it would have denied those Maori who possessed the property qualifications to vote in European electorates the right to do so in future.

3.13 With the defeat of Reynolds's Bill, the Lodgers Franchise Bill and the Registration of Electors Bill of 1875 became the law. Each reflected Gisborne's earlier Bill, while managing to evade the problems over the Maori franchise of which Reynolds had run foul. Like so much of the legislation of the following decade, these Bills closely reflected the contents of the Imperial Reform Act of 1867.

3.14 The Lodgers Franchise Act soon proved to be barely workable, and a judicial ruling that the Registration of Electors Act enfranchised all ratepayers, no matter how little the value of their property, raised doubts as to whether the legislation was fulfilling its intended purpose.

3.15 In 1876, as a member of Atkinson's Government, Whitaker undertook the task of electoral reform. Grey introduced a private member's Bill in that year providing for universal manhood suffrage. This gave the franchise to every male of 21 years and over who had lived in the same electorate for 6 months prior to the last registration of electors. Grey also introduced a Triennial Parliaments Bill. Both were defeated, Whitaker taking the opportunity to state in the debate on each that he was preparing legislation to be introduced in the following year. In the same year Sheehan unsuccessfully introduced a Bill which provided that native joint holders of a Crown grant could have their names placed in the electoral roll of the district in which their land was situated.

In August, 1877, Whitaker said in Parliament that:

> It was the intention of the Government during the present session to bring in a Bill for the purpose of registering Maori electors. It was also intended to bring in a Bill for the purpose of adopting a new plan for registering other electors. It was also intended to take the census of the European inhabitants, and a census of the Maori population, and then to confer on the Maori population a representation in proportion to that of the Europeans.[7]

3.17 By September of 1877, 1 month before Atkinson's Government expired, Whitaker's Bill had reached the proof stage. He did not publish it until a year later, when Grey was Premier. It provided for the abolition of the different kinds of franchise and of plural voting. All European residents who had lived in an electoral district for 6 months were to be entitled to vote, and all electoral districts were to be of equal size relative to population. The Maori would have a number of seats determined by their population in proportion to that of European voters. Whitaker also recommended the use of the Hare system of proportional representation. The Hare system permits the voter to rank the various candidates in order of preference. Any candidate who receives the necessary quota of votes is declared elected. Votes received by candidates in excess of the quota, and all the votes of the lowest-polling candidates, are transferred to the continuing candidates according to the voters' second choices. A candidate then who has the quota is declared elected, and the process continues until the required number of candidates is declared elected. The Hare system works best with constituencies returning 5 or more members. It also tends to give importance to the individual candidate rather than to parties, a fact of some importance at a time when the legitimacy of parties was by no means universally accepted. Stout had recommended this system in 1875, and its merits and the question of the appropriate system of voting for New Zealand were to be the subject of much discussion for the next 60 years.

3.18 The Grey Government came to power with a policy of making changes in 3 areas of electoral law: the shortening of the duration of Parliament, the extension of the franchise, and the adjustment of representation to population. With the aim of achieving the first of these goals, G. Wallis introduced the Triennial Parliaments Bill in August 1878. "The time," he said, "has not yet come, in my opinion, for annual Parliaments. I can see annual Parliaments and delegation in the distance, but many years may have to elapse before we reach a consummation so devoutly to be wished. Sir, the shortening the duration of our Parliaments from five years to three would be a step in the right direction".[8]

3.19 In the same year Stout introduced an Electoral Bill. This abolished the miners' right and the lodgers' franchise. Qualifications were to be essentially of 3 kinds. Freehold qualification was available to any male of 21 years of age or over in possession of freehold property to

the value of £25 or more for 6 months prior to claiming a vote. Household qualifications were available to any male of 21 years of age or over who within the same period occupied a tenement worth £10—later amended to £5—or more. Residential qualifications were available to any male of 21 years or over who had resided in New Zealand for 2 years or more, and had resided in the electoral district for 6 months or more. All those, further, who were on a ratepayers' roll in a given district were entitled to vote. This included women and Maori ratepayers. Stout's Bill slightly diminished the rights of the Maori to vote in European electorates. Two of the 3 Maori members who spoke on the Bill supported the greater separation the Bill implied, Taiaroa arguing that since it decreased European anxieties about Maori double voting, it might increase the possibility of the Maori gaining more seats.

3.20 It was an amendment to the part of the Bill related to the Maori franchise that was to lead to the Bill being defeated. Maori owners of property of a value of £50 or more had the right to vote, independent of any ratepayer qualification. Stout's Bill would have removed this right. Sheehan moved an amendment to the Bill which would have given Maori holders of property worth £25 or more the franchise as well as those with ratepayers' qualifications. When the Bill was referred to the Legislative Council, Sheehan's amendment was deleted, and after a meeting of representatives of the 2 Houses was unable to reconcile the differences, the Bill was abandoned.[9]

3.21 In 1879, at the very end of his term in office, Grey also introduced a Representation Bill. This provided for the establishment of a Representation Board which would divide the country into electoral districts after each census. It would consist of the Speaker of the House of Representatives, the Chairman of Committees for that House, the Colonial Secretary, the Comptroller and Auditor-General, and the Registrar-General. Electoral districts were to be divided into town districts and country districts. The Bill also provided that:

> The total number of members to be elected for country districts shall bear to the aggregate population of such districts a proportion exceeding by, as nearly as possible, twenty-five per cent the proportion borne by the total number of members to be elected for town districts to the aggregate population of the town districts.[10]

This Bill contained the seeds of both the Representation Commission and the country quota.

3.22 None of these 3 Bills became law under Grey's Government. In October 1879, it gave way to that of Hall. The latter's Government was a grouping of conservative, mainly South Island, farmers maintained in power by the support of Liberal members from the Auckland area. These members demanded, as part of the price of their support, that electoral reforms continue to be pushed through. The recent victories of the Conservatives in Britain under a franchise widened in 1867 had made the members of Hall's Government less timid about electoral change than they might otherwise have been. Thus over the next few

years several Bills were passed, loosely following English precedent, which were for a long time to provide the basic electoral law of this country.

3.23 The Triennial Parliaments Bill became law on 19 December 1879. Only the date at which it was to come into operation had been changed from the Bill of the Grey Government, the Bill coming into force immediately rather than after the next election.

3.24 Hall mentioned increased work as a result of the abolition of the Provinces, and greater voter interest in the activities of the House of Representatives, as justifications for adopting the 3-year term.

3.25 The Qualification of Electors Act, passed at the same time, distinguished between a freehold and a residential qualification to vote. The former was available to those males of 21 years and over having a freehold estate of £25 or more, for 6 months prior to registration. The latter was available to males of 21 years and over, of British nationality, who had been resident in the country for 1 year, and in the electoral district for 6 months prior to registration. The miners' franchise was abolished on the ground that they were adequately provided for under the residential qualification. No provision was made for those Europeans on ratepayers' rolls, they too being considered, presumably, to be given the franchise by the residential qualification. Even so this franchise was less wide than those of either Reynolds's or Whitaker's Bills.

3.26 Relative to the Maori franchise the original Bill had read:

> Aboriginal native inhabitants of New Zealand, including half-castes living as members of a Native tribe, according to their customs and usages, and male descendants of such half-castes by aboriginal native women, are not qualified to be registered as electors under this Act.[11]

This was vigorously resisted by Maori members. H. M. Tawhai, member for Northern Maori, commented:

> I seek for the reason why the Maori should not be entitled to a vote of this kind. With regard to the electoral roll, it is a privilege afforded us by our Queen. Those rights were vested in us by the Treaty of Waitangi in 1840 . . . In that treaty it said that both races in this Island should be under the one rule—under the English rule—and that the Maoris were to be looked upon as loyal subjects.[12]

M. Te Wheoro, member for Western Maori, stated that "the Maoris should continue to vote for the Europeans until you give them increased representation".[13] I. Tainui, member for Southern Maori, invoked the Treaty of Waitangi, and referred to the "many petitions sent down asking for more members. . .".[14] Hall, however, saw no reason for altering the existing Maori representation. Two years later he was to comment on the 4 Maori seats that "The present exceptional mode of dealing with the Maori representation is not only just to the European population, but it is a salutary lesson to the Maoris themselves".[15] The Act eventually gave the vote in European electoral districts to:

> Every male Maori of the age of twenty-one years and upwards, whose name is enrolled upon a ratepayers' roll in force within the electoral district in respect of which he claims to vote, or who is seized in severalty of a freehold estate of the value of £25. . .[16]

The Maori were specifically not entitled to vote "in respect of any other qualification under this Act".[17]

3.27 For the purposes of this Act, a Maori was defined as "an aboriginal native inhabitant of New Zealand, and includes any half-caste living as a member of a Native tribe, according to their customs and usages, and any descendant of such half-caste by a Maori woman".[18]

3.28 The third piece of legislation of 1879, the Registration of Electors Act, developed the 1875 Act of the same name's shifting of responsibility for voters' names appearing on the rolls to the Government. Hall explained its most significant elements as follows:

> the reason why a considerable proportion of the adult males of this colony had not been placed on the electoral roll was not because the franchise did not entitle them to have their names placed on the roll, but because the machinery for doing so was troublesome. An elector had, at a specified time of the year to send in a claim in a certain form, to give certain particulars of his claim, to have it attested in a certain way, to be delivered at a certain place, to a certain officer; and, unless he complied with every one of those requirements, his claim fell to the ground, and his name was not placed on the roll... The Government proposed, therefore, to entirely alter the manner in which the roll was to be made up. They proposed to adopt the principle which was followed in the Old Country. In each electoral district, there would be a Registrar whose duty it would be to see that every man in that district who was entitled to be on the roll was put upon the roll. The roll would not be made, as by law was now required, at any particular time of the year. It could be completed and added to from time to time on its being ascertained that persons existed whose names ought to be added to the rolls.[19]

3.29 The important change in the Election Petitions Act of 1880 was that the hearing of an election petition was to be removed from the jurisdiction of the House of Representatives, and placed in the hands of 2 Judges of the Supreme Court, appointed for that purpose by the Chief Justice, thus removing the trial "from a political to a non-political tribunal".[20]

3.30 Of the last 3 Acts of this group, passed in 1881, the Corrupt Practices Prevention Act followed British precedent in prohibiting all payments, except those in respect of the candidate's personal expenses, printing and advertising, stationery, postage and telegrams, holding public meetings, and hiring committee rooms. Miscellaneous expenses were allowed not exceeding £25. The Regulation of Elections Act introduced no major changes, although it took some time to achieve

this outcome. Two aspects of the original Bill, which were not adopted, are of interest as foreshadowing later events. Speaking to the Bill in 1879, Hall commented:

> In the first place, by the 10th clause, it was proposed to abolish the old fashion of a nomination at the hustings by a proposer and seconder, and to provide that a qualified person desiring to become a candidate might nominate himself by a nomination paper sent in not less than seven days before the day appointed for the poll. If he did that, however, he would be called upon to deposit £10, so that the country should not be put to the expense of a contested election unless there was some reasonable ground for it. . . The £10 would be returned to him if he polled not less than fifty votes. . .[21]

3.31 Stout had, in fact, attempted to introduce written nominations in his unsuccessful Electoral Bill of 1878. Speaking a year later, Hall referred to a part of the Bill, describing the process of voting, which was clearly an attempt to introduce a form of proportional representation:

> The Bill provided that, in all cases in which three members were to be elected by one constituency, no elector should give more than two votes, so that if there should be a slight majority of one way of thinking in a large constituency, and the minority be a large one, the minority should not be entirely unrepresented. In cases of that kind, the effect of such a provision would be that the majority would return two members, and a large minority would return one member. That was a provision which had been introduced in the United Kingdom in large towns, and he had never heard of it not working well. This was the only point in which the present Bill differed from the one which was before the Committee last session.[22]

3.32 This proposal was however rendered redundant by the Representation Act of 1881, which created 91 European electoral districts, each returning 1 member. In moving the second reading of the Bill, Hall had commented, "If I could induce the House to deal with this question in the manner which I believe most satisfactory, I would ask it to assent to a Bill based on what is called Hare's system".[23] Such a system was, however, rejected by the House, and Hall responded by stating that "it seems to me that the only other mode of securing something like that representation of minorities, which is not only just but expedient, is to divide the country into single electoral districts".[24]

3.33 Hall argued that "The leading principle upon which the Bill is framed is that of representation on the basis of population",[25] and the seats were distributed among the provinces according to the percentage of the population found in each. Within each province, however, Hall introduced a system of distribution similar to that outlined in Grey's Representation Bill of 1879. This allowed for the variance from the quota of the population in country electoral districts to be somewhat greater than was the case for other electoral districts.

3.34 The country quota was to be an important element in the country's electoral system for almost 60 years, and it came to be a means of strengthening the rural interest as important as the property qualification in the past. It was justified by Hall as follows:

> The towns have much larger facilities for exercising political influence than the country districts. They get information more readily; they can get at their representatives more readily; and there are also a considerable number of persons representing country districts who, if they do not actually reside within the towns, are practically connected with them. So that in a great many cases, even if the towns did not elect any representatives at all, they would in reality be well represented. Of course it will be understood that I do not for one moment suggest that such should be the case, but I am showing that there are many methods by which towns can utilise their representation much more effectually than the country districts. This applies to some extent also to districts which I may call suburban. We therefore propose in this Bill that the quota for the country districts shall be less than the quota for town districts by, as nearly as possible, 25 per cent.[26]

3.35 Between 1871 and 1881, the European population of New Zealand increased from 254,928 to 487,889. This rapid increase in population created some anxiety about the stability of electoral districts, and gave rise to pressure for a fixed number of seats and a more rational method of determining boundaries. The fact that this increase in population appeared to be taking place in the North Island led members from that Island to argue for more representation. This was also argued for on the grounds of contribution to the revenue, and the greater number of Maori population in North Island Maori districts. Although these arguments were not effective, W. J. Hurst, member for the City of Auckland West, successfully moved that the Bill be amended to the effect that the Act should continue in operation only until 1887.

3.36 With the taking of the census in 1886 and the approaching termination of the 1881 Act, the question of the distribution of seats again became an issue. The movement of population towards the North Island had not, in the event, been as dramatic as many North Island members had hoped. Over a decade was to pass, in fact, before the number of North Island members was to pass that of the South Island. Even so, few members, especially South Island members, can have looked forward to presiding over this shift of power with much pleasure. By now the Stout-Vogel ministry was in power. Speaking on the subject in June of that year, Stout stated his own views on representation:

> I have held the opinion for many years that this matter of representation ought to be dealt with automatically after each census, on a scheme which will prevent it coming on the floor of this House periodically. And, after all, we must look at population as the only thing practicable to be guided by.[27]

3.37 When Stout introduced the Representation Bill of 1886, which created the Representation Commission, he referred back to Whitaker's Parliamentary Representation Bill, and to Grey's Representation Bill of 1879. He noted that he himself had some part in the creation of the latter Bill, and in particular, the composition of the Representation Board it sought to establish. Stout's Commission was, however, differently composed from Grey's Board. The Bill provided for the appointment of the Controller and Auditor-General, and the Surveyor-General, as official members, and for 3 persons, who were not members of the Public Service or Members of the General Assembly, as unofficial members.

3.38 The duties of the Commission were defined as follows:

> Within one month after the passing of this Act, and thereafter within three months after the results of any periodical census are ascertained and reported to the Commission, which the Registrar-General is hereby required to do as early as possible, it shall be the duty of the Commission aforesaid to divide the colony into electoral districts for the apportionment of the representation of the people of New Zealand in the House of Representatives. . .[28]

3.39 The tolerance relative to the quota differed for a borough or city, where it was 1,000, from all other districts where it was 500.

3.40 Speaking of the election of only 1 member from each electoral district, and the ensuing danger of minorities being unrepresented, Stout said

> There is always that danger; but the remedy that we ought to adopt is some system such as the proportional-representation scheme which has been adopted and advocated at Home, sooner than have these single-member constituencies, because they really do not give a minority any chance whatever.[29]

In the event his Bill compromised to the extent of creating four multiple electorates:

> The Commission shall amalgamate the several electoral districts fixed under the preceding subsection for the several cities of Auckland, Wellington, Christchurch, and Dunedin, with their immediate vicinities, into one electoral district for each one of such cities which shall respectively be represented collectively by a number of members which shall be equal to the total number of members assigned to the several electoral districts so amalgamated.[30]

3.41 By the time Stout's Bill had become an Act in 1887, a number of important changes had taken place. The Controller and Auditor-General had been replaced by the Property Tax Commissioner, as a member of the Commission.

3.42 The number of European seats was retained at 91, and all electoral districts returned single members. A number of areas of the country were however retained as special districts. These were:

(a) Road districts, town districts, and outlying districts severally within every riding of a county in cases where a road district exists in each riding.
(b) Ridings of counties in cases where no road districts exist in such ridings.
(c) The Counties of Kawhia, West Taupo, East Taupo, Sounds, Fiord, and Stewart Island; and
(d) Boroughs not exceeding 2,000 inhabitants.[31]

A nominal addition of 18 per cent was made to the population of these districts. This move gave legislative sanction to the country quota. The 4 amalgamated city electoral districts were abolished.

3.43 A uniform tolerance relative to the quota of 750 was also provided for.

3.44 Stout's creation of the Representation Commission was of major importance in the country's electoral history. His belief that, so far as the country quota was concerned, "...as the population of the colony increases this portion of the Bill will drop out, and then representation in New Zealand will be based entirely upon population",[32] was not to appear justified for many years. Further, in June 1886, V. Pyke had commented in the House that with the use of population as the basis for representation:

> it was found that the towns were over-represented, and the country districts under-represented. This was easily explained by the fact that in the towns there was a preponderance of women and children. The population basis had therefore had the effect of giving too many representatives to the towns, and too few to the country. By reverting to the electoral basis laid down in the Constitution Act this injustice would be remedied ...[33]

This situation was accounted for by a provision in the Act which went some way in the direction Pyke desired. It required that the Commission should take into consideration, "The proportion which the number of male inhabitants of the district, other than Maoris, of or above the age of twenty-one years, bears to the entire population, other than Maoris, of the district ...".[34]

3.45 The Stout-Vogel Government was displaced by Atkinson's "Scarecrow" Government in 1884. This was a period of severe financial depression. With the passing of the Representation Act Amendment Act later in the same year, the number of European seats was reduced drastically to 70 as an economy measure. However Seddon, arguing against the change, commented:

> The larger the number of members we have in this House the less danger there is of what is politically known as "log-rolling", and of having legislation in the direction of benefiting particular classes ... The great danger that I see in lessening the representation is that there will be a dominant party such as we have at the present moment on those benches, who are

> supported by the wealth of the colony, who are supported by the land-rings of the colony, and by absentees.[35]

Seddon's accusation that "this is the most Conservative House that has been sitting here since 1879"[36] is perhaps further reflected in its subsequent legislation.

3.46 The Representation Act Amendment Bill of 1889 raised the country quota to 25 per cent. In the Act it was raised even higher, to 28 per cent. This Act also adopted Stout's plan in his Representation Bill of 1886, of creating 4 city electoral districts of Auckland, Wellington, Christchurch and Dunedin, each of which was to return 3 members, and altering the degree of tolerance relative to the quota, for town and country districts. The figure of tolerance of 750 remained for country seats. For the city seats it was reduced, however, to 100. For others the figure of tolerance varied according to the proportion of town and country voters in each electoral district.

