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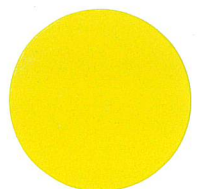
**Te Oranga o te Iwi Maori:
A Study of Maori Economic and Social Progress**

The Maori Seats in Parliament

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Introduction

This essay proposes the abolition of separate Maori representation in parliament. The Maori seats were introduced in 1867 as a temporary measure but soon became a permanent feature of the constitutional landscape. This paper revisits the separate seats 140 years on and finds their justification wanting. The Maori seats survived through indifference and neglect last century after the introduction of the full adult franchise had exhausted their original purpose. The under-representation of Maori in parliament under the first-past-the-post (FPP) voting system provided some belated justification for their retention. However, that justification disappeared, too, when the mixed-member proportional (MMP) electoral system was introduced in 1996. Proportional voting broadened the range of sectional interests represented in parliament and ended the need for separate Maori seats.

This essay advances four propositions: (a) the separate seats are unnecessary to secure effective representation of Maori, (b) the seats entrench a form of historical paternalism that removes Maori issues from the mainstream political agenda, (c) the retention of the seats under MMP represents an insidious form of reverse discrimination and (d) the seats invite 'overhang' and the potential to undermine the expressed will of the people. This paper also examines two arguments that are related to the argument for abolition, that: (a) separate representation for Maori is a right guaranteed under the Treaty of Waitangi and (b) the seats, rather than be abolished, should be constitutionally entrenched and protected from political attack. Neither argument withstands scrutiny. The Crown's duty of active protection under Article II of the Treaty of Waitangi does not embrace political rights, and to entrench the Maori seats would give further legal sanction to a separatist policy founded on ethnicity.

The separate franchise

Four separate Maori electorates were created in 1867, based on an adult male franchise.¹ This arrangement was intended to last for five years while the Native Land Court converted communal Maori land tenure into Crown grants. The aim was to enfranchise Maori under the standard property-ownership qualification that conferred the right to vote. However, the freeholding of Maori land proved more intricate and time-consuming than expected and the four seats were retained for a further five years,² and then indefinitely.³ The four fixed seats remained until the introduction of MMP voting, when they were replaced with a

¹ See the Maori Representation Act 1867.

² See the Maori Representation Act Amendment and Continuance Act 1872.

³ See the Maori Representation Acts Continuance Act 1876 which provided that the Maori Representation Act 1867 would remain in force until expressly repealed by an Act of the General Assembly.

writer believed the Weld Government was actuated by humanitarian concerns to redress Maori electoral rights under Article III of the Treaty of Waitangi.¹⁷ However, a clutch of provincial politicians organised around the former native affairs minister, Walter Mantell, successfully opposed the bill.

In 1865, the Weld Government introduced two statutes of relevance to Maori. The Native Rights Act 1865 allayed doubts whether Maori born before the establishment of British rule in 1840 were "natural-born subjects of Her Majesty" and subject to the jurisdiction of the colonial courts. The Act affirmed the status of all Maori within the colony and the jurisdiction of the courts in cases "touching the persons and the property whether real or personal of the Maori people".¹⁸ The second measure was the Native Commission Act 1865 introduced to assist Maori enjoy rights of political representation – the birthright of natural-born subjects. The government accepted it would take time for the Native Land Court to convert Maori land tenure into Crown grants and resolved to grant Maori a temporary franchise. The Native Commission Act 1865 authorised the appointment of a commission to examine how best to confer a temporary franchise, pending the conversion of Maori title. It was proposed that the commission comprise 20 to 35 Maori and three to five non-Maori, with a quorum of 10. FitzGerald, the architect of the legislation, desired a truly representative commission in which settler interests would not dominate. However, FitzGerald lost office before the commission was fully appointed and his successor resolved not to continue it.¹⁹

Temporary expedient

The passage of the Maori Representation Act 1867 fulfilled FitzGerald's purpose – the establishment of a temporary Maori franchise. The Act's preamble cited the disenfranchisement of Maori under their land tenure system and observed:

Whereas ... 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 [sic] Her Majesty's Native subjects in the House of Representatives and the Provincial Councils of the said Colony.

The Act established four Maori electorates – three in the North Island and one in the South and Stewart Islands.²⁰ The statute was to remain in force for five years

¹⁷ McClelland, above n 8, p 279.

¹⁸ Native Rights Act 1865, s 3.

¹⁹ See MPK Sorrenson, 'A History of Maori Representation in Parliament' in *Report of the Royal Commission on the Electoral System: Towards a Better Democracy*, AJHR 1986, H.3, Appendix B, pp 18–19.

²⁰ For the history of Maori representation, see *Report of the Royal Commission on the Electoral System: Towards a Better Democracy*, *ibid*, pp 82–84 (paras 3.7–3.13); Sorrenson, *ibid*; MH Durie, *Te Mana Te Kawanatanga: The Politics of Maori Self-Determination*, Oxford University Press, Auckland, 1998, ch 4.