

REFLECTIONS ON CONSTITUTIONAL AND OTHER ISSUES CONCERNING OUR ELECTORAL SYSTEM: THE PAST AND THE FUTURE

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I INTRODUCTION

The Royal Commission on the Electoral System, which I chaired, reported to the Government in 1986.¹ The report dealt comprehensively with the nine questions asked of the Commission in its terms of reference. Many of the questions raised matters of considerable importance to our democracy and I will later refer to some of them. The Commission will, however, probably be best remembered for its analysis of the advantages and disadvantages of a proportional voting system, which we called Mixed Member Proportional (MMP), as against First Past the Post (FPP), and its recommendation that FPP should be replaced by MMP. The report ultimately led to the 1993 referendum in which, by margin of 53.9 per cent/46.1 per cent, the electorate voted to change our voting system from FPP to MMP.

In the lead up to the referendum, whenever a suitable opportunity arose and my other commitments permitted, I spoke publicly about the Royal Commission's proposal in order to explain and support the Commission's reasons for recommending the change to MMP. Prior to the first MMP election in 1996, I was appointed as the first President of the new Electoral Commission and was in that capacity involved in the education campaign undertaken before the election to explain to voters how the new system worked. I was sorry when a health problem compelled my resignation from both the Electoral Commission and the Judiciary in October 1996. Since that time, I have generally refrained

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¹ Report of the Royal Commission on the Electoral System *Towards a Better Democracy* (Government Printer, 1986). The Report contains a description of how the MMP system recommended by the Royal Commission operates.

from writing or speaking about MMP, but I now do so as a contribution to this conference which celebrates the outstanding achievements of the Rt Hon Sir Ivor Richardson in the law and in public life, this also being an appropriate time to place on record a variety of facts, personal views, and comments concerning the change to MMP.

This paper is not an attempt to write a summary of the facts, circumstances and outcomes of the Royal Commission Report. Nor is it a "coda" or "reprise" composed with the sole aim of justifying the conclusions contained in the Report. It is, in part, a personal perspective, but the main purpose of the paper is to reflect upon