3.47 Plural voting was also abolished. In effect this Act implemented those policies which members of Atkinson's Government had argued for when in opposition to the Stout-Vogel ministry.

3.48 Under the Representation Act Amendment Act of 1890, the coming into effect of the Report of the Representation Commission, published in 1889, was made dependent on the passing of that Act of Parliament and not on the Proclamation of the Governor.

3.49 The Electoral Act Amendment Act of 1890 amended a number of sections of the Regulation of Elections Act of 1881. In particular, Hall's recommendations relative to the nomination of candidates, and the payment of a deposit of £10 by the candidate, were adopted. The deposit was not to be returned if the candidate failed to poll 10 per cent of the votes. Further, where an election was contested, a poll was to be conducted automatically, thus eliminating the show of hands.

3.50 A new aspect of this Act was the special provision made for seamen. This must be seen as a direct response to the maritime strike of the same year. The Act provided for a seaman whose name was on the roll to obtain an "elector's right". This right entitled him to vote in any part of the colony for a candidate in an election in the district in which his name appeared on the roll. It was, in effect, the first use of an absentee vote in this country's electoral system.

4 The Liberal Period

4.1 The period of Liberal rule, in the 21 years following Ballance's becoming Premier in 1891, produced one of relatively few new pieces of major legislation.

4.2 The Electoral Act of 1893 was largely a consolidating Act, bringing together the Qualification of Electors Act, the Registration of Electors Act, the Regulation of Elections Act, and the legislation related to Maori representation. The residential requirement that an elector reside for 6 months in the electoral district before registering was reduced to 3 months. The electoral right was granted not only to

seamen but also to commercial travellers. Later in the same year, the Electoral Act Amendment Act extended the right to cover shearers.

4.3 The most important aspect of the Act, however, was its granting of the vote to women with the same qualifications as eligible male voters. It has already been noted that the first move to give the vote to women in parliamentary elections occurred in 1878. In the following year Ballance attempted to amend the Qualification of Electors Bill so as to give women the franchise, but was unsuccessful. The association of the women's franchise with the property qualification led the more radical members to withdraw their support from the Bill. In 1887 Vogel introduced a Women's Suffrage Bill, but this was defeated at the instigation of Seddon after an all-night debate. The strongest support for the women's franchise by no means came invariably from among Liberal members. Seddon, for instance, opposed it throughout these years, but on the other hand Hall vigorously supported it, unsuccessfully introducing a Female Suffrage Bill in 1891 and 1893. Hall's view, shared by many others, was that women represented a powerful conservative force in the community, and he saw their enfranchisement as advantageous to his own relatively conservative position. The 1891 Bill was defeated when the Government inserted a clause giving women the right to sit in Parliament. This ensured the Bill's defeat in the Legislative Council. The 1893 Bill was rendered redundant by the Government's own measures introduced in the Electoral Bill. By 1893, though some of the Liberal Ministers tried to defer the decision until after the election of that year, there was little resistance to the relevant clauses of the Electoral Bill in Parliament, and, with its being passed, women acquired equal voting rights with men. Women, however, were still barred from becoming members of the House of Representatives.

4.4 The definition of a Maori was altered to "an aboriginal inhabitant of New Zealand, and includes half-castes and their descendants by Natives"[1] to account for the granting of the women's franchise. Provision was also made for any Maori possessing a freehold property of the value of £25 or more, or any half-caste having the qualifications necessary for being placed on a European roll, to apply to be placed on the European roll. In such a case they would not be entitled to vote in a Maori electorate. The means of voting in a Maori electorate were also described. In the first instance election was by show of hands, but where a poll was called for:

> On the day of the poll the electors shall enter one by one the polling-booth, and shall each present his voting-paper and, when requested to do so, shall state the name of the candidate for whom he intends to vote, and his own name. The Returning Officer or his Deputy shall thereupon write the name of such candidate on the voting paper, and sign the same, and pass it to a Maori, to be appointed by him, to be associated with him for this purpose, who shall place his initials or name on such voting-paper as witness.[2]

Determination of the boundaries of Maori electoral districts remained in the hands of the Governor.

4.5 The Liberal Government of these years was increasingly gaining support among small farmers, especially as a result of the leasehold tenure introduced in 1892 by J. McKenzie, the Minister of Lands. The lack of sympathy towards the large land owners among these voters found some reflection in the Electoral Act Amendment Act of 1896. There the non-residential qualification was abolished, although the validity of existing registrations was retained. A non-residential qualification was defined in the Electoral Act of 1893 as "a freehold or leasehold qualification ... of which residence forms no part". This change was promoted by Seddon as giving effect to the principle of "one man one vote, one man one registration on one roll", and effectively diminished the value of the freehold qualification.

4.6 Seddon explained how this was achieved:

> If a man has property in several districts, those [votes] held in respect of property are practically dormant votes, and when a by-election takes place he may, by transferring the registration, exercise them, or he may, if he is disposed to do so, at the general election ... I say no such power should be given to any person in the colony. It means giving a preference to property over manhood, and I believe, myself, we should have as our electoral basis manhood pure and simple.[3]

4.7 This Act also strengthened the rural vote in a minor way by extending the elector's right to include musterers. The Electoral Act Amendment Act of 1900 also redefined a "seaman" in line with the removal of the property qualification.

4.8 The Corrupt Practices Prevention Amendment Act of 1895 was an attempt to make membership of the House of Representatives more accessible to poorer members of the community. In particular, the Act stated that no payment for election expenses should be made except by the candidate. Any claim against the candidate would have to be sent in within 30 days of the election. In introducing the second reading of the Bill, Seddon explained the implication of these sections:

> They all heard that there had been no corrupt practice, no payment of expenses; but, after a given period, these election costs were presented. That system was an unfair one. It prejudiced the chances of a poor man with a wealthy man. People who performed these services held over their accounts for six months, and then the claims came upon candidates, and the candidates found them to their cost subsequently. He thought that these accounts should be rendered within a certain number of days after election. That was the law in Great Britain at the present time.[4]

The total expenses for a candidate were set at £200.

4.9 Equally important were the 4 statutes, passed between 1896 and 1903, relating to representation. The Representation Act

Amendment Act of 1896 split the Representation Commission into two, creating 1 each for the North and South Islands. For the North Island, the Surveyor-General and the Commissioners of Crown Lands for Auckland and Taranaki were the 3 official members. Two unofficial members were appointed to each Commission. The 2 Commissions were to initially sit together to determine the number of seats for each Island, and then each Commission would separately determine the boundaries of the electoral districts in the Island for which they were responsible. The legislation appears only to have had the purpose of speeding up the procedure for determining the electoral boundaries, and thus the preparation of the rolls.

4.10 The Representation Act of 1900 increased the number of European members to 76. When one considers that this was to remain the number of members until 1967, the introduction of the Bill appears remarkably casual. Seddon commented:

> I should not have touched this representation question had it not been for the fact that in the debate on increasing the numbers of Ministers I was told, from all sides of the House, that it would give too great representation to the members of the Treasury benches unless we increased the number of representatives in the House.[5]

Further, in view of his opinion that "from time to time as population increases we ought to have increased representation",[6] and his preference for more members rather than for "chopping and changing the boundaries of the electorates, every five years, as we have been doing. . .",[7] the persistence of the number of seats determined on by this statute needs, perhaps, some explanation. The reason is possibly to be found in the fact that the number of members had come to be seen as related to the question of whether Parliament should be controlled by individuals or parties.

4.11 It will be remembered that the Hare system, which had been widely supported in the 1870s and 1880s, was generally considered to be favourable to individuals rather than parties in Parliament. The Canterbury Trades and Labour Council's encouragement to its members, in 1890, to "vote only with your party",[8] however, was typical of a growing trend in the country's political life.

4.12 In 1891 a Constitutional Reform Committee was set up by Parliament to examine the governments of other countries "with a view to such modifications of the existing system of government in New Zealand as will diminish the evils of the present party-system . . .".[9] The Committee's conclusions were relatively conservative. It commented that "many and very serious evils are inseparably connected with, and spring from, the system of party government here".[10] It found the most deplorable aspect of party government to be the tendency for public moneys to be used by the party in power to strengthen its position. It also recommended "the present Government of the Swiss Federation"[11] as a suitable model for this country.

4.13 In 1894 a further Constitutional Reform Committee was set up to examine more closely the value of the Swiss system for this country. This committee resolved "... that party Government, as it exists in New Zealand, is not adapted to obtain the best results in Government and that a change is requisite".[12] As, however, a member of the Committee, Major W. J. Steward, had independently introduced a Bill into Parliament, the committee made no further recommendations.

4.14 Steward's Elective Executive Bill provided that the executive should be appointed by ballot of the House of Representatives rather than by the Premier. The defeat of Steward's Bill may be said to have effectively ended this debate, although J. A. Hanan continued over the next 2 decades, from time to time, to unsuccessfully introduce an Elective Executive Bill. With party lines being increasingly clearly drawn and dominant in these years, this argument may perhaps be seen as having been resolved in favour of party control, such resolution sapping the question of the number of members of any vital interest.

4.15 In the same Act the tolerance relative to the quota for any electoral district was increased to 1,250 in the case of rural electorates. The increase in the tolerance is related by Seddon to his argument for increasing seat numbers, rather than changing boundaries as the population increased. He stated:

> When you alter the quota you have to chop and change nearly every electoral boundary in the colony, and just as a member knows the requirements of his district a portion of it is taken away, and he is put into another where he does not know the requirements and does not know the people. It is right enough in the larger centres of population. A change there does not trouble the representatives much, because, as a rule, it is a curtailment—a drawing-in—but, as regards the suburbs, new districts are created, and the old members are knocked about from pillar to post.[13]

The increase in the figure of tolerance, however, just as possibly reflected the increasing dependence of the Liberal Party on the small farmer for support. When the latter's support tended to move in the direction of those members who were eventually to form the Reform Party, the situation was bound to change. In the Electoral Act of 1902 the figure of tolerance was dropped to 550 with little discussion.

4.16 That Act was again a consolidating Act. Thus the Representation Acts, the Corrupt Practices Prevention Acts, and the Election Petitions Act were incorporated in the existing Electoral Act. In one area, however, that related to the qualification of electors, the law was redrafted in what is fundamentally its still existing form:

(1) The members of the House of Representatives shall be chosen in every electoral district by the votes of the inhabitants of New Zealand who possess within the district the following qualification, that is to say:

(a) Every adult person who has resided for one year in the colony, and in the electoral district for which he claims to vote during

the three months immediately preceding his registration on the roll of the district, and who is a British subject either by birth or naturalisation, or a half-caste, is entitled (subject to the provisions of this Act) to be registered as an elector and to vote at the election of members for that district for the House of Representatives.

(b) Every person who on the passing of this Act is lawfully on the roll of the district . . .[14]

4.17 The City Single Electorates Act of 1903 provided for the division of each of the 4 city electorates, which had each in turn returned 3 members, into 3 electorates returning 1 member only. Sir Joseph Ward, who moved the Bill's second reading, explained:

> The fact remains that many who have the extraordinary advantage of exercising three votes in the cities when it suits them think so little of it as to throw two of their votes away, and use their other to plump for one man. The plumping system has been carried out to such a scientific point that a minority to a very large extent can, by co-operating with people whose political opinions are not in accord with their own at all, succeed in returning a member, or even the three members, which they could not have done but for that concentration and abuse of the existing system.[15]

With the abolition of these 3-member electorates, the system of 1 person having 1 vote to return 1 candidate only in 1 electoral district became a permanent element in the country's political system. This change, however, by no means ended the debate about how that member should be elected.

4.18 In 1905, Ward also introduced an Electoral Act which he described as largely a consolidating measure, the justification for which was questioned by a number of members. Nevertheless a number of changes of some importance were made in the law.

4.19 The deposit of a candidate was to be forfeited if he received less than 25 per cent of the votes. The move was widely criticised. Sir William Russell's comment, "To a rich man £10 may be a matter of absolute indifference, or of little consequence: it may deter many an able but poor man from embarking on a political career",[16] may be taken as typical. It may, however, be seen as reflecting Ward's hostility to minority parties competing in elections.

4.20 The Act also allowed for voters to obtain a voting permit which would allow them to vote anywhere in the country for a candidate in the electorate in which they were registered. Thus absentee voting became available to all registered voters.

4.21 A change of some importance for the administration of the country's elections was heralded by Section 30, which provided that "The Governor may from time to time appoint some fit person to be Chief Electoral Officer, who, under the direction of the Colonial Secretary, shall be charged with the duty of carrying this Act into

effect". The Chief Electoral Officer was to head an Electoral Department charged with co-ordinating the work of the Registrars, 1 of which would be appointed for each electorate. After the closing of the general roll each year, the Chief Electoral Officer was required to print a roll, and the Registrar for each district was to prepare and print a supplementary roll. These printed rolls were the legal rolls.

4.22 With the organisation of the rolls on a national basis, Ward noted that "special machines have been imported for the purpose of consecutively numbering the electoral claims and rights . . .".[17] Interest in mechanising the electoral process extended to including in the Act a provision for the experimental use of vote-counting machines.

4.23 The organisation of the rolls on a national basis was clearly linked to their expected wider use. Ward commented:

> There is also the advantage of having in the course of time an expert staff, which will greatly facilitate the issue of the rolls when required for a referendum or a by-election, or in the contingency, in the near future, of the Education Boards or municipalities or other public bodies desiring to use these rolls for the purposes of their elections.[18]

4.24 Although the Act provided for the Chief Electoral Officer to be responsible to the Colonial Secretary, under whose jurisdiction electoral matters had come in the past, in the following year the Electoral Department became a branch of the Department of Internal Affairs. As was later explained,

> the reason why the electoral work was originally with Internal Affairs, and why it was transferred back to Internal Affairs in 1945 [sic] was that it is desirable to have the whole electoral system, that is, Parliament and local body, under the one general control, and that the Parliamentary electoral system is tied up with the constitutional work affecting Parliament etc, that is handled by Internal Affairs.[19]

4.25 Ward had hoped in this Act to provide for the preparation of rolls for the Maori electoral districts, but had been dissuaded by the lack of time before the forthcoming election. Maori representation was, however, the subject of lengthy comment in the debate on the second reading. Support for discontinuing Maori representation, for which the preparing of Maori rolls was a preliminary step, was frequently expressed, by members of all parties. Massey commented that "I believe that the time is coming when the special representation of the Maori race will be done away with".[20] T. E. Taylor, member for Christchurch City, argued that "Maori representation in the year 1905 is an anomaly and an absurdity, and something that cannot possibly be defended, and that the experience of that special class representation has been disastrous".[21] J. (later Sir James) Carroll, Minister of Maori Affairs, argued:

> I do believe that the Natives would be better off if the Maori Representation Act . . . were repealed . . . At the present time

> the whole Native population of the colony is represented by only four members, consequently the representation must be of a restrictive order. But if you make a change in the direction of allowing the Natives to be placed on the general roll, you will have Native interests, especially in the North Island, represented by every member from the districts in which there are Maori constituents, with the exception, possibly of the cities . . . It does not necessarily mean that there must be a majority of Maoris in a district to insure proper representation for them on the part of their representative. The very fact of Natives being on the roll and exercising their privilege as voters will bring the representative or candidate to attention at once . . .[22]

The only Maori member to speak on the issue, Hone Heke, however, defended Maori representation:

> I say, it is entirely ungenerous on the part of the European community and the European members of this House to raise the question to do away with the Native voice in Parliament. Let me take Cape Colony as an illustration: what is the position there in regard to the franchise? The question raised by the European community there is not to continue the assimilation of the franchise. The Natives and Europeans there vote for one candidate, whether that candidate may be European or Native, and the cry raised there during the last few years has been to urge upon the Government of the Colony to bring down legislation to do away with the right of the franchise extended to the Natives. And why? Because the Europeans recognise that the Native population is a large one, and they fear, according to their ways of looking at things, that there is a danger—that instead of having a European Parliament there is a possibility in the near future of the Europeans being controlled by a Native Parliament.[23]

This statement is of interest in that it marks a shift in the Maori attitude towards the Maori seats from one of indifference, to one of determination to retain them as important symbols of, and means to, the survival of their cultural identity.

4.26 With the passing of the Reprint of Statutes Act 1895, a Commission had been established to prepare an edition of Consolidated Acts. These included the Electoral Act. After 1908 the electoral law was to be found, virtually unchanged from the Electoral Act of 1905, in Division II of the Legislative Act.

4.27 An unusual innovation in the law was, however, to be introduced in the Second Ballot Act of 1908. This Act provided that no candidate should be elected to Parliament unless he had over 50 per cent of the votes. Where that did not occur in the first ballot a second ballot was to be held in which the only candidates would be the 2 who polled highest in the first ballot. This was essentially a form of preferential voting. Ward, commenting on the Bill, stated that it was

based on "the very important principle that the majority should rule in everything".[24] And examining the electoral returns for 1899, 1902, and 1905, he had come to the conclusion that, "Anomalous as it may appear, the tendency is to return a larger number of men representing minorities to the House of Representatives".[25] Ward's arguments here must be read in conjunction with his arguments against multi-member city electorates. Both express a fear of the success of a "minority" or third party, or even of a third party having any impact on the electoral result. It was no secret that the third party in question was the Labour movement. Massey commented that "There is not a man in this House—there is not an elector throughout the length and breadth of this country, who does not know it is brought down for party purposes; brought down to prevent vote-splitting. . .".[26]

4.28 As party government developed in New Zealand, the fact that it did not evolve into a 2-party system until 1935 meant that, outside the arena of Parliament, an intense debate took place over which electoral system would most appropriately cope with the complex political situation.

4.29 In 1911, G. Fowlds, member for Grey Lynn, and a Liberal member sympathetic to Labour aspirations, introduced a Proportional Representation and Effective Voting Bill. This allowed for the country to be divided into 19 electoral districts, returning between 3 and 6 members. The method of electing members was as follows:

> 4. Each voter shall have one vote only, but may vote in the alternative for as many other candidates as he pleases not exceeding four; and his ballot-paper shall be deemed to be given to the candidate opposite whose name is placed the figure "1"; but it shall be transferable to the other candidates in succession, in the order of priority designated by the figure set opposite their respective names in the event of its not being required to be used for the return of any prior candidate.
> 5. Subsection one of section one hundred and thirty of the principal Act is hereby repealed, and in lieu thereof the following is substituted, namely:
>
> (1.) The voter, having received a ballot-paper, shall retire into one of the inner compartments provided, and shall there, alone and secretly, insert opposite to the names of the candidates for whom he wishes to vote the figures "1", "2", "3", "4", "5", in the order of his preference but shall not place the same figure opposite more than one name. . . .

The count of votes proceeded by first dividing the total number of unrejected ballot papers by the number of members to be elected, plus 1. A candidate who achieved the quota on the strength of the first preference votes was declared elected. Votes for that candidate other than those needed for his election were transferred to other candidates according to the voters' second choices. The candidate with the lowest number of votes was eliminated and his votes transferred to the continuing candidates according to the voters' second choices. These

processes were continued until the required number of candidates had achieved the quota and were declared elected.

4.30 This Bill only reached its first reading before disappearing with the collapse of the Ward Government.

4.31 A number of Liberal members were not alone in being sympathetic to the system of proportional representation. In their manifestos for the election of 1911, the Reform Party promised that the Legislative Council would be replaced by a Council elected by a system of proportional representation, and the Labour Party promised that the Legislative Council would be abolished and members of the House of Representatives elected by a system of proportional representation.

4.32 One other Act of these last years of the Liberal Government may be noted. After the election of 1908 one of the judges presiding at the hearing of an election petition relative to the Northern Maori seat had severely criticised the legislation governing the conduct of elections in Maori electorates. As a result the law on this matter was revised in the Legislative Amendment Act of 1910. In particular, voting by show of hands was abandoned in favour of voting by declaration. On the question of a Maori roll, Ward commented "I think more time should be given to the Maoris before we compel them to adopt the European system of elections".[27]

4.33 This Act also provided for an electoral census. While the legislation had enjoined Registrars to make every effort to ensure that all eligible persons were on the rolls, and Police Officers, Post Masters, Clerks of Court, and other Government officers were encouraged to assist in preparing them, this had not proved an adequate means of ensuring complete rolls. Thus in 1905, with the establishment of the Electoral Department, staff were appointed to systematically place persons on the roll. The provision of a census, which could take place from time to time as directed by the Minister, placed responsibility for all eligible persons appearing on the roll in the hands of the Government rather than the voter.

5 The Reform Period

5.1 When the Liberal Party lost power in 1912, it was replaced briefly by the Government of Thomas MacKenzie. He had supported the Second Ballot Bill in 1908 because "I am dissatisfied with our electoral law in every respect, and I am going to support any change that may be proposed, in the hope that finally we may obtain some useful measure".[1]

5.2 During his own brief Government, a Bill was drafted which would have introduced a system of preferential voting, and thus displaced the Second Ballot Act. This Bill attempted to embody the best features of the systems in operation in Victoria and Western Australia, and the recommendations of the English Report on Electoral Systems of 1910, relative to a preferential voting system for single-member electorates. The making of second and further preferences was made optional in line

with the systems in Queensland and Western Australia, and unlike the provisions of Victorian legislation of the previous year.

5.3 The voter was required to place the figure 1 opposite the name of the candidate to whom he gave his first preference, and the figures 2, 3, 4 etc, opposite the names of other candidates in order of preference. If, on counting the first preference votes, it was found that no candidate had received a majority, the candidate with the lowest number of votes was declared defeated. His ballot papers were then distributed among the remaining candidates according to the second choice indicated on them. This procedure was continued until a candidate was found to have an absolute majority.

5.4 This Bill disappeared with the defeat of the MacKenzie Government. The Legislative Amendment Act of 1913, the first piece of legislation passed by Massey's Reform Government, made 2 significant changes in the law. In the first place, the figure of tolerance relative to the quota for each electoral district was changed, in the case of urban electoral districts, from 100 to 250.

5.5 The second important provision of this Act was that of abolishing the second ballot in line with Massey's election promise. He had originally hoped to achieve this in the following year as part of an Electoral Bill. But there was clearly some pressure for urgent change of the existing system in the community at large. In 1912, at the time of the drafting of the preferential voting Bill, the Chief Electoral Officer had written to G. W. Russell, who as Minister of Internal Affairs was in charge of electoral matters, that:

> In view of the movement that is on foot in Wellington to form a league to urge the adoption of proportional representation as against the preferential system now under consideration by the Government, might I suggest that the Honourable Prime Minister cable to the Premier of Tasmania for information in connection with the proposed amendment of the Electoral Law.[2]

5.6 With the change of Government, F. M. B. Fisher had been placed in charge of the electoral system. Fisher was a supporter of proportional representation.

5.7 In 1913 the Chief Electoral Officer was sent to Tasmania to examine that state's system of proportional representation. He reported:

> Regarding the application of proportional representation to New Zealand there would be no difficulty so far as the parliamentary poll was concerned, but I see very great difficulties in the way of carrying out a poll under the proportional system (which requires large constituencies) simultaneously with the licensing and national prohibition polls. The whole position would become exceedingly complicated. . .[3]

He also commented that in Tasmania few voters understood the system by which they elected their representatives.

5.8 It is not clear how seriously the difficulties presented by the requirements of the licensing poll were taken, but in areas where such problems were absent some effort was made to push forward with the introduction of proportional representation.

5.9 The Local Elections (Proportional Representation) Act of 1914, provided that:

> In lieu of marking his voting paper in the manner prescribed by the principal Act, the voter at an election pursuant to this Act shall place in the squares respectively opposite the names of three candidates the figures 1, 2, and 3, so as to indicate the order of his preference. He may also indicate the order of his preference for as many of the other candidates (if any) as he pleases by placing in the squares respectively opposite their names other figures next in numerical order after those already used by him.[4]

This system was described by Fisher, in introducing the Bill's second reading, as "being the Tasmanian system, with a slight variation upon the lines which were indicated by Lord Courtney, and that is: it should not be compulsory to extend the preference right through the ballot paper to the full number of candidates".[5] The system was intended to be experimental and its use by local bodies was optional. It was used in various Christchurch local body elections until 1933, but remained in legislation as an option until the 1960s.

5.10 Over many years dissatisfaction had been growing over the working of the Legislative Council. In 1891 the Liberal Government on coming to power had passed a Legislative Council Act which made all future appointments to the Council of 7 years duration only, with the possibility of re-appointment. This had apparently had little effect in ensuring the easy passage of Bills passed by the House of Representatives. In 1896, at a time when prohibition was a sensitive electoral issue, the Council had thrown out an Alcoholic Liquors Sale Control Bill. Furthermore, only by a number of ingenious strategies was Seddon able to get the Council to pass an Old Age Pensions Bill in 1891, and in 1901 it had repeatedly blocked a Referendum Bill. This Bill attempted to make liquor legislation, and the subject of Bible-reading in schools, matters to be decided by referenda. The possibility of using the referendum as a way of getting Bills passed which had been blocked by the Council was reflected in other legislation.

5.11 Steward also introduced at this time a series of Legislative Council Election Bills. Although these were unsuccessful, the need for change in the Council, if not its abolition, had become, as already noticed, the cry of both the Reform and Labour candidates during the 1911 election campaigns. Thus in 1914 the Massey Government passed the Legislative Council Act.

5.12 In that statute, the Council was made elective, a somewhat elaborate system of proportional representation being introduced. The number of seats being 40, the Representation Commissions meeting together were required to distribute these seats between the North and

South Islands on the basis of population. Each Island was then split into two electorates of equal size. Each electoral district would thus return several members. The method by which the voter selected the candidates he or she wished elected was the same as that for electing local body candidates. This Act, however, was never implemented, the Legislative Council Amendment Act of 1920 deferring its implementation indefinitely.

5.13 The *Auckland Star* commented:

> Perhaps it is just as well the acceptance of the party truce and the formation of the National Government [during the war] prevented the Act coming into operation as it passed on to the Statute Book. At any rate, Mr Massey has realised in the interval that a Council elected on a broader franchise than the other branch of the Legislative and freed from Ministerial control might become a very grave menace to what have for seventy years been regarded as the prerogatives of the House.[6]

5.14 The attention of the electorate and its representatives drifted away from the Legislative Council over the next few years. However, interest in the relative merits of proportional representation and preferential voting remained alive. Yet while the liveliness of the interest in this subject makes some attention to it necessary, the fact that it had so little practical result justifies a degree of selectivity.

5.15 During the term of the Massey Government, 2 members, W. A. Veitch and J. McCombs, repeatedly but unsuccessfully introduced Bills providing for a system of proportional representation. Veitch introduced a Proportional Representation and Effective Voting Bill in 1914, each year from 1916 to 1919, and 1921. McCombs introduced comparable Bills in 1921 and 1922.

5.16 Veitch's House of Representatives was to consist of 4 electoral divisions, 2 for each Island, a total of 80 seats being distributed between these 4 electoral districts according to population. The method of marking the voting papers was that the voter would place in the squares opposite the names of 3 candidates, the figures 1, 2, and 3, in order of his preference. If he desired he could also indicate his preference for as many other candidates as he pleased. A candidate who received the required quota of votes on the first choice votes would be declared elected. The total of the voting slips for the elected candidate would then be examined for the second choices indicated thereon. A fraction of these second choice votes would then be distributed among the remaining candidates, depending on the relation between the number of surplus votes for the successful candidate and the total number of votes received by him. The votes of the candidate with the fewest votes would be distributed to other candidates according to the next choices indicated on them. These processes would be continued until the required number of candidates was elected.

5.17 McCombs's Bill of the same name, and the Proportional Representation and Country Quota Bill of 1921–2, were closer in form to

that of Fowlds than to that of Veitch. They divided the country into 17 electoral districts, each returning not less than 3 candidates. The means of voting was similar to that in Fowlds's Bill. The means by which votes surplus to the quota for an elected candidate were distributed among other candidates was a fractional system similar to that of Veitch.

5.18 McCombs remained the most vigorous supporter of proportional representation in the Labour Party for the rest of the decade. However, in 1923 the Government circulated a Legislative Amendment Bill which was intended to introduce compulsory registration, and preferential voting. Compulsory registration was then separated from this Bill, and introduced in 1924 in the Legislative Amendment Bill (No.2), which will be discussed shortly. In the meantime, the provisions for the introduction of preferential voting in single-member rural electorates were combined with further provisions which created 4 multi-member electorates in the 4 main cities, the members for which were to be elected by a system of proportional representation. This curious attempt to combine the 2 main rivals to the first past the post system of voting pleased nobody and was quickly discharged. This was the last serious attempt to introduce a method of proportional representation into the country's electoral system.

5.19 In 1925 Massey died and a regrouping of political forces led to the founding of the United Party, with Ward as its leader. The United Party in its 1928 election manifesto announced that it "disfavours the present unfair system of electing parliamentary members", and promised to ensure that candidates represented an absolute majority of the electors by adopting the preferential voting system.[7] The argument for the necessity of an absolute majority for winning candidates reflected that of Ward in introducing the Second Ballot Bill in 1908. With the victory of Ward's party in the election of 1928, the Chief Electoral Officer was sent in the following year to Australia to examine the Commonwealth system of preferential voting. However, with the death of Ward in 1930 and his replacement as Prime Minister by G. W. Forbes, and the obvious fact that the approaching depression was moving people's attention elsewhere, the impetus to change the electoral system began to flag. In that year, C. H. Clinkard introduced an Electoral Amendment Bill which would have provided a system of preferential voting very similar to that introduced in 1912 by the MacKenzie Government. It came, however, to nothing.

5.20 With the approach of the 1935 election W. (later Sir Walter) Nash, speaking as President of the Labour Party, was quoted as saying that "there was no provision in the party's platform for an alteration in the voting system ... He would regard an attempt to change the system at this stage as simply an expedient to save the Government from disaster".[8] With the victory of the Labour Party in the election of that year, and the emergence in 1936 of the National Party as the only viable political alternative, reconciliation to the first past the post voting system and the disappearance of discussion of the alternative systems of voting occurred with remarkable rapidity.

5.21 Although the most discussed electoral matter of the time, the debate on the most appropriate voting system for the country was not in the end to result in any legislation. Those laws which were in fact passed were a very miscellaneous group.

5.22 The Legislative Amendment Act of 1914 allowed for the registration of Maori voters, though this was never acted upon. It also extended the electoral right to theatrical performers.

5.23 No legislation relating to the electoral system was passed during the First World War, except the Parliamentary Elections Postponement Act of 1916, which effectively deferred elections until the end of the war.

5.24 In 1919, the Women's Parliamentary Rights Act, following British precedent, extended the same conditions relative to being a member of the House of Representatives to women as applied to men.

5.25 With elections occurring again in 1919, it was also found necessary in that year to arrange for votes to be cast by the members of the armed forces in New Zealand but unable to be in their electorates. While the Expeditionary Forces Voting and Electoral Rights Amendment Act provided for what was seen as a unique situation, the experience gained in administering that statute may have facilitated the introduction shortly afterwards of postal voting.

5.26 This form of voting had been considered since as early as 1918. In the following year the Chief Electoral Officer drew the attention of the Prime Minister to the fact that a system of voting by post was in use in Victoria and that it gave general satisfaction.[9] Even so a system of voting by post was slow to develop in this country owing to a preoccupation at this time with the secrecy of the vote. Postal voting was finally introduced in the Legislature Amendment Act of 1927. A. D. McLeod, in introducing the second reading of the Bill, commented, "My officer informs me that it is copied practically *in toto* from the Commonwealth Act".[10]

5.27 In the same year an Electoral Act was passed. It was entirely a consolidating measure.

5.28 In the Report of the Representation Commission in 1917, the North Island Commission had commented:

> This Commission desires to call special attention to the difficulty experienced in obtaining electoral boundaries that will conserve community of interest and at the same time keep the population of each electorate within the limits at present prescribed by the Act. It is of the opinion that the obtaining of suitable boundaries would be facilitated by increasing the "margin" allowed in respect of rural population from 550 to 1,000.[11]

This recommendation was taken up, one assumes, with some alacrity by the Government in the Legislature Amendment Act of 1920 where the tolerance provided for was in fact 1,250. Not surprisingly, McCombs opposed the measure, and also took the opportunity to attack the

country quota as striking "at the root of the whole of the principles underlying our representative institutions —that people, and not land, shall be represented".[12]

5.29 In introducing the second reading of what was to become the Legislature Amendment Act (No. 2) of 1924, which introduced compulsory registration, Massey commented that:

> We have had enrolments by Post Office Officials, and we have had enrolment by temporary employees of the State who were sent through the country for that purpose. None of those systems have proved satisfactory, and at best they have turned out to be mere expedients. In connection with every one of them we have had the usual stock of complaints after elections.[13]

5.30 In 1921 Downie Stewart had stated in Parliament that compulsory registration was under consideration.[14] Later in the same year, a time of relatively severe economic depression, the Chief Electoral Officer, writing to the Prime Minister, had introduced another factor into the deliberations.

> I believe the expenditure in connection with a General Election could very materially be reduced if a system of compulsory enrolment and notification of change of address were adopted for compiling Parliamentary Electoral Rolls. It is the large amount expended on additional clerical assistance that makes the expenditure so high. The amount that could be saved in this direction alone is estimated at £14,000.[15]

The compulsory compilation of the rolls, the legislation for which was also based on the Commonwealth Act, was found to be both effective as to numbers of voters enrolled, and inexpensive in that £10,000 was saved compared with the cost of compiling the rolls for the 1922 election.[16]

5.31 There was from that year until the coming to power of the first Labour Government only 1 piece of significant legislation. Even that turned out to be transient in its effect. The Electoral Amendment Act of 1934 increased the length of the parliamentary term to 4 years. In 1932, the Finance Act had extended the term of the existing Government by 1 year to 1935 on the grounds, as Forbes commented, that "There has been no period in the history of this country when things have been so difficult, and naturally any man with forethought must realise that it will take some time to so arrange our plan of readjustment as to enable this country to get back to normal conditions".[17] At the same time he also expressed a preference for a permanent 4-year period over a 3-year period. In speaking to the Bill in 1934, he argued:

> As far as one can see, the business confronting every Government in the civilised world is becoming greater and greater, heavier and heavier year by year; and it is in the interest of this country and of every other country that there should be sufficient stability and a sufficiently long term of

> office to enable the Government to think out its measures and put them into effect. . . The more one examines the principle of the extension of the life of Parliament, the more one is convinced that, having in mind the real interest of the people of the country, a longer term than three years would be beneficial . . . If honourable gentlemen opposite are fortunate enough to be in office at any time, they will agree with me that, if a policy is to be carried out, it requires some little time . . . to enable the people of the country to understand and appreciate it.[18]

The following year the Labour Party was to have an effective opportunity to comment on Forbes's arguments.

6 The First Labour Government

6.1 The Labour Party came to power in 1935, and in 1937, by means of the Electoral Amendment Act, restored the term of Parliament to 3 years. In committing the Bill, H. G. R. Mason said only that:

> Whatever may be thought as to the question of the proper life of Parliament, as far as this Government is concerned, it believes that Parliament is a trustee for the people and should not enlarge the life of Parliament except in so far as the people have definitely assented to that enlargement. Pursuant to that view, the Government has taken steps to restore to the people the right which they previously had, a right which, it seems to this Government, was wrongly taken from the people.[1]

Mason is here saying that such a change should have been submitted to the electors, at an election, before it became law.

6.2 The major part of the Bill, and the debate, concerned itself with bringing the procedure for Maori voting more into line with that of the elections for European seats.

6.3 In its 1928 election manifesto, the United Party had promised "To provide the Maori Electors with a Roll for the Four Maori Electorates [and] in the absence of such a Roll, the scrutineers will be allowed in the Public Booths".[2] With the death of Ward in 1930 and the replacement of his Government by that of Forbes, however, no legislation was to be passed. W. A. Veitch, who was Minister in Charge of the Electoral Department under both Governments, had asked the Chief Electoral Officer in October of 1930 about the feasibility of preparing Maori Rolls, and the latter had replied that he saw "no difficulty in carrying out the work, although it is quite possible that at first Maoris would be somewhat dubious about enrolling under the compulsory provisions, as applied to Europeans".[3] Nothing ensued at that time.

6.4 The possibility of scrutineers being present in booths during polling in Maori electorates had for many years been argued from a number of quarters. As early as 1922 members of the Arawa tribe had unsuccessfully petitioned the Prime Minister for scrutineers to be present while Maori electors exercised their vote.[4]

6.5 In 1931 H. E. Holland raised the question in Parliament of whether it would be possible to "introduce legislation to bring the Electoral Act, in its relation to scrutineers in the booths of Maori polls, into line with the section of the Act governing the appointment and functions of scrutineers of pakeha polls?"[5] In the draft of a reply, which was apparently not delivered, it was stated that "It is not considered desirable to amend the Electoral Law in the direction suggested, as under the present system of voting by Maoris [i.e. by declaration] the secrecy of the ballot could not be so easily maintained if persons other than the officers were allowed to be present during the voting hours".[6]

6.6 A year later attention had shifted to ensuring the secrecy of the poll. Tirikatene asked in Parliament:

> Will the Prime Minister take immediate steps to amend the electoral laws, with the object of placing the Maori people on the same electoral footing as the pakeha and to enable elections of Maori members to Parliament to be conducted on the same basis of secrecy as those of all other members of Parliament?[7]

He further described the system of Maori elections under the existing system as "extremely farcical".[8] Forbes answered that this matter would be gone into when the electoral law was again examined.

6.7 This reply indicated that the Government had no intention of proceeding with either the preparation of the Maori rolls or increasing the secrecy of Maori elections in the foreseeable future. The matter, however, was kept alive to some degree by a resolution of the Public Accounts Committee in 1934, to the effect that:

> The Committee desires to call the attention of the Government to the present unsatisfactory position in respect to the facilities afforded the Maori when voting for Parliamentary candidates; there being at present no electoral roll for Maori voters.
>
> Further, half-caste Maori voters have the option of voting for either European or Native candidates, and there is very little method of preventing the half-caste Maori from exercising two electoral votes, and under these conditions the abuse of the voting privileges by Natives is facilitated.[9]

6.8 When asked by Forbes to comment on this recommendation, the Chief Electoral Officer replied:

> I am doubtful as to whether the time is opportune to call upon the Maoris to register in the same manner as Europeans, as the compilation of a reliable roll would be a somewhat difficult task and lead to confusion on Election Day. There are many Maoris who are educated and capable of filling up an application for enrolment form, but the great majority of Maoris would experience difficulty.
>
> With regard to the method of voting, I do not see any difficulty in devising a system which would give general satisfaction, and suggest the following proposal for your consideration:

> When a Maori applies to the Polling Officer to vote, he shall be called upon to complete an application to vote. In the form of application he shall state his name, tribe and hapu, and declare that he has not already voted at the Election being held. The application shall be signed by the Maori and witnessed by the Deputy Returning Officer. If the Deputy Returning Officer and his associates are satisfied that the Maori is entitled to vote, the ballot paper, with the names of the candidates printed thereon (European method), shall be given to the elector, and he shall mark the ballot paper in the same manner prescribed for European Elections. I think the Maoris are intelligent enough to be able to mark a ballot paper when fully instructed how to do so by the associate.
>
> This method of voting would ensure secrecy and satisfy the Maoris.[10]

6.9 Tirikatene, in 1935, commented in Parliament again on the necessity for a secret ballot in Maori elections.[11] With the change of Government later in that year it seemed likely that Maori rolls might soon be printed. Maori rolls had been a part of Labour Party policy since 1925. In that year it had held a conference with Maori leaders at Parewenui Pa, near Bulls, at which it had been recommended, among other things, that a printed Maori Roll should be prepared.[12]

6.10 Thus in 1936, Tirikatene, who as a member of the Ratana Church had thrown his weight behind the Labour Government, asked in Parliament "whether any steps had been taken towards the preparation and printing of the rolls that would be required in the adoption of the system of voting by ballot in Maori elections".[13] Later in the year the matter was raised yet again by Nash and referred to the Chief Electoral Officer. The latter's memorandum to Savage, who was Minister in Charge of the Electoral Department, repeated word for word the argument of the memorandum of 1934 in response to the Public Accounts Committee's resolution.[14] A further resolution of the Public Accounts Committee in 1936, drawing attention to the resolution of 2 years earlier, elicited the same response when referred to the Chief Electoral Officer.[15]

6.11 That part of the Electoral Amendment Bill introduced into Parliament in 1937, which responded to these pressures, followed closely the recommendations of the Chief Electoral Officer:

> 3 (1) Every person proposing to vote at any election of a Maori member of the House of Representatives, pursuant to Part IV of the principal Act, shall make to the Deputy Returning Officer at the polling-place at which he proposes to vote an application in the prescribed form for a voting-paper.
>
> (2) On receipt of such application the Deputy Returning Officer or his associate shall put to the person proposing to vote the following questions, namely:
>
> "(a) Are you a *bona fide* resident of the [*Name of Maori Electoral District*]?

"(b) Are you twenty-one years of age or over that age?

"(c) Have you already voted at this election in your own name or in any other name?

"(d) Are you registered on any European roll?

"(e) Are you disqualified from voting for any reason?":

and shall inform the person proposing to vote of the grounds of disqualification prescribed by section one hundred and twenty-seven and section one hundred and eighty-one of the principal Act.

(3) If the first and second of the said questions are not answered absolutely in the affirmative, and the other questions are not answered absolutely in the negative, the person to whom such questions are put shall not be entitled to vote.

(4) If, after the said questions have been duly put and answered, the Deputy Returning Officer is satisfied that the person proposing to vote is entitled to vote, he shall give to him a ballot-paper in the prescribed form, and the voter shall thereupon retire into one of the inner compartments provided for the purpose, and shall there alone and secretly mark his ballot-paper by striking out the names of the candidates for whom he does not wish to vote. . . etc.

As a consequence of these changes the Bill also provided for "one scrutineer for each booth [for each candidate] who shall be entitled to be present in that part of the booth in which voting papers are delivered to voters".[16]

6.12 Although the Opposition in general supported the Bill, a number of members, saw this change as a prelude to the abolition of the Maori seats. F. W. Schramm, for instance, said:

> Today 50 per cent of the Maori people have pakeha blood in their veins, and the half-caste can now vote at European elections but not at Maori elections. He cannot therefore vote for both Maori and European members. The time will come when the Maori people will gradually transfer their names to the pakeha register. I hope that before long it will not be necessary to have separate Maori representation in the House.[17]

6.13 This possibility worried Sir Apirana Ngata, who asked for "an assurance from the leaders of the Government now, that it is not the intention of the Government to go so far in achieving a measure of equality".[18] Mason assured him that it "has never been thought of by the Government".[19] There is no reason to doubt that this was true. The demand for secrecy of the poll was not only the result of a wish on the part of the Maori for the removal of a situation they felt to be degrading relative to the situation of the pakeha. It also reflected, to some degree, political struggles within the Maori community itself. Ngata further commented:

> When . . . the Attorney-General [Mason] says that there is a universal demand for the measure, I think he is wrong. There is not. There is a demand from a very large section of our people, and that section is the one generally opposed to the members that formerly represented them in this House. There is a strong section opposed to myself which has made representations. That is the foundation of the measure, quite apart from the honest desire of the Electoral Department to bring about improvements, or to bring about a system preparatory to putting Maori electors upon a roll . . .[20]

He also stated that:

> By this Bill it is proposed to secure secrecy. I mentioned to the Attorney-General, in Committee, and I mention now to the Prime Minister, that I doubt very much whether secrecy will be secured by the provisions of this Bill. There are too many Maoris on the verge of illiteracy.[21]

6.14 In his speech moving the second reading of the Bill, Mason had stated that "there is only one important difference left between the system proposed for the Maoris and that in use with Europeans, and that is that in the case of the Maori elections no provision is yet made for a roll".[22] Legislative change was not in fact required for the rolls to be created, a proclamation under Sections 196 and 197 of the Electoral Act 1927 being sufficient.

6.15 Even so, no movement was made towards producing a roll. In reporting on the Maori elections of 1938, the Chief Electoral Officer noted that the small number of informal votes "testifies to the success of the new method of voting. . .".[23] However he did not think it "desirable at the present time to add further to the complexity of the Electoral requirements",[24] and was unable to recommend the preparation of rolls. Mason had at this time suggested that the application forms filled in by the Maori in applying to vote could be used as a basis for the rolls. The Chief Electoral Officer argued that the small number of the Maori who in fact voted rendered this means of creating a roll worthless.[25] With the coming of war this matter lapsed.

6.16 In that it had argued that restoring the 3-year term of Parliament was restoring the "rights" of the people, the Labour Government's decision in 1941 to defer the elections for a year may appear to have placed it in a vulnerable position. However, it was clear in the debate on the second reading of the Prolongation of Parliament Bill that members were debating an issue the outcome of which had already been determined by mutual agreement of the party leaders.[26]

6.17 Some semblance of the same unity survived in the following year, when a further Prolongation of Parliament Bill was introduced. Fraser commented:

> When the understanding between the two major parties which resulted in the setting-up of the new War administration was made public, there was some uneasiness on the part of some

> people that the proposal had an appearance of something that was never intended—namely, that the members of the House proposed to vote themselves office in perpetuity.[27]

The Leader of the Opposition, S. G. (later Sir Sidney) Holland, agreed, but added, "As far as I can put my finger on the pulse of public opinion, it seems to me that there is a feeling that the war may last up to three or four years, and that people think that if there were an indefinite extension of the life of Parliament they would be losing something of the democratic right of electing parliamentary representatives".[28] The Government was aware of these feelings and provided in the Act, not only that the sitting Parliament should "continue until the expiration of one year from the termination of the present war . . ." but that "at least once in every year after the year nineteen hundred and forty-two, the Prime Minister shall move a motion in the House of Representatives either approving the continuation of the House of Representatives or fixing an earlier date for its expiry . . .".[29]

6.18 A year later, however, the war situation had improved and, a prolongation of the existing Parliament being no longer plausible on the grounds of the existence of a crisis situation, Fraser moved that an election be held that year.[30]

6.19 In the 4 years between the end of the war and the Labour Government's loss of office in 1949, two important pieces of legislation related to electoral law were passed.

6.20 In 1945 the Electoral Amendment Act changed the structure and duties of the Representation Commission. This Act abolished the Commissions for each Island and created 1 Commission for the whole country, abolished the country quota, and provided for a uniform tolerance relative to the quota of 500 for all electorates.

6.21 Two of these changes had been considered many years before. The previous redrawing of the electoral boundaries had taken place in 1937 following the census in 1936. In 1935 the Surveyor-General had written to the Chief Electoral Officer suggesting that legislation be introduced altering the functions of the Commission. He noted that:

> It is very desirable that the present margins by which the quota may be exceeded or diminished in any district should be increased from the present 1250 (or in purely urban areas 250), and I would recommend that these be made 10 per cent and 5 per cent respectively, of the quota.
>
> With a small margin it is impossible for the Commission to give sufficient weight to community of interest, facilities of communication and topographical features and these important considerations have to be sacrificed to mere numerical equality.[31]

6.22 A memorandum on the departmental files, unsigned and undated but apparently written in 1936, suggested a number of amendments to the Electoral Act. There the Surveyor-General's views of the appropriate figure of tolerance, relative to the quota, were

recommended. This paper however also recommended that the law be changed to provide for 1 permanent Commission of 4 members, comprising the Chief Electoral Officer, the Surveyor-General, the Government Statistician, and a Chairman appointed by the Governor-General.[32] These proposals were not, however, implemented.

6.23 When the Commission reported in 1937, the North Island Commissioners recommended "increasing the margin allowed above or below the quota from the present figures of 250 for urban districts and 1,250 for rural districts (approximating 1 per cent and 5½ per cent of the quota respectively) to 2½ per cent and 10 per cent thereof . . .".[33] Like the two documents quoted, their report referred to the difficulty, with the existing figure of tolerance, of respecting the element of community of interest as required by the Act, especially relative to the drawing of licensing boundaries.

6.24 The first Electoral Amendment Bill of 1945 created 1 Representation Commission comprising the Surveyor-General, who would be Chairman, and 4 other members, not Public Servants or members of the General Assembly, who would be appointed by the House of Representatives. This aroused bitter opposition, Holland expressing satisfaction with the existing system as unbiased, and arguing that in removing the currently serving technically competent Public Servants, "the Government [was] prepared to give all of them their marching-orders—all the Commissioners of Crown Lands—and appoint a new Commission consisting of the Surveyor-General and four other members who are partisans".[34] This Bill was later amended to include the Commissioners of Crown Lands for Auckland and Canterbury in the Representation Commission.[35]

6.25 The figure of tolerance relative to the quota in the Bill paid no attention to the recommendations of the Representation Commission of 1937. It was reduced to 500 for all European electorates. This was in line with the Labour Party's avowed policy of equalising the votes of electors as much as possible.

6.26 This policy also determined the population figure the Representation Commission would work with. European seats were to be defined by dividing the number of such seats among the "adult" population of each Island, rather than the total population, as had been the case. The "adult" population in this context meant the total population of the country, less the Maori, those under the age of 21 years, and those in prisons, detention camps, and mental institutions.

6.27 The clearest statement of the Government's view of the country quota, and of the reason for its abolition, was perhaps expressed by A. H. (later Sir Arnold) Nordmeyer, who argued that:

> It was in order to compensate the landed interests for what was regarded as a sacrifice they were making in the interests of the principle of "one man one vote" that the country quota was first of all established. From time to time the basis of that country quota has been altered, and the ostensible reason for continuing it has been the desire on the part of the

> Government of the day to ensure that a member's electorate did not get too big.[36]

6.28 The farming community reacted in some alarm to the abolition of the country quota. When a delegation of farmers met Fraser and Roberts, the Minister of Agriculture, they attempted to persuade the Government to defer the passing of the Bill until after an election. Fraser replied that:

> There were approximately 627,000 people living in the rural areas but only about 200,000 would be actual farmers. The Bill would be debated in the ordinary way. To go to the country on a loaded franchise was impracticable. The Government would go to the country and ask the people on the basis of one vote-one value whether they approved of the stand taken.[37]

6.29 The Farmers' Union also subsequently approached the Governor-General requesting that Parliament be prorogued, with equally little success.[38]

6.30 In its first Report a year later, under the 1945 legislation, the Representation Commission recommended "Increasing the tolerance allowed above and below the quota from the present figure of 500 to 7½ per cent of the quota in order that better consideration may be given to the consideration of community of interests".[39]

6.31 A relatively minor change introduced in this Bill was the greater flexibility allowed in party activity on election day. It became legal to wear or display any party emblem, or to distribute to any person any card which had on it the name or the party of each candidate.

6.32 In 1948 the Labour Government passed the Electoral Amendment Act. The most important provisions of this Act were those relating to the enrolment of the Maori. When the Prime Minister had asked the Chief Electoral Officer for his view on the matter in 1944, the latter had commented that producing Maori rolls "would inflict upon the Maori a complex registration system with a multitude of forms that the majority of them would have difficulty in understanding".[40] In view of the fact that the records of current Ration Books and Social Security Levy Books had been recommended at various times as means of identifying Maori voters, and the appropriate departments had presumably had no difficulty registering the Maori relative to these documents, it is not clear how seriously this comment should be taken.

6.33 The Chief Electoral Officer also noted in favour of the existing system, that since its inception, "there has not been a single recorded case of dual voting".[41] A few years later, however, the situation had apparently changed considerably. Tirikatene, who had continued to argue vigorously for a Maori roll, commented, "It is a matter of common knowledge that at the present time dual, triple voting or more, may take place not only within one Electoral District, (often presumably under different names), but in booths bordering electoral districts, in two electorates".[42]

6.34 On 19 May 1948 a meeting of officers of the Electoral Office and Department of Maori Affairs, convened to arrange a method of compiling the Maori rolls, had made a number of recommendations to Fraser as the Minister of Maori Affairs. These included:

> 1 That the registration of votes at the last General Election be taken as the basis of the Roll to be prepared. . .
>
> 7 That Maoris wishing to vote on next Election day who are not on the Roll should be given facilities to vote by declaration; but this concession should not be given publicity until after the rolls have closed. This concession is suggested to avoid disfranchising any person through official or personal omission under the new voting procedure.
>
> 8 That in all other details as to registration of Maori voters, the Electoral Department's usual administrative procedure be adopted.
>
> 9 That the rolls for the four Maori Electorates should be compiled in the Chief Electoral Office.[43]

6.35 These recommendations were taken up on 3 August 1948 in a memorandum to the Prime Minister from the Chief Electoral Officer. While noting that a roll could in fact be created by proclamation, the latter suggested that, "to remove any doubt as to the extent to which certain parts of the European system should be modified for the Maori, the position should, I think, be clarified by statute".[44] He then suggested that the above recommendations be endorsed by statute.

6.36 Thus the Electoral Amendment Act of 1948 gave statutory authority for the creation of Maori rolls, while at the same time providing for the retention of the Maori right to vote by declaration. It also provided that the preparation of the Maori rolls be centralised in the Chief Electoral Office.

6.37 The Act also took account of the Public Accounts Committee's view of 1934 that a Maori roll would remove the ambiguity in the status of half-castes. Nash, introducing the Bill's second reading, said:

> It also clarifies the position as to half-castes, and gives them the option of being registered either as Maori or European in the various Maori or European electoral districts. . . Previously they could register as Europeans only, and vote as such. If they were not registered, they automatically had the right to vote as Maoris.[45]

6.38 The manner in which the Bill was dealt with was, perhaps, as important as its contents. While the 1945 Electoral Amendment Bill had been debated with considerable bitterness, parts of this Bill were clearly the result of agreement before it was introduced into Parliament. On 8 July 1948, Fraser in Parliament took the opportunity "of thanking the Leader of the Opposition and others for the assistance they gave in agreeing to certain papers being used in connection with the preparation of the Maori electoral-roll".[46] These papers apparently related to the centralisation of the preparation of the rolls. In August

they had been passed by Fraser to the Chief Electoral Officer, with the request that the latter confer with the Leader of the Opposition. The Chief Electoral Officer reported to the Prime Minister on 15 September that he had discussed the matter with Holland and later, at his request, with the Dominion Organiser of the National Party, T. G. Wilkes.[47] Agreement had been reached that the rolls should be prepared in the Chief Electoral Office.

6.39 This movement of discussion of the electoral law and administration out of the arena of Parliament began in the years of "unity" during the war and was to become characteristic of the handling of such legislation for some years in the future.

6.40 A number of minor discrepancies in the law revealed by the *Raglan Election Petitions*[48] were also rectified. These related to voting by declaration, and the inspection of declarations by scrutineers.

6.41 The Act also abolished the seaman's right. Postal voting was now the preferred means of voting for seamen, and the seaman's right was now seen as redundant. The limit of election expenses was also raised to £500.

7 The Electoral Act 1956

7.1 With the abolition of the country quota the most overt discrimination between rural and urban electoral districts disappeared. Tension of this kind subsequently came to be reflected elsewhere and more obliquely. With the victory of the National Party in 1949, the new Government re-examined the functions of the Representation Commission. In particular, in the Electoral Amendment Act of 1950, the use of the "adult" population figure as that upon which the distribution was based was replaced by the "European" population figure. This was arrived at by excluding the Maori, persons in prisons or mental institutions, and those residing on ships, in hotels, hospitals, or armed services establishments.

7.2 When the Electoral Amendment Bill of 1945 was being debated, R. G. Gerard had commented in relation to the use of the "adult" population figure: "Does the Minister realise what that means in New Zealand where three children are born in the country to every two in town?"[1] The implication clearly was that the use of the "adult" population figure by the Representation Commission would result in the boundaries being drawn in a manner favourable to urban interests. The same point was made in 1950 by T. C. Webb in speaking to the Electoral Bill of that year. On the other hand, T. H. McCombs, son of J. McCombs, criticised the abandonment of the "adult" population figure as "actually equivalent to about an 8 per cent country quota",[2] and as a measure which in effect handed over power to rural areas.

7.3 The same preoccupation manifested itself in considerations of the figure of tolerance relative to the quota for each electoral district. It has already been noted that in 1946 the Representation Commission had recommended increasing the tolerance allowed from 500 people to 7½ per cent of the quota in order that better consideration might be

given to community of interests. When Webb introduced the Electoral Amendment Act of 1950 when this figure became law, he argued that he was only implementing the Commission's recommendation. McCombs, however, saw the tolerance as too wide and at odds with the Labour Party's policy of each member representing the same number of votes. Of the Bill as a whole he commented, "It will be something to widen the breach between town and country".[3]

7.4 In 1950 the Legislative Council was abolished. The National Party's dissatisfaction with that body went back to a speech of Holland's in 1941 in which he stated that the Council should be either made a more useful body or be abolished.[4] Two years later the abolition of the Council was mentioned briefly in the National Party's election manifesto. In 1946 Holland declared that the Council would be abolished if the National Party came to power. His party not winning the election, Holland introduced the Legislative Council Abolition Bill in 1947 as a Private Member's Bill. In moving this Bill, Holland had placed the Government in something of a quandary. The Labour Party had not supported the abolition of the Council in Parliament since 1924. It could not, however, ignore the general public dissatisfaction with the Council. Its strategy was to argue that it was inappropriate to abolish the Council before any clear decision had been reached about what would replace it. When the Bill was defeated the Government set up a Joint Constitutional Committee to consider this question. On September 29 1948 that Committee reported that as it "has not been able to reach agreement, [it] has no recommendation to make".[5] W. A. Sheat moved unsuccessfully that the matter be referred to a referendum.

7.5 A number of Opposition members were sympathetic to the idea of reconstituting rather than abolishing the Council. There was also some support in the Opposition for the use of a referendum to decide the issue. R. M. (later Sir Ronald) Algie and Webb in particular supported this idea, and Holland voted for a referendum in the Committee. Holland introduced his Bill again in 1949, but it was allowed to lapse.

7.6 In the National Party's election manifesto for that year, abolition of the Legislative Council was again an important item. The National Party won this election, and in 1950 Holland introduced his Bill again. In moving the second reading, he said:

> The New Zealand Constitution makes provision for two Houses of Parliament. It is what we call a two-Chamber system. Originally it was intended—and I think it was put into practice—that those appointed to the Legislative Council should be people of independent thought, people of great strength of character, and they were appointed for the term of their lives. Once appointed, they could not be unseated. However, the intention at that time was to make the Chamber a truly revisory Chamber—that is to say, that legislation introduced into the House of Representatives, after having gone through the ordinary processes of debate, and so on,

would finally go to the Legislative Council, where a body of independently minded people, who could not be unseated, who were not responsible to the Government of the day, because they could not lose their seats, would examine the legislation and make any improvements they thought necessary, or block any legislation which they thought was opposed to the best interests of the country. The intention was, as I say, that the Legislative Council should be a truly revisory Chamber, and under the original conception of the constitution of a Legislative Council, the Council itself instituted and initiated legislation of its own.

In the process of legislation being dealt with in the Legislative Council of those days, some very important amendments were made to legislation passed by this House. After a while, however, with experience and some years of practice the proposals of the elected representatives of the people began to be blocked by those who had not been elected by the people. That caused a good deal of difficulty and dissension. The Legislative Council of those days tended to become autocratic. Its members could not be disciplined, and none of them could lose his seat, because they were all appointed for life. In 1891 the position got as bad, and so much good legislation had been blocked—so many of the intentions of the elected representatives of the people had been blocked from the statute book—that the life appointment was abolished. Later, a seven-year term was substituted for the life appointment . . . Since that time party politics have developed . . . As party organisation grew and developed so did the power of the lower House grow, and so did the influence of the people grow. I do not think any one can dispute this statement: that the people to-day are much more politically minded than they have ever been before. I think that is a good thing. The people of New Zealand now know more about politics, and the why and wherefore, than ever before. I am sure every member of the Legislature feels that in going to the electors he has had a fair trial. If successful, he has been approved. If unsuccessful, he must try again. We can accept the will of the people as the result all of us asked for.

As the influence of the people's parliamentary representatives grew, so the power of the Legislative Council fell away. The council had no voting contact with the people. It would be going a little too far to say that members of the initial Legislative Council did not have any contact with the people. They had contact with the people—man to man—but they did not have the same contact that elected representatives experience.[6]

7.7 Fraser, in replying, said that "I found myself a great deal in agreement with [Holland's] tracing of the history and efforts"[7] of the

Legislative Council. However, he found the Government's decision to abolish that body without considering a replacement "hasty" and "revolutionary". He also referred to the Government's election manifesto, in particular,

> the clause which says that, as the Government, the National party will examine the possible alternatives to provide for some form of safeguard against hasty, unwise, or ill-considered legislation.[8]

7.8 Holland ensured the passing of the Bill through the Legislative Council by appointing to it 26 new members who could be relied on to support his Bill in that chamber. Even so, the possibility of creating an alternative upper house continued to preoccupy the minds of many members, including a number in Holland's own party.

7.9 Consequently the Government appointed what was named a Joint Constitutional Reform Committee. Its members were R. M. Algie, E. H. Halstead, J. R. Hanan, T. L. Hayman, J. R. (later Sir John) Marshall, D. M. Rae, and W. B. Tennant. These were all members of the Government, the Opposition having declined the invitation to nominate 3 members. Among the Committee members some, including Algie (who was one of the Committee's chairmen) and Marshall, were known to have favoured reform of the Legislative Council rather than abolition.

7.10 The Committee's Report of 15 July 1952 recommended the establishment of an upper house, to be called the Senate, of 32 members. These were to be appointed by the leaders of the parties in the House of Representatives according to their strength, and their term of office was to be 3 years.

7.11 Of more interest relative to the future, however, was the extended discussion in the Report of the value of entrenched provisions to ensure the permanence of the projected upper house.

7.12 The Committee showed considerable interest in recent constitutional changes in South Africa. In 1951, J. F. Northey had examined the law in that country relative to the validity of entrenched clauses in this country's legislation. He concluded:

> If the Bill to remove coloured persons from the ordinary voting register is passed by a simple majority in each House of the Union Parliament, and is declared invalid by the South African Courts, it would seem that the New Zealand General Assembly may prescribe "manner and form" of legislation that would be binding on succeeding Parliaments.[9]

7.13 The Committee commented on the failure of subsequent events in South Africa to fulfil Northey's expectations, and the significance of these events for its own hopes that entrenched provisions might preserve an upper house:

> The Parliament of the Union of South Africa has shown that it is quite prepared to face any wrath there may be on the part of the electors and to introduce legislation designed to nullify the pronouncements of the Court . . . Even so, we desire to adhere

> to our view that there is a moral and also a practical value for such entrenched provisions . . . We recognize only too clearly that such procedural clauses, such so-called "entrenched" sections, may be of very little legal validity. We realize, too, that it may be difficult to persuade any Government to fetter its own or its successors' authority by adopting them. But in spite of these manifest weaknesses, we believe that "entrenched" provisions of the kind under review are possessed of solid moral value and for that reason—even if it be the only one available to us—we are prepared to recommend that they should be given a conspicuous place in any legislation that may be put forward for the setting up in this country of a worthwhile second Chamber . . .[10]

Although the Committee's recommendation of a second chamber was not to be taken up, these ideas about the value of entrenched provisions were to find an important place in the final shaping of the Electoral Act of 1956.

7.14 Consideration of the possibility of consolidating and improving the Electoral Act may have begun as soon as the National Party took office. In 1950 the control of the Electoral Office reverted again to the Department of Justice, and in the following year the Secretary for Justice invited all Deputy Returning Officers to offer their recommendations as to how the electoral system could be improved. On 14 November 1952, the Chief Electoral Officer wrote to the Secretary for Justice indicating the legislative and administrative recommendations received. He commented, "For a number of years there has been need for a consolidated statute . . . There is a general feeling amongst our officers that the time is opportune to improve and re-write [the existing] enactments into one self-contained law in which there is no room for uncertainties".[11] In the Department's Annual Report of 1952 the Secretary commented, "Legislative authority for changes . . . may later be sought. I am satisfied that there is room for improvement".[12] Also in 1952, the National Party Conference had passed a remit calling for the overhaul of the electoral law.

7.15 At this time a departmental committee was set up to examine these recommendations. In his Annual Report of 1953, the Secretary pointed out that "The subjects under consideration by this committee do not touch the basic principles of voting. The review is being made purely to improve the conduct of elections".[13] The outcome of the deliberations of this committee was the Electoral Regulations of 1954. Commenting on these in the 1955 Annual Report, the Secretary noted:

> The new regulations give much fuller effect to the principle that technicalities and errors should not deprive people of a vote and that facilities for the exercise of the franchise should be as wide as possible. The regulations also revised the procedure within the Electoral Office and effected considerable simplifications.[14]

The first of these principles was also to be important for the Electoral Act of 1956.

7.16 During these years, however, two amending Acts were passed which must be looked at briefly. On 22 May 1952 a Cabinet Committee was appointed to consider the redrawing of the Maori electoral boundaries. It comprised E. B. Corbett, then Minister for Maori Affairs, W. Sullivan and Webb. Its recommendation of 4 June considerably extended the northern boundary of the Southern Maori electoral district into the North Island, at a line extending from the south-western end of the Rangitikei County to the eastern boundary of the Taupo County.

7.17 The announcement of the change in Maori electoral boundaries was widely commented on in the newspapers relative to the advisability of preserving the Maori seats. The *Gisborne Herald*, in particular, referred to a statement made by Sir Apirana Ngata in 1949, that "Within the next decade we will request the abolition of the present system of representation in Parliament and insist on being represented in common with Europeans in Parliament".[15] The press in general, however, argued for the retention of Maori seats. Corbett, too, argued:

> I think it is safe to say that even if the Maoris voted in the European constituencies it would be almost impossible for a Maori to be returned to Parliament. Sir James Carroll had that distinction but he was a very exceptional case . . . We must never lose sight of the fact that the tribal customs, tribal character, tribal traditions still play a big part in the life of a big majority of Maoris, and that these factors are present in even the election of members of Parliament.[16]

7.18 These boundary changes created an anomaly which required legislative change. The Secretary of Justice explained in a memorandum to Marshall as Minister of Justice:

> With the introduction of registration for Maoris, their rolls, like those of Europeans, require to be reformed, after a boundary change, the original enrolment cards being sorted into the new electorates and new general rolls prepared. The Electoral Act, however, does not allow new general rolls to be used until the General Election following the expiry of the existing Parliament. . ..
>
> Thus, as the Act is at present, it would be impossible to conduct a Maori by-election to fill a vacancy occurring between a proclamation of new boundaries and the next General Election. Such a by-election would require a new general roll which there is no power in the Act to supply.[17]

7.19 The Electoral Amendment Act of 1953 provided for the alterations of the boundaries of Maori electoral districts to take effect on the expiry of the existing Parliament. They were gazetted in the following year.

7.20 The Electoral Amendment Act of 1954 allowed those entitled to vote on making a declaration to vote as absent voters or postal voters.

Hitherto they had been entitled to vote only if voting in their own electorate. It also allowed for those Maori who had been disenfranchised by changing their addresses to vote by declaration.

7.21 On 27 May 1955, the Deputy Chief Electoral Officer prepared a series of notes for the Minister to assist him in considering a number of remits presented to him by the Wellington Branch of the National Party, relating to electoral matters. These included a remit from the Wellington Central Branch to the effect that the Government should be urged to make a close investigation of the Electoral Act particularly in regard to the use of amended rolls. In commenting on this remit, the Deputy Chief Electoral Officer wrote:

> There has been much popular demand for a consolidation Act from political, licensing and other sources and also within the Department. The many amendments make the present Act difficult to follow, and much of the law is obsolete.
>
> We hope to have a consolidating measure before Parliament in 1956, incorporating various improvements arising from suggestions received following the last two General Elections and also from a close examination of the present Act.[18]

7.22 On 15 July 1955 Marshall wrote to the Dominion Secretary of the National Party asking if it had any concrete suggestions for improvements to the Act.[19]

7.23 On 19 December of the same year the Dominion Secretary forwarded to Marshall the recommendations of a staff committee of the party, and the Auckland, Canterbury/Westland, and Otago/Southland divisions.[20]

7.24 On 11 July 1955 Marshall had also written to Nash, as Leader of the Opposition, inviting suggestions concerning the content of the Bill.[21] By 10 August it had been decided to form a committee to study the Bill.

7.25 The Bill was introduced into Parliament on 12 October 1956, and a Select Electoral Committee appointed accordingly to consider it. Marshall stated that 5 principles had determined the drafting of the Bill:

1 That no qualified person should be deprived of the opportunity to register and to vote.
2 That no vote should be invalid because of some mistake on the part of an official.
3 That on polling day voters should be free from all influence and propaganda by parties and candidates.
4 That double voting and similar abuses should be made as difficult as possible.
5 That where an election is contested, the Court should look to substance and not to technicalities.[22]

The application of these principles in the Bill was seen in the following ways.

7.26 The right to vote was made dependent, in Section 38, on a person's being ordinarily resident in New Zealand as well as having lived in New Zealand for 12 months. Provision was also made to ensure

that no persons of specified itinerant classes would be deprived of a vote because they had not completed 3 months' residence in a particular electorate when they registered. The various forms of absentee and postal voting were all brought under the same rules in Sections 99, 100, and 110. The Bill also provided that all British subjects who had left New Zealand but were ordinarily resident in New Zealand were qualified to register and vote.

7.27 The last provision reflects the concern expressed over voters at sea by both the meeting of the Dominion Headquarters of the National Party, and the Canterbury/Westland Division.

7.28 Provision was made, in Section 115, that no ballot paper would be rejected only by reason of some error or omission on the part of an official, on the grounds that if the intention of the voter is clear, the vote ought to count.

7.29 It was also made unlawful, in Section 127, for any candidate to publish any statement on election day which might influence the voter in any way. Posters or propaganda in view within half a mile of a polling booth could be removed. The distribution of party cards on polling day and the stationing of tables outside polling booths was prohibited. The conveyance of electors to the polling booth on election day was forbidden. The definition of electoral expenses was altered to expenses incurred within 3 months of polling day.

7.30 The sections on canvassing on election day were derived from the contents of both the Australian Commonwealth Electoral Act 1953, and the United Kingdom Representation of the People Act 1949. The existing practice had been found inconvenient by the Electoral Office, and had been disapproved of by the National Party. Both the Dominion Headquarters and the Auckland Division of the National Party expressed dissatisfaction at the greater flexibility in these matters introduced by the Labour Party in 1945. The change was also welcomed by some sections of the press. The *Christchurch Press*, after commenting that "Some of the practices of recent elections have been quite out of place in an enlightened democracy", stated that the new measures "should have a good effect".[23] The *New Zealand Herald* considered them "both welcome and desirable".[24]

7.31 In Section 43 the registration of electors was made compulsory after the proclamation of new boundaries, as a means of countering double voting and other abuses.

7.32 The condition of the rolls in the previous elections had been the cause of considerable concern. The National Party recommendations, however, were not consistent and found no place in the legislation. A number of recommendations from Returning Officers of about this time made reference to the re-enrolment of electors.

7.33 The Returning Officer for Waikato's suggestion, "Why not have a purge when preparing for each election, with a complete re-enrolment at each change of boundaries?"[25] might have contributed to the legislation's final form. The press, where it commented at all, was

generally approving. The *Christchurch Press* saw enrolment after each change of boundaries as the logical conclusion of compulsory registration,[26] and the *New Zealand Herald* saw it as providing "a far more effective cleansing of rolls than the present laborious examination by officials".[27]

7.34 Enrolment by Maori electors was also made compulsory and the procedure for enrolling became the same for Maori as for European electors. The Electoral Office's view was that:

> There have been three general elections since Maori enrolment was introduced and Maori electors have therefore had time to be entitled to become accustomed to the system. While Maoris continue to be entitled to vote without troubling to register many of them will not do so and the real value of registration is in these circumstances lost.[28]

7.35 Provision was also made for elections to be set aside for corrupt practices—personation, treating, undue influence, etc—but not for illegal practices. The latter however remained subject to prosecution and punishment. Election petitions were to go to the Supreme Court, to be heard by 3 judges. This was a consequence of the irreconcilable disagreements that arose on a number of points between the 2 judges who heard the *Raglan* petitions.

7.36 The relevant sections here were again based on the Australian Commonwealth Electoral Act and, more particularly, the United Kingdom Representation of the People Act.

7.37 The Select Committee appointed to consider this first Bill comprised 6 members of the Government and 4 members of the Opposition. Its original members were B. V. Cooksley, F. G. Hackett, J. R. Hanan, C. G. E. Harker, P. N. Holloway, H. Johnstone, J. Mathison, C. F. Skinner, S. W. Smith and Marshall. Hackett was appointed its Chairman.

7.38 A number of the changes to the Bill by the Committee were relatively minor. A person who had been out of the country continuously for more than 3 years was deemed not to be ordinarily resident in New Zealand. This restriction did not apply to public servants overseas for official purposes. Disqualification, as voters, of persons sentenced to imprisonment but not in prison on election day was abolished. Minor alterations were made to sections relating to the preparation of new rolls, the nomination of candidates, advertising by the Returning Officer of the names of candidates, and the death of candidates.

7.39 Provision was also made for the Returning Officer to send the master roll to the Registrar of Electors for the district, and for the latter to keep it until the next election. The roll was to be open to inspection by any registered elector of the district.

7.40 Provisions relating to activities on election day were made more flexible, particularly relative to the removal of signs, giving information to electors, and the conveyance of electors to booths. A candidate, where a corrupt or illegal practice had been committed with

his knowledge, was to be treated as though he were himself guilty of the offence.

7.41 More important changes, however, related to the membership of the Representation Commission. The original Bill had named the Surveyor-General and the Commissioners of Crown Lands for South Auckland and Canterbury as official members. Four unofficial members were to be appointed by the House of Representatives. The committee altered the membership to the Surveyor-General, the Government Statistician, the Chief Electoral Officer, and the Director-General of the Post Office as official members, and 2 unofficial members appointed on the nomination of the House of Representatives, 1 to represent the Government and 1 to represent the Opposition.

7.42 The original Bill simply reproduced the existing law, introduced by the Labour Government in 1945. This, however, was only a stop-gap measure while the Commission's composition was being considered. In 1952 the Commission had redrawn the electoral boundaries and these new boundaries had been used in the 1954 elections. In 1955 the re-elected National Government was subjected to sustained criticism that the Commission had manipulated the boundaries in its favour. In view of the fact that the composition of the Representation Commission was that established by the Opposition's own legislation of 1945, this criticism caused some bitterness, and the Government was concerned to rid itself of the taint of bias.

7.43 In a speech at the Annual Conference of the National Party in August 1956, Holland said that he thought the existing law "unsound" for it "gives a right to the party of the day to have members on the boundaries commission and it can exclude the Opposition". He argued for a Commission "devoid of party politics", and suggested the appointment of members only for their technical qualifications. It should have 5 to 7 members, and include the Surveyor-General, the Government Statistician, and the Commissioner of Crown Lands.[29] Not only was the Commission discussed at the meetings of the Select Committee, but also the *Dominion* noticed that "high-level discussions [were] also taking place between the Government and the Opposition", at which "the Representation Commission question was the subject of discussion ...".[30] The disparity between Holland's view of the appropriate composition of the Commission and the Select Committee's final recommendation measures the extent of the compromise the Government was prepared to make, and the retention of 2 political appointees as members may have thus been the Opposition's contribution.

7.44 Another alteration related to the work of the Representation Commission was the figure of tolerance relative to the quota for an electorate. The original Bill had preserved the figure of tolerance relative to the quota of 7½ per cent, but this had been altered by the Select Committee to 5 per cent. The *Christchurch Press* considered this "a retrograde step" making it impossible to take into consideration the matter of community of interest.[31]

7.45 The most interesting of the innovations of the Committee, however, is to be found in Section 189(2) of the Act:

> No reserved provision shall be repealed or amended unless the proposal for the amendment or repeal—
>
> (a) Is passed by a majority of seventy-five per cent of all the members of the House of Representatives; or
>
> (b) Has been carried by a majority of the valid votes cast at a poll of the electors of the European and Maori electoral districts . . .

7.46 Marshall's introduction of this Section in Parliament reflected the ideas of the 1952 Joint Constitutional Reform committee:

> I feel I should make it perfectly clear that the effect of these reserved sections is not in their legal force to bind future Parliaments but in their moral force as representing the unanimous view of Parliament.
>
> Under our constitution Parliament cannot bind successive Parliaments, and each successive Parliament may amend any law passed by a previous Parliament. Some laws which incorporate long established and widely held principles of government could not be amended except in the face of general public opposition.[32]

7.47 Hanan and Marshall, who were members of both the 1952 Committee and the Select Committee of 1956, no doubt contributed significantly to this part of the Electoral Act. However, prior to the deliberations of the Select Committee, the possibility of introducing entrenched clauses seems not to have been considered, at least publicly, relative to this legislation.

7.48 The value of a referendum relative to certain parts of the electoral law was, however, vigorously argued, especially by Holland.

7.49 The political context of this debate was an ongoing public concern as to the security of the House of Representatives, as a democratic institution, since the abolition of the Legislative Council in 1950. In the speech at the Annual Conference of the National Party, already referred to, in which he discussed the composition of the Representation Commission, Holland gave most of his time to a consideration of this question. Here he appears to have "outlined a proposal which emanated from a committee of members of Cabinet and the Party's Dominion Council".[33] However, Holland's known attraction to the use of the referendum makes it likely that the views expressed were basically his own.

7.50 Holland commented:

> When we had a Legislative Council, it served no useful purpose and since then there has been no support for the reconstitution of the chamber we had. In the last six years we have suffered no known difficulty without it.[34]

The party's 1949 election manifesto had, however, as already noted, promised "some form of safeguard against hasty, unwise or ill-considered legislation".

7.51 Holland continued:

> I do not think Parliament should be allowed to tinker with these laws without the consent of the people. We ought to get public approval for all the things I have suggested by submitting it to the vote of the people. Then it can stand with the people's endorsement through having the weight of the people behind it. It would not have been done by the party in power.
>
> If we say in law that it (the present system) cannot be altered unless it has the prior approval of the people, then the country has not much to fear from succeeding parties. That means we have to have a referendum before it can be enacted or repealed. I believe the people want to see fair play in Parliamentary elections and I think the people would overwhelmingly endorse it. No party would dare, without a referendum, alter that law.[35]

7.52 This was not, however, a view which could be assured of unqualified non-party support. Nash, for one, was critical:

> A referendum for the purpose of handing over the responsibility of government and Parliament does not appear a wise way of governing, although the principle of the referendum is excellent.[36]

In any case, provisions for a referendum found no place in the first Bill.

7.53 The 6 reserved provisions covered the following subjects:

(a) The 3-year duration of the House of Representatives.

(b) The structure of the Representation Commission.

(c) The procedure for the establishment of the boundaries of electoral districts by the Representation Commission, and the definition of the term "European" as applied to this provision. (This entrenched the 76 European seats).

(d) The tolerance relative to the quota (fixed at 5 per cent).

(e) The age for qualification to vote (21 years).

(f) The method of casting a vote.[37]

7.54 A number of newspapers examined the implications of the census conducted in 1956 relative to the consequent distribution of seats between the North and South Islands. The entrenching of the sections relative to the Representation Commission, in that it entrenched the number of 76 European seats, appeared to ensure that the South Island would lose seats in the future. The *Evening Post* noted that the North Island seats would increase from 50 to 51, and the South Island seats decrease from 26 to 25.[38]

The *Otago Daily Times* commented:

> The Government will be expected to give further consideration to an amendment of the constituency quotas to ensure that

> the South Island will not have its representation in Parliament still further reduced.[39]

It is not surprising that 3 days before it had reminded its readers that the entrenched clauses "could have no more than the force of moral law".[40] The allusion here is to the fact that clause 189(2) which entrenched the 6 reserved provisions was not itself entrenched, a fact which no doubt reflected the uncertainty at the time of the legal effect of entrenched clauses on the power of the General Assembly to make law.

7.55 Nevertheless, Marshall considered that the entrenching provision would "provide the best safeguard we can work out to protect what in the unanimous view of Parliament are essential safeguards for our democratic method of electing the people's representatives".[41]

7.56 When the Bill was redrafted to include the conclusions of the Select Committee and introduced into Parliament for its second reading, Marshall spoke on its most important aspects, but other parts of it were introduced by Government and Opposition members of the Select Committee, speaking alternately.

7.57 Marshall said of this second Bill that it "is a genuine, and I believe successful, attempt to place the structure of the law above and beyond the influence of Government and party".[42]

7.58 Nash remarked:

> I do not think that the attempt to put forward the best possible Bill could have been improved. We on this side of the House are appreciative of the Government's action in the way the Minister has said he appreciated our action in trying to find a way of achieving the objective aimed at.[43]

7.59 Hanan described the Bill as "almost an attempt to attain some of the advantages of a fixed constitution—that is, making laws unalterable except under certain conditions",[44] while noting that the binding power of the section was moral rather than legal.

7.60 Hanan also drew the attention of Parliament to the most important part of the legislation not covered by the entrenching clause:

> One rather curious situation seems to have arisen. By this entrenched clause there can be no alteration to the number of European seats fixed at 76. A future Legislature could not without a 75 per cent vote or a referendum vary that principle, and yet it would appear that the Maori representation could be varied at the will of the future Government by a simple majority vote in the House of Representatives. I think that the House will give consideration to that anomaly in the Committee stage. I would think that the Maori representation should be similarly entrenched.[45]

The Maori seats remained outside the jurisdiction of the entrenching clause.

7.61 Tirikatene also commented on the Maori seats:

> Assimilation has been mentioned, but I do not want to speak about that just now. The Maoris themselves have the choice. It

> is fairly clear that throughout New Zealand and the Chatham Islands the leaders of the Maori people favour separate representation in the House. Would it not be just as well to relieve the Government of the responsibility [for determining the boundaries of Maori electoral districts] by transferring it to the Commission?[46]

7.62 Nash raised the same question, also suggesting that in determining the boundaries of Maori electoral districts, consideration be given to the localities of different tribes. "I would like the power", he added, "to be taken away from any Government to determine electoral boundaries. They are so determined now, even in spite of what may be said".[47]

7.63 The only serious disagreement between the parties in the drafting of this legislation may have been that of the age qualification. "I do not know when democracy commences", said Nash. "I am not certain that it commences after a person becomes twenty-one, but we wanted every qualified adult to have a vote".[48]

8 The Last Twenty Years

8.1 It was not until 1965 that the next important change was made in the electoral law, and that change related to one of the entrenched clauses. A growing disparity between the populations of the two Islands had led to concern that if the number of European seats remained at 76, the existing number of seats for the South Island would be further reduced. Both the National and the Labour Parties had promised to stabilise the number of South Island seats, the former at the existing number of 25, and the latter at 26, the number at the time of the passing of the Electoral Act, in their 1963 election manifestos.

8.2 The Electoral Amendment Act of 1965 divided the South Island into 25 districts. The quota for the South Island was thus the total European population of the South Island divided by 25. The total European population of the North Island was to be divided by the quota for the South Island, and that determined the number of North Island seats.

8.3 The 75 per cent of the vote required to change an entrenched section of the Electoral Act was obtained by the Government giving a promise that, in the words of K. J. (later Sir Keith) Holyoake, in the event of the Opposition coming into power and wishing to increase the number of South Island seats to 26, "such a Government would have cooperation equal to that given to the National Government by the present Opposition".[1]

8.4 Both parties agreed on the need for South Island seats not to be reduced. The difference was that the Labour Party was rather more committed to an overall increase in the number of seats. Nordmeyer said of the Bill that:

> It does go some way towards remedying an unsatisfactory position, but even in 1976, if the proposal of the Government is

> given effect to, there would be only 89 members compared with the present 80; and that number, I suggest, is insufficient. We for our part firmly believe that it is only tinkering with the problem to provide one additional seat for the South Island. We believe it is imperative that two more seats be given to the South Island . . . [2]

Tirikatene took the opportunity offered by the discussion of the increase in European seats to raise the question in the Select Committee of increasing the number of Maori seats by 1. Later in the House he argued that Maori representation should be on a population basis: ". . . apparently the Government believes 191,254 Maoris should be restricted to four members. Let us consider what the outside world may be thinking when Europeans are divided into electorates of 30,000 or 31,000.".[3]

8.6 Holyoake commented on this that:

> Maori representation had never been regarded as being on a population basis; that it was a special kind of representation introduced at a time when the right to vote was based largely on property qualifications. Over the years, whether the population justified it or not—and mostly it did not—the Maoris have been represented by four members in this House, and in all the years I have been here the general understanding in the House has been that the next step in Maori representation would be complete integration; that we should join together and be on the same roll.[4]

8.7 That was certainly the Government's view. The Opposition, however, argued with Tirikatene that the Maori seats should be retained and increased. They also argued that that was the view of the Maori themselves. Tirikatene noted that "Our elders, and some of our academics, including the Federation of Maori University Students, have claimed that they still desire Maori representation".[5] Faulkner commented, on the question of integration, that "There has been a lot of argument from time to time, but never, I think, from the rank and file of the Maoris, that the Maori seats should be abolished".[6]

8.8 The debate on the Bill was extremely heated, the 4 Maori seats being referred to as "a form of apartheid"[7] at one point. It was possibly to avoid this acrimony that, when the next challenge to the entrenched sections of the original Act occurred, the Government resorted to a referendum. This was in 1967, and the subject was the possible change in the length of a parliamentary term to 4 years. The result of the referendum was that the length of the term remained at 3 years. In view of the fact that this referendum was held in conjunction with another, that of abolishing the 6 o'clock closing of public houses, it is not clear whether the electoral issue received from the public the attention it deserved.

8.9 The Electoral Amendment Act of 1967, as J. R. Hanan said when introducing the Bill, "removes the disqualification which prevents Maoris other than half-castes from standing as members for European electoral

districts and Europeans standing as members for Maori electoral districts. No change is made in the qualifications for registration as electors. . .".[8]

8.10 The reply of the Leader of the Opposition, N. E. Kirk, suggested a more sympathetic attitude to integration than was seen 2 years earlier in his Party.

> As the Minister knows, I took the opportunity on a recent occasion of saying the time had come for the Maoris to be able to enrol, as a matter of choice, on either a European roll or a Maori roll. This does not appear to have been accomplished in the Bill the Minister is introducing. Instead, he says that any person, Maori or European, may contest either a Maori seat or a European seat. This means that separate rolls are going to be maintained, that the principle of separate representation is going to be maintained, but that any Maori may contest any European seat and any European may contest any Maori seat. It seems to me that it might have been a much wiser step to have moved towards integration by leaving the Maori an area of choice to enrol either as a European or as a Maori elector, thus automatically giving him the right to contest a seat either as a European or as a Maori.[9]

8.11 On 2 July 1969 the Deputy Leader of the Opposition, H. Watt, presented a petition to Parliament on behalf of the 11,000 signatories requesting that the age of qualification for voting be lowered to 18 years. This was the culmination of considerable social pressure over a number of years. Parliament lowered the voting age to 20 in the Electoral Amendment Act of the same year. Marshall, in introducing the Bill's second reading, commented:

> If we are to admit young people of 20 to the rights of citizenship and of exercising the vote we must review their other legal disabilities and face the larger question of the general age of majority. I have already told the House that the Government is undertaking this review . . . we are not committed to an over-rigid approach or an across-the-board change. We are looking at each case on its merits.[10]

The Opposition supported the Bill, but clearly would have preferred the voting age to be lowered to 18 years.

8.12 In 1967 the Chief Electoral Officer had suggested to the State Services Commission the possibility of using computers in the preparation of the electoral rolls. Thus, in 1968, a feasibility study was conducted by the State Services Commission to consider its viability. The study recommended the establishment by computer of a master record which once established, could be kept up-to-date from information as it came to hand. It further noted that "The most logical point at which to carry out this process is at the District Electoral Office, where staff would have local knowledge of the electorate".[11]

8.13 In 1969, the electoral rolls for 6 Wellington electorates (Porirua, Western Hutt, Karori, Wellington Central, Island Bay and Miramar) were prepared by computer. This experiment was considered to have been in general, successful, and it was recommended that computer coverage be extended to all electorates.

8.14 In 1970, a sub-committee of the Public Expenditure Committee, chaired by M. A. Connelly, was appointed to consider the economics and administration of the Registrar-General's Division of the Department of Justice. It confined its recommendations to the activities of the Electoral Office. A number of recommendations of the sub-committee were implemented in the Electoral Amendment Act of 1971. These included the increase of the limit of members' election expenses to $1,500.

8.15 Among the sub-committee's more important recommendations was that, "in the compilation of Maori electoral rolls, the printing of the full tribal name be dispensed with, but that tribal identification . . . and sex classification, be retained meantime".[12] On this question, the sub-committee consulted the Secretary of Maori Affairs, who agreed that some Maori did not in fact know the tribe to which they belonged. However, he also "instanced cases where, but for the advantage of having the tribe recorded, it would not be possible to distinguish between voters".[13]

8.16 The sub-committee also recommended that the party allegiance of a candidate be indicated on the ballot paper, and that more vigorous attempts be made to ensure that the names of all those who were entitled to vote should appear on the rolls.[14]

8.17 It also found "That it is feasible and desirable for a single agency with computer facilities to be given the responsibility of undertaking enrolments for both parliamentary and local authority elections".[15] As a consequence, it recommended that a single agency be established as quickly as possible, with the necessary electronic data processing facilities, to undertake the enrolment for both parliamentary and local body elections, and that the overall responsibility for its operation rest with the Chief Electoral Officer.[16] The expectation was that the rolls for the 1972 election would be prepared by computer.

8.18 The sub-committee also examined the use of canvassers to ensure as complete an enrolment as possible. This was done in the United Kingdom, Canada, and Australia. Although it made no specific recommendation on this matter, it did suggest generally that Government "should play a more positive role in ensuring that those eligible to vote are enrolled",[17] and indicated ways in which individual departments could contribute to this end. In discussing the work of canvassers, the sub-committee compared their work to that of taking the census.

8.19 In 1973 the Minister of Justice, Dr A. M. Finlay, set up a Parliamentary Select Committee to consider possible improvements to the Electoral Act. Its Chairman was J. L. Hunt, who had been a member

of Connelly's sub-committee. In the following year it published an interim report in which it recommended that the qualifying age for voting be lowered to 18 years. This was in any case Government policy, and it became law in time to apply to the Sydenham by-election, with the passing of the Electoral Amendment Law of 1974.

8.20 The recommendations of the Final Report of the Committee, published on April 16 1975, were largely implemented by means of the Electoral Amendment Act of the same year. The recommendations that the size of the House of Representatives be increased to 121, and that a consolidating New Zealand Constitution and Electoral Act be passed, were not taken up.

8.21 A number of changes were of purely antiquarian interest. Statutory bans on bands, flags, and banners, and the use of committee rooms in licensed premises, were removed. Candidates were at last allowed to provide a light supper for the public after an election meeting.

8.22 Others reflected wider social changes. British nationality was no longer a qualification for voting. Instead, all New Zealand citizens and all permanent residents were to be entitled to vote. The term "European" was replaced by the term "General" relative to rolls. The necessary period of residence in an electoral district, as an entitlement to vote, was also reduced from 3 months to 1 month.

8.23 Candidates were also allowed to appoint more than 1 scrutineer for each polling booth, though only 1 was permitted to be in attendance at any one time. The party affiliation of a candidate was now required to be placed on the ballot paper. Allowable candidate's expenses were increased to $2,000.

8.24 More important perhaps were the changes made in the Representation Commission. As it was intended that the rolls should also be usable for local body elections, the Chairman of the Local Government Commission was placed on the Commission. However, he was not allowed to vote. The ban on public servants as unofficial members of the Commission was altered to cover only those directly concerned with the administration of the Act. The time during which the Commission was required to report was increased from 4 months to 6 months.

8.25 On Maori representation, the Select Committee commented as follows:

> Most submissions received by the Committee dealt wholly or in some part with the question of Maori representation. Nine submissions proposed that Maori seats should be abolished immediately or in the near future. On the other hand four submissions suggested that the number of Maori seats should be determined by the Representation Commission in the same way as those of "European" seats, namely on the basis of total population. This would obviously lead to an increase in the number of Maori seats . . .

> Several submissions stated that on the basis of total population Maoris were under-represented and were entitled to seven seats. Because the figures for Maori population published after each census class all half-castes as Maoris, while for electoral purposes half-castes at present are given the option of deciding whether to vote on either roll, there are no exact figures for Maori population . . .
>
> On the other hand it does not seem opportune at this time to abolish the Maori electorates altogether. There were six submissions from Maoris or representatives of Maori organisations and not one of these submissions favoured the abolition of Maori electorates. The Committee must take note of this and also of the request for changes to provide for a different basis of representation.[18]

8.26 The Select Committee also referred to Section 2 of the Maori Affairs Amendment Act 1974 which defined a Maori as "any person of the Maori race of New Zealand and includes any descendant of such a person".[19] This became the basis of the legislation's definition of a Maori:

> "Maori" means a person of the Maori race of New Zealand; and includes any descendant of such a person who elects to be considered as a Maori for the purposes of this Act . . .[20]

8.27 It also recommended, in line with the suggestion that the number of Maori seats should be determined by the Representation Commission, that that body "determine the boundaries of the Maori seats using the same basic principles as are used for determining the boundaries of General seats".[21] The Select Committee admitted the difficulty of identifying those who considered themselves to be Maori for these purposes, and consequently recommended:

> that the total number of those wishing to enrol on a Maori roll together with their children under 18 be divided by the New Zealand quota and the quotient then obtained shall represent the number of Maori seats.[22]

8.28 This recommendation was made only by a majority of members of the Select Committee. The Opposition argued, both in the Select Committee and in Parliament when the Bill was introduced there, that the number of seats should be determined on an adult population basis. This recommendation was incorporated in Section 8 of the Act.

8.29 Two other recommendations relative to the Maori representation were of great significance. These were that:

> The Committee recommends that on the electoral enrolment form to be distributed with the census form at the time of every census, all adult Maoris be given the right to choose whether they wish to vote on the Maori or General electoral roll . . .
>
> The Committee recommends that no person be able to transfer from a Maori roll to a General roll except at the time of a census.[23]

This was an important change in that now all the Maori and not only half-castes had the option of choosing whether they wished to be on the Maori or General roll.

8.30 The combining of the enrolment of voters with the taking of the census was recommended by the Select Committee for both Maori and General electorates. The idea had arisen out of the growing interest in the use of canvassers to place people on the roll.

8.31 A number of submissions to the Select Committee had recommended that a question could be placed on the census questionnaire for the Maori to determine their own racial standing and ultimately the electoral roll on which they wished to vote.

8.32 A system was worked out whereby census enumerators delivered and collected separate enrolment cards concurrently with but independent of census questionnaires.

8.33 The Select Committee also recommended that the Post Office play an active part in the electoral process. Whereas the District Electoral Officers were at the time invariably officers in the Courts Division of the Department of Justice, the Select Committee recommended that these be replaced by officers appointed from the staff of the Post Office. However they also suggested that overall responsibility for the elections remain with the Chief Electoral Officer.

8.34 These recommendations were all adopted in the legislation of 1975. The enrolling of voters had thus become a somewhat complicated process. Enrolment papers were to be delivered and collected by census enumerators, who would then hand them over to the Post Office. From these cards in turn a national computerised roll was to be constructed by the Electoral Office. The unwieldy nature of this system, made more complicated by the law as it related to Maori enrolment, was to contribute in a major way to the problems that would be experienced with the rolls in the 1978 election.

8.35 The Electoral Amendment Act of 1976 repealed the Section of the 1975 legislation relating to the number of Maori seats, and reintroduced the legislation of the Electoral Act of 1956. This was the result of the change of Government in 1975, and of the new Government's avowed policy of having no more than the 4 existing Maori seats. The adjustment of the boundaries of the Maori electoral districts was removed from the jurisdiction of the Representation Commission and returned to the Governor-General.

8.36 The 1975 legislation's definition of "Maori", and their right to choose which roll they wished to be placed on at the time of each census, remained unaffected. The Maori Option thus became a permanent institution.

8.37 The 1977 Amendment Act repealed further provisions of the 1975 Act. Prisoners, who had been enfranchised for the first time in 1975, were again disenfranchised. The residential qualification which had been reduced to 1 month in 1975 was restored to the former period of 3 months. The 1977 Act also repealed a provision of the 1975 Act

which had allowed qualified but unregistered electors to vote who believed on reasonable grounds that they were or should have been registered and who gave the issuing officer a completed enrolment form. This had been in effect a form of election-day registration. Notwithstanding the availability of this facility in 1975, there were still 44,937 special votes disallowed because the voters were not enrolled. This was 22 percent of the total number of special votes received,[24] a proportion similar to that of subsequent general elections.[25]

8.38 During the 1975 election campaign, individuals had associated independently of party affiliations to publish material supporting the candidacy of the Prime Minister, the Rt. Hon. W. E. Rowling. The 1977 Amendment Act provided that no advertisement for the promotion of a candidate was to be published unless the publication of the advertisement was authorised in writing by the candidate, or by a political party where more than one candidate was supported. Every advertisement authorised by a candidate was to form part of the candidate's election expenses, the limit of which was raised from $2,000 to $4,000.

8.39 On 20 June 1977 the boundaries of the General electoral districts for the next general election were proclaimed in the Gazette. The 1975 Amendment Act would have required the compilation of rolls on the new boundaries within 3 months after the gazetting of the proclamation. It did not prove possible to meet this deadline. The delay was validated by the Electoral Act (Validation of Irregularities) Order 1978.[26]

8.40 Various complications arose in implementing the new enrolment system established by the 1975 Act. Electors were required to re-enrol on census night, which was also the time when the Maori Option had to be exercised. The responsibility for compiling rolls from the forms derived from the census exercise had been transferred to Post Office employees. The Chief Electoral Officer did however retain overall responsibility. His inquiries soon convinced him that the census re-enrolment had been far from complete. He decided that the cards held for those who had not enrolled should be retained to avoid the disenfranchisement of these electors. In this way many outdated entries came to be in the 1978 rolls. The *Hunua Electoral Court* was to uphold the validity of this action in respect of non-Maori electors, but different considerations applied to registrations for a Maori electorate as this required the exercise of an option in favour of the Maori roll.[27] In October 1977 the Chief Electoral Officer called in all cards from the electorate offices. Enrolment cards were thus centralised and held in alphabetical order at the Chief Electoral Office in Lower Hutt. It was considered that a centralised collection of cards was necessary to guard against duplications of enrolment and infringements of the rule against changing from a Maori to a General roll (or vice versa) outside the time designated for the exercise of the Maori Option. The *Hunua Electoral Court* held that while the centralisation of the cards was not authorised and did involve breaches of duty by the electorate officers, the

compilation of the roll was nevertheless conducted substantially in compliance with the law. In the opinion of the Court, the centralisation of the cards and the comparison of other registrations from all over New Zealand, and in particular the comparison between registration on Maori and General rolls, could only be properly performed by centralisation.[28] The Committee of Inquiry into the Administration of the Electoral Act chaired by Sir James Wicks, which was appointed following the 1978 election, indicated that the objectives of centralising the cards could be achieved by certain enhancements to the computer system, in particular by checks of dates of birth stored in the computer. It therefore recommended the abandonment of the national alphabetical card index once the proposed changes to the system had been made.[29] It also recommended that the Director-General of the Post Office assume full responsibility for the preparation of the rolls. In this recommendation the Committee followed a joint proposal of the Secretary for Justice and the Director-General of the Post Office.[30] These recommendations were implemented in 1980.

8.41 Another matter which caused great concern and divisions of opinion was the way ballot papers not marked strictly in accordance with the Electoral Act were to be treated. Section 106 of the Act provides that voters are to mark their ballot papers by striking out the name of every candidate except the one for whom they wish to vote. Not all electors complied with that provision. There were some who would indicate their preference for a particular candidate by placing a tick or a cross against the candidate's name. Could Returning Officers count such votes where they were satisfied that the ballot papers clearly indicated the voters' intentions? Before the judgment of the Hunua Court, electoral officials had assumed that they could. This assumption was based on another provision in the Act which directed Returning Officers not to reject any ballot paper because of some informality in the manner in which it had been dealt with by the voter if it was otherwise regular, as long as the voter's intention had been clearly indicated (Section 115(2)(a), first proviso). The Hunua Court held that the Returning Officer's discretion not to reject ballot papers not marked in strict compliance with the Act was limited and narrow. It applied to rare cases such as that where a voter inadvertently crossed out the names of all the candidates and, instead of applying for another ballot paper, printed in above the name of the candidate for whom he wished to vote that candidate's name. The Court rejected all votes where the voter had voted by placing a tick or a cross alongside the candidate's name, or where any method other than that of striking out the candidates' names had been used.[31] The Court's decision that ballot papers marked by ticks and crosses could not be counted was followed in determining the other petition to arise out of the 1978 election in respect of the Kapiti electorate.[32] The "ticks and crosses" issue, as it came to be called, was resolved by the Court of Appeal in 1980 when, in granting a declaration sought by the General Secretary of the Labour Party, it held that where the voter's intention was clear, Returning

Officers could not reject the voter's ballot paper because it had not been marked in the way stipulated by the Act.[33]

8.42 Following the completion of the report of the Wicks Committee in August 1979, a parliamentary Select Committee on the Electoral Law was established. Select Committees with similar terms of reference were also appointed by the two succeeding Parliaments. Since the establishment of the Select Committee on the Electoral Law, every significant amendment to the Electoral Act has been preceded by a report from the Select Committee on the subject matter of the amendment. The Select Committee has therefore been effective in giving the Opposition adequate notice of proposals to amend the Electoral Act. Members have always included a Democratic Party (Social Credit) MP, and Mrs Tirikatene-Sullivan MP has, since the inception of the Committee, ensured that the special concerns of Maori electors have been represented on the Committee. Many of the Committee's proposals have been carried unanimously.

8.43 The Select Committee on the Electoral Law noted that the Wicks Committee had criticised the absence of top-level departmental co-ordination over administrative developments for the 1978 election. It resolved to remedy that defect by recommending the establishment of a standing committee of Permanent Heads to supervise and co-ordinate electoral law administration. The Officials Committee on Electoral Matters was set up in January 1980. It is chaired by the Secretary for Justice. The other members are the Permanent Heads or their Deputies of the Post Office, the Government Computing Service (Computer Services Division), the Departments of Internal Affairs, Lands and Survey, and Statistics. The State Services Commission, the Government Printing Office, and the Ministry of Works and Development have been represented at appropriate stages. Each of these agencies has an essential part to play in compiling rolls or in running elections. The Officials Committee agrees on a detailed electoral timetable which becomes binding on all the departmental participants involved in the electoral process. In this way responsibilities are defined and efforts co-ordinated. The smooth conduct of the 1981 election as well as that of the early 1984 election, for which there was only 1 month's notice, is doubtless in no small measure attributable to the continuous supervision exercised by the Officials Committee since 1980. The functions of the Officials Committee are in many ways comparable to those of Electoral Commissions in overseas jurisdictions. It has from the beginning been concerned with electoral policy as well as with matters of administration. It does not confer with Ministers before reporting to the Select Committee. In reporting to the Select Committee, the Officials Committee normally submits options rather than recommendations to ensure that its non-partisan status is maintained.

8.44 The Electoral Amendment Act 1980 was the culmination of the work of the Wicks Committee, the Officials Committee, and the Select Committee, work which began almost immediately after the 1978 election and which was dominated by the concern caused by the

imperfect rolls used at that election. The concern, briefly put, was that inflated rolls could allow the unscrupulous to vote more than once, thus perverting the purpose of electoral rolls. The central element of the new roll compilation system was to be a system of 3-yearly roll revisions tied closely to general elections. This is a simplified form of re-enrolment under which every registered elector in the country is sent a form indicating the details shown on the current roll. If the details are correct, the elector need simply sign the card. Electors who fail to respond are removed from the roll. A statutory requirement to that effect put the matter beyond the discretion of officials, thus sparing them the invidious task of deciding whether to carry forward previous registrations. The decision to eliminate such registrations could have resulted in the disenfranchisement of electors, the decision to include them in inflated rolls. Since the introduction of roll revisions—the first was held in October 1980—the entries on electoral rolls have been up-to-date and duplications virtually unknown.

8.45 The 1980 Amendment also provided that the Maori Option was to be exercised in every year in which the 5-yearly census was taken, over a period of 3 months (this was changed to 2 months in the following year). The maintenance of the link between the Maori Option and the census meant that the Representation Commission would receive an up-to-date figure of the Maori electoral population. This consideration militated against calls to conduct Maori Options in conjunction with roll revisions. Where a census and a general election were both due to be held in the same year, the Maori Option period was to be postponed by a year. This followed the recommendation of a majority of the Select Committee which was based on the consideration that the separation of Maori Option periods from general elections was necessary to allow Maori people the freedom to exercise their option free of pressure of political parties in an election.[34] In 1981 a 5-yearly census as well as a general election were both duly held. For this reason the Maori Option took place in 1982.

8.46 The 1981 Electoral Amendment Act gave the Representation Commission the new task of drawing the boundaries for the 4 Maori electoral districts. The objective was the same as that for the redrawing of General electorates: each Maori electorate was to contain an equal number of the Maori electoral population, subject to a tolerance level of 5%. The relevant considerations were the same as those for General electorates, except that under the heading of "community of interest" there was a specific reference to Maori tribes. The Electoral Amendment Act 1981 also reflected the fact that a third political party had again been represented in Parliament since 1978. Political parties represented in the House but not represented by either of the unofficial members of the Representation Commission were given the right to make initial submissions to the Representation Commission.

8.47 The 1981 general election gave rise to the *Taupo Election Petition*.[35] That case held that the status of a Member of Parliament came to an end on the dissolution of a Parliament. The point arose

because J. W. Ridley, the "sitting member" for Taupo, had witnessed declarations of special voters. Mr Ridley thought he was authorised under the Oaths and Declarations Act 1957 to witness declarations because of his status as a Member of Parliament. The Electoral Court held that Mr Ridley was not at the time he witnessed the declarations a Member of Parliament because his office had been terminated on the dissolution of Parliament.

8.48 Some two years after the judgment in the *Taupo Petition* was handed down, events were to show that matters of greater moment than the taking of statutory declarations depended on the way "sitting MPs" were classified during the course of a general election. On 16 July 1984, two days after polling day for the 1984 general election, the incoming Government indicated to the outgoing Government that it wanted an immediate devaluation of the currency. The outgoing Prime Minister was opposed to that proposal. A possible crisis was averted when, on the following day, the outgoing Government stated that it would take the advice of the incoming Government on any matter of such great constitutional, economic or other significance that it could not be delayed until the new Government formally took office. The incident raised the question whether a newly-elected Government could assume office almost immediately after polling day. Section 9 of the Civil List Act 1979 provides that "No person shall be appointed as a Minister of the Crown or as a member of the Executive Council unless that person is at the time of appointment a member of Parliament". Hence the importance of the status of "sitting MPs". The *Taupo Petition* and other authorities supported the view that, in the period immediately following an election, there were no Members of Parliament. The view to the contrary was that the Members continued as Members of the House of Representatives. That body continued after the Governor-General dissolved the General Assembly. As a result, in October 1984 the Government appointed an Officials Committee under the chairmanship of Mr B. J. Cameron, Deputy Secretary for Justice, to develop proposals for the clarification of the rules relating to the change of governments following a general election. The Committee was also charged with the consolidation of existing constitutional provisions. Following the presentation of its Report in February 1986,[36] a Constitution Bill was introduced. The Bill would clarify the status of Members of Parliament by specifying that sitting MPs cease to hold office "at the close of polling day", and that successful candidates become MPs "on the day after the day of the return of the writ".[37] The requirement that only a Member of Parliament could be appointed a member of the Executive Council or as a Minister was amended to allow the appointment of candidates at the previous election. Persons appointed on the basis of their candidacy would however be required to vacate office if they did not become MPs within 40 days (this period was changed to 70 days by the Justice and Law Reform Committee). The effect of these rules, if passed, would be to allow for an immediate change of Government after a general election.

8.49 The work of the Select Committee on the Electoral Law has, since its inception in 1979, focused mainly on the enrolment of electors. Its terms of reference have, however, not been confined to that aspect of electoral law. It has always had a general power to consider matters relating to the law and practice of parliamentary elections. Under its original terms of reference the Select Committee was specifically asked to consider such matters as the method of voting and the fundamental question whether the first past the post system of representation should be retained or replaced by an alternative system.[38] When this matter came to be considered in 1981, the Committee recommended that the present system be retained.[39] A minority of the Committee supported the establishment of a Royal Commission to carry out a detailed investigation into alternative methods of representation in the New Zealand context.[40] When the Select Committee was reappointed in 1982 the question of alternatives to the existing system of representation was no longer included among the Committee's specific terms of reference. These were, first, the merits and feasibility of combined rolls, an item carried forward from the original terms of reference; second, the implementation of the new provisions on the electoral system; third, whether any further changes should be made to the electoral law and its administration in the light of the 1981 election, and fourth, the procedures required for the 1982 Maori option exercise.[41]

8.50 In its Third Report, the Select Committee was concerned to effect further refinements to the enrolment system and to clarify questions concerning the qualification of electors raised in the course of the *Taupo Petition*. One of these was whether an elector whose name lawfully appeared on the roll had to be qualified at the time of voting. The Committee recommended that the Act expressly state that this was a requirement. It also paid considerable attention to electors who, because of their unusual situation, were disadvantaged by the enrolment system. The Electoral Act provided that electors could not be registered unless they had resided in a district for a period of 3 months. The only exception was in the case of electors with an itinerant occupation and their spouses. The Committee proposed to extend that exemption to all those who, for whatever reason, had never attained a residential qualification in an electorate. Another group hitherto unable to vote were young persons who attained the minimum age of 18 years on election day. People who attained their residential qualification (3 months) on election day had been under a similar disability. The Select Committee recommended that electors in these 2 categories be allowed to enrol in anticipation of their qualifications as from the Monday before election day. These recommendations were implemented by the Electoral Amendment Act 1983. That Act also raised the limit of permitted election expenses to $5,000, also on the recommendation of the Select Committee.

8.51 The Select Committee was again reappointed on 17 August 1984, 1 month after the election of the fourth Labour Government. This time it was charged

> to consider (1) all matters relating to the electoral system which may be referred to it, and (2) such matters relating to the law and administrative procedures governing parliamentary elections as the committee thinks fit, especially in the light of the experience of the 1984 General Election, and in particular the merits and feasibility of combined rolls for parliamentary and local body elections.[42]

It was, however, understood at the time of the Select Committee's reappointment that a Royal Commission on the Electoral System would shortly be established and that the scope of the Select Committee's inquiries would therefore be limited. The intention of establishing a Royal Commission had been announced as part of the Labour Party's "Open Government Policy 1984" during the general election. The Royal Commission under the chairmanship of the Hon. Mr Justice Wallace was established on 18 February 1985

> to receive representations upon, inquire into, investigate, and report upon the following matters:
>
> 1. Whether any changes to the law and practice governing the conduct of Parliamentary elections are necessary or desirable:
> 2. Whether the existing system of Parliamentary representation (whereby in respect of each electoral district the candidate with the highest number of votes is elected as the Member of Parliament for that district) should continue or whether all or a specified number or proportion of Members of Parliament should be elected under an alternative system or alternative systems, such as proportional representation or preferential voting:
> 3. Whether the number of Members of Parliament should be increased, and, if so, how many additional Members of Parliament there should be:
> 4. Whether the existing formulae and procedures for determining the number and boundaries of electoral districts should be changed, and, in particular,—
>
> (a) Whether the redistribution of electoral districts should be based on total population or adult population:
>
> (b) Whether the allowance of 5 percent by which the population of an electoral district may vary from the quota should be changed:
>
> (c) Whether the membership and functions of the Representation Commission and the time limits and procedures governing its functions should be changed:
>
> (d) The feasibility of some form of appeal from decisions of the Representation Commission:

5. The nature and basis of Maori representation in Parliament:
6. The term of Parliament:
7. To what extent referenda should be used to determine controversial issues, the appropriateness of provisions govening the conduct of referenda, and whether referenda should be legislatively binding:
8. Whether the present limits on election expenses are appropriate and whether any limits on such expenses should be extended to political parties and to the amount of individual or total donations candidates or parties receive and whether such expenses should be defrayed wholly or in part by State grants and the conditions, if any, which should apply to such grants:
9. Any other question relating to the electoral system which you may see fit to inquire into, investigate, and report upon.[43]

The Select Committee has been careful not to touch on matters included in the specific terms of reference of the Royal Commission. It has presented 4 interim reports to Parliament. The first was a very short recommendation on the question of combined parliamentary and local body rolls,[44] an item which had been on the Select Committee's agenda from its very inception. The Committee recommended that the Chief Registrar of Electors be authorised to supply each territorial authority with edited lists of parliamentary electors resident in the territorial authority. This was to be the first step towards a system of common enrolment, as distinct from a common physical roll on which much attention had earlier been focused. Legislation passed in 1985[45] and 1986[46] implemented the new system in time for the 1986 local government elections.

8.52 The electoral timetable for the period leading up to the 1987 general election posed a particular problem because the new electoral boundaries were to be promulgated in an election year. This was exacerbated by the early election of 1984 which meant that the general election for 1987 had been brought forward to a latest possible date of 19 September. This left little time for the compilation of new rolls, including the conduct of a roll revision. The Select Committee sought to alleviate the problem in a number of ways. The Representation Commission was to be required to attend to procedural matters, the most important being the appointment of a chairperson, immediately after the taking of the census. Hitherto the official and unofficial members did not have their first meeting before the provisional boundaries were drawn up. It was only then that they nominated a chairperson. The intention was to have a complete and fully briefed Representation Commission by the time that the maps of the provisional boundaries were available for its consideration. In this way it was hoped that the Representation Commission would be able to complete its substantive task within the 6 months prescribed by the Act; delays by the Representation Commission were likely to disrupt the general

election. The Representation Commission was also required to communicate each boundary placement made after the gazetting of the proposed boundaries to authorised electoral officials. In this way it was hoped many of the steps required to produce new rolls could be taken while the Representation Commission's work was still in progress. The Select Committee also proposed that it be possible to produce new rolls on a roll revision conducted on old boundaries, an option ruled out by the legislation then in force. A further related proposal was that the legislation allow the conduct of roll revisions in years which were not election years, with the possibility of combining such roll revisions with any Maori Option to be held in the same year. These recommendations contained in the Select Committee's Second Interim Report[47] were all implemented by the Electoral Amendment Act 1985.

8.53 In a further interim report presented in 1985,[48] a majority of the Select Committee recommended a reduction of the residential qualification from 3 months to 1 month. In making that recommendation the majority was influenced, among other matters, by the impending common enrolment for parliamentary and local body elections. This meant that the qualifications for both kinds of election had to be fully compatible. Before 1986 when the requisite qualifications became identical, there had been 1 significant difference. A local body elector ceased to be qualified on leaving the district. By contrast parliamentary electors, on leaving the electorate, remained qualified until they qualified for a new electorate. This took a minimum period of 3 months at that time; in some cases the period would be considerably longer. In view of the fact that the common enrolment would require the qualifications for local body electors to be the same as those for parliamentary electors, the majority of the Select Committee considered a link of 3 months between electors and districts which they had permanently left unduly long in the local body context. The majority also considered that the reduction of the residential qualification would simplify registration for transient electors, enabling them more readily to qualify in the electorate in which they currently resided and with which they most readily identified. The Select Committee's recommendation to reduce the residential qualification from 3 months to 1 month was implemented by the Electoral Amendment (No 2) Act 1985.

8.54 On 5 August 1986 the Select Committee presented its Fourth Interim Report.[49] Most of the recommendations were of an administrative nature for the conduct of elections. There were some recommendations for legislative change, the most significant of these was a proposal which would permit all electors to vote in their own electorate before election day. In the course of a debate on the Report on 10 September 1986, the Minister of Justice, Geoffrey Palmer, indicated that the Committee's proposal would not be implemented before the next general election, but that they would instead be studied in the light of the forthcoming report of the Royal Commission on the Electoral System.[50] This report would be the point of departure for the next chapter of New Zealand's electoral law.

NOTES

1 The Colonial Period

1 C.O. 209/4, quoted in McIntyre, W. David, and Gardner, W. J., eds, *Speeches and Documents in New Zealand History*, Clarendon Press, Oxford, 1971, p 12

2 On this group see Stone, Russell, "Auckland's Political Opposition in the Crown Colony Period, 1841–53" in *Provincial Perspectives; Essays in Honour of W. J. Gardner*, ed Richardson, Len and McIntyre, W. David, University of Canterbury Press, Christchurch, 1980, pp 15–35

3 c.f. McLintock, A. H., *Crown Colony Government in New Zealand*, Government Printer, Wellington, 1958, p 148

4 The New Zealand Association had in fact been responsible for the introduction in the House of Commons of a Bill establishing a form of government, according to its own design, for New Zealand, as early as 1838. This Bill was not successful; see Cheyne, Sonia, *Search for a Constitution; People and Politics in New Zealand's Crown Colony Years*, Unpublished PhD thesis, University of Otago, 1975, pp 91

5 C.O. 209/52, quoted in McIntyre and Gardner, op. cit., p 65

2 The Provincial Period

1 C.O. 209/63 quoted in McIntyre and Gardner, op. cit., p 66

2 c.f. Cheyne, op. cit., p 277, n.15

3 McLintock, op. cit., p 298

4 c.f. Cheyne, op. cit., p 284

5 Fox to Stafford, 7 November 1850, quoted in ibid, p 275

6 From Fitzgerald, J. E., *A Selection of the Writings and Speeches of John Robert Godley*, Christchurch 1863, quoted in McIntrye and Gardner, op. cit., p 67

7 Fox, Sir William, *How New Zealand Got Its Constitution*, Wilson and Horton, Auckland, 1890, p 9

8 c.f. Rutherford, J., *Sir George Grey: A Study in Colonial Government*, Cassell, London, 1961, p 243

9 McLintock, op. cit., pp 297–8

10 c.f. Rutherford, op. cit., p 249

11 c.f. C.O. 209/93, quoted in McIntyre and Gardner, op. cit., pp 69–72

12 New Zealand Constitution Act 1852, Section 7

13 Quoted in Rutherford, op. cit., p 251 and n.78

14 *New Zealand Gazette*, 1853, v 1, no. 1

15 ibid, p 6

16 ibid, p 7

17 ibid, p 9

18 New Zealand Parliamentary Debates (N.Z.P.D.), 1854–55, p 168

19 c.f. ibid, pp 391–7; Greenwood's scheme is based on Section 41 of the Constitution Act 1852, not Section 47 as stated in ibid, p 392.
20 ibid, p 496
21 Votes and Proceedings of the House of Representatives, Session IV, 1856, Auckland v II, D.1.
22 ibid, D.28
23 N.Z.P.D., 1854–5, p 27
24 ibid, p 426
25 c.f. N.Z.P.D., 1856–8, pp 305–6: ". . . the said General Assembly should be empowered to alter the provisions of the said Act, except the provisions contained in the following clauses—viz, 1, 3, 18, 25, 28, 29, 32, 44, 45, 46, 47, 53, 54, 56, 57, 58, 59, 61, 64, 65, 71, 80, so much of clause 40 which does not relate to the number of members of the House of Representatives, and so much of clause 64 which does not relate to the manner of accounting to Her Majesty for the sums specified therein: but that every Bill for making such alteration should be reserved for the signification of Her Majesty's pleasure thereon".
26 Appendices to the Journals of the House of Representatives (A.J.H.R.), 1858, F.1, p 3
27 c.f. LE. 1/1858/1. This file contains copies of the Electoral Bills with annotations by the Clerk of the Committee.
28 A.J.H.R., 1858, F.1, p 4
29 N.Z.P.D., 1858–60, p 6
30 ibid, p 7
31 ibid, p 8
32 c.f. Representation Apportionment Bill, in Votes and Proceedings of the Legislative Council, Fifth Session, Auckland, 1858, no page numbers (General Assembly Library copy.)
33 N.Z.P.D., 1858–60, p 26
34 ibid, p 10
35 N.Z.P.D., 1854–5, p 426
36 Votes and Proceedings of the House of Representatives, D. 28, op. cit., p 3
37 N.Z.P.D., 1856–8, p 597
38 ibid, p 595
39 ibid, p 596
40 Votes and Proceedings of the House of Representatives, D. 1, op. cit., p 2
41 N.Z.P.D., 1858–60, p 459
42 ibid, p 513
43 Cumberland, Kenneth B., and Hargreaves, R. P., "Middle Island Ascendant: New Zealand in 1881 (Part 1)", *New Zealand Geographer*, v XI, no. 2 October 1955, p 96
44 ibid, pp 97–8

45 c.f. Wylie, D. M., *Representation and the Franchise in New Zealand, 1852–1879*, Unpublished MA thesis, Otago University, Dunedin, 1951, p 55
46 N.Z.P.D., 1858-60, p 513
47 ibid, p 777
48 N.Z.P.D., 1861–3, pp 483–4
49 Journals of the House of Representatives of New Zealand, Auckland, 1863, p 54
50 N.Z.P.D., 1861–3, p 903
51 N.Z.P.D., 1865, p 599
52 Section 3
53 N.Z.P.D., 1865, p 325
54 A.J.H.R., 1860, E. 7, p.8
55 c.f. A.J.H.R., 1864, E. 15
56 Section 2
57 Section 5
58 N.Z.P.D., v I, pt I, p 336
59 ibid, p 460
60 ibid, p 520
61 ibid, p 463
62 30 August 1867, p 3
63 Becke, Louis, and Fitzgerald, J. D., "The Maori in Politics", in *The Review of Reviews*, 20 June 1895, p 618
64 N.Z.P.D., v 8, p 178
65 ibid, p 179
66 Section 28
67 Section 49
68 On Reynolds, see Wood, G. A., "The 1878 Electoral Bill and Franchise Reform in Nineteenth Century New Zealand", in *Political Science*, v 28, no. 1, July 1976, p 44, and Wylie, op. cit., Chs IV & V passim

3 Uncertain Years

1 N.Z.P.D., v 19, p 154
2 ibid, p 338
3 ibid, p 339
4 Section 2, para 2
5 N.Z.P.D., v 19, p 436
6 ibid
7 N.Z.P.D., v 24, p 490
8 N.Z.P.D., v 28, p 566
9 For discussion of the events of these years, as they relate to the franchise, see Wood, op. cit., passim, and Wylie, op. cit., Chs V—VII, passim
10 Section 6, para 4
11 Section 2, para 4

12 N.Z.P.D., v 33, p 22
13 ibid, p 19
14 ibid, p 33
15 N.Z.P.D., v 39, p 472
16 Section 2, para 3
17 ibid
18 Section 7
19 N.Z.P.D., v 33, pp 41-2
20 N.Z.P.D., v 35, p 235
21 N.Z.P.D., v 33, p 43
22 N.Z.P.D., v 55, p 50
23 N.Z.P.D., v 39, p 470
24 ibid, p 473
25 ibid, p 471
26 ibid, p 472
27 N.Z.P.D., v 55, p 15
28 Section 3
29 N.Z.P.D., v 56, p 568
30 Section 3(4)
31 Section 3, para 2
32 N.Z.P.D., v 57, p 33
33 N.Z.P.D., v 54, p 168
34 Section 3, para 6(a)
35 N.Z.P.D., v 59, p 309
36 ibid

4 The Liberal Period

1 Section 148
2 Section 156, para 12
3 N.Z.P.D., v 96, p 439
4 N.Z.P.D., v 87, p 329
5 N.Z.P.D., v 114, p 515
6 ibid, p 514
7 ibid
8 *Lyttelton Times*, 12 November 1890, p 5
9 A.J.H.R., 1891, I.10, p 1
10 ibid
11 ibid, p 2
12 LE. 1/1894/3, p 8
13 N.Z.P.D., v 115, p 41
14 Section 26
15 N.Z.P.D., v 125, p 297
16 N.Z.P.D., v 134, p 17
17 ibid, p 11
18 ibid, pp 9-10

19 EL. 12.5.1.16, A. G. Harper, Under-Secretary for Internal Affairs, to Chairman of Public Service Commission, 22 March 1950. The Electoral Department was in fact transferred back to the Department of Internal Affairs on 1 August 1943.
20 N.Z.P.D., v 134, p 16
21 ibid, p 28
22 ibid, p 37
23 ibid, pp 35–6
24 N.Z.P.D., v 144, p 574
25 ibid
26 ibid, p 581
27 N.Z.P.D., v 153, p 656

5 The Reform Period

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2 EL. 5.2, p 167
3 A.J.H.R., 1913, H. 39, p 2
4 Section 4
5 N.Z.P.D., v 169, p 383
6 13 March 1920, p 12
7 c.f. EL. 12.14.2.17
8 *Christchurch Star-Sun*, 19 July 1935, p 10
9 c.f. EL. 12.13.1. 23 September 1919
10 N.Z.P.D., v 212, p 693
11 A.J.H.R., 1918, H.28, p 2
12 N.Z.P.D., v 187, p 780
13 N.Z.P.D., v 205, p 1101
14 c.f. N.Z.P.D., pp 487–8
15 EL.12.13.1, 6 December 1921
16 EL.12.14.2.8., C.E.O. to Minister in Charge of Electoral Department, 19 September 1927
17 N.Z.P.D. v 232, p 529
18 N.Z.P.D., 239, pp 144–5

6 The First Labour Government

1 N.Z.P.D., v 249, p 811
2 c.f. EL. 12.19.6.
3 ibid, 30 October
4 c.f. EL.12.19.6., Raharuhi Pururu and others to Prime Minister, 25 November 1922
5 N.Z.P.D., v 230, p 447
6 EL.12.19.6
7 N.Z.P.D., v 233, p 474
8 ibid
9 EL.12.19.6

10 ibid, C.E.O. to Minister in Charge of Electoral Department, 15 October 1934
11 c.f. N.Z.P.D., v 242, p 303
12 c.f. Brown, Bruce, *The Rise of New Zealand Labour*, Price Milburn, Wellington, 1962, p 176
13 N.Z.P.D., v 246, p 484
14 EL.12.19.6, C.E.O. to Prime Minister, 1 October 1936
15 c.f. EL.12.14.6.1, Secretary of Treasury to Acting Minister of Finance, 28 October 1936
16 Section 4(b)
17 N.Z.P.D., v 249, p 836
18 ibid, p 817
19 ibid
20 ibid, p 816
21 ibid
22 ibid, p 812
23 EL.12.19.6, C.E.O. to Prime Minister, 10 February 1939, MAORI ELECTIONS, 1938, p 2
24 ibid
25 c.f. ibid, ELECTORAL ROLLS FOR MAORI ELECTIONS
26 c.f. N.Z.P.D., v 260, pp 1151–60
27 N.Z.P.D., v 261, p 542
28 ibid, p 544
29 Section 2
30 c.f. N.Z.P.D, v 262, pp 28–36
31 EL.12.15.1.6, 4 June 1935
32 c.f. EL.12.15.16, SUGGESTED AMENDMENTS TO ELECTORAL ACT: REPRESENTATION COMMISSION
33 A.J.H.R., 1937–8, H.45, p 2
34 N.Z.P.D, v 271, p 46
35 See discussion in McRobie, Alan D., *Electoral Distribution in New Zealand*, Unpublished MA thesis, University of Canterbury, Christchurch, 1975, pp 157–60
36 N.Z.P.D., v 270, p 790
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38 c.f. ibid, Dominion President, New Zealand Farmers' Union to Governor-General, 1 November 1945
39 A.J.H.R., 1946, H.46, p 3
40 EL.12.5.4.5, 13 November 1944, p 3
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42 EL.12.19.6, Tirikatene to Minister in Charge of Electoral Department, 3 August 1948

43 EL.12.19.6, Minutes of Meeting of Committee re Preparation of Maori Electoral Roll, 44EL.12.14.6.8, p 1
45 N.Z.P.D., v 284, p 4168
46 N.Z.P.D, v 280, p 412
47 EL.12.19.6, 15 September 1948
48 [1947] N.Z.L.R. 363; (No. 2) [1947] N.Z.L.R. 706; (No. 3) [1947] N.Z.L.R. 707; (No. 4) [1948] N.Z.L.R. 65; (No. 5) [1948] N.Z.L.R. 98

7 The Electoral Act 1956

1 N.Z.P.D., v 270, p 680
2 N.Z.P.D., v 291, p 2670
3 ibid, p 2675
4 For a detailed discussion of the abolition of the Legislative Council see Jackson, W. K., *The New Zealand Legislative Council*, Otago University Press, Dunedin, 1972, Ch 16 passim
5 Journal of the House of Representatives, Session 1948, Government Printer, Wellington, 1949, p 194
6 N.Z.P.D., v 289, pp 538–9
7 ibid, p 547
8 ibid, p 546
9 "Can Our Liberties Be Safeguarded?" *New Zealand Law Journal*, v 27, no. 9, 22 May 1951, p 142
10 A.J.H.R., 1952, I.18, pp 44–5
11 J.20.1.7. pt 1
12 A.J.H.R., 1952, H.20, p 4
13 A.J.H.R., 1953, H.20, p 14
14 A.J.H.R., 1955, H.20, p 6
15 c.f. 14 April 1952, p 4, and 20 June 1952, p 4
16 *Freedom*, 18 June 1952, p 1
17 E.7.8.1 pt 1, (1983), 7 November 1952
18 EL.12.12.7.35
19 J.20.1.7. pt 2
20 ibid, and EL.12.12.7.35
21 J20.1.7, pt 2. Handwritten note, 18 July 1955
22 N.Z.P.D., v 310, pp 2840–1
23 16 October 1956, p 12
24 15 October 1956, p 8
25 EL. 27/9
26 op. cit.
27 op. cit.
28 EL.12.14.6. Secretary for Justice to Law Draftsman, 14 April 1956, p 6
29 c.f. *New Zealand Herald*, 21 August 1956, p 10
30 22 October 1956, p 11
31 2 November 1956, p 12

32 N.Z.P.D., v 310, p 2839
33 Smith, R. M., Submission to Select Committee on Electoral Act 1956, *New Zealand's Constitutional problem*, 19 October 1956, Uncatalogued papers in Parliament Buildings
34 c.f. *New Zealand Herald*, 21 August 1956, p 10
35 ibid
36 *Evening Post*, 21 August 1956, p 12
37 c.f. Section 189 (1)
38 c.f. 31 October 1956, p 11
39 1 November 1956, p 4
40 29 October 1956, p 4
41 N.Z.P.D., v 310, p 2840
42 ibid, p 2839
43 ibid, p 2843
44 ibid, p 2850
45 ibid
46 ibid, p 2849
47 ibid, p 2844
48 ibid, p 2843

8 The Last Twenty Years

1 N.Z.P.D., v 344, p 2707
2 N.Z.P.D., v 343, p 1548
3 N.Z.P.D., v 344, p 2714
4 ibid, p 2708
5 ibid, p 2714
6 N.Z.P.D., v 343, p 1665
7 N.Z.P.D., v 344, pp 2708 et seq
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9 ibid
10 N.Z.P.D., v 362, p 1937
11 E.1.3.3.2, pp 10–11
12 A.J.H.R., 1970, I.12. p 20
13 ibid, p 35
14 ibid
15 ibid, p 18
16 ibid, p 19
17 ibid
18 A.J.H.R., 1975, I.15, pp 12–13
19 ibid, p 13
20 Electoral Act, Section 2
21 op. cit., p 14
22 ibid
23 ibid
24 A.J.H.R., 1976, E. 9, p 121

25 c.f. 1978: 22% (A.J.H.R., 1979, E. 9, p 117); 1981: 21% (A.J.H.R., 1982, E. 9, p 111); 1984: 18% (A.J.H.R., 1984, E. 9, p 133)
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27 *Re Hunua Electoral Petition* [1979] 1 N.Z.L.R., 251, 268–269
28 ibid, 264
29 Report of the Committee of Inquiry into the Administration of the Electoral Act, August 1979, p 75, para 6.14(b)
30 p 130, para. 11.10(a)
31 [1979] 1 N.Z.L.R., 251, 298–299, 303
32 *Shields* v *Brill* (Supreme Court (Electoral Court), Wellington) 14 May 1979 (M41/79)
33 *Wybrow* v *Chief Electoral Officer* [1980] 1 N.Z.L.R., 147
34 A.J.H.R, 1980, I.17, p 21
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48 A.J.H.R., 1985. I. 17B; this report, although entitled "Second Interim Report", is in fact the Committee's third interim report.
49 A.J.H.R., 1986, I. 17A
50 N.Z.P.D., v 474, p 4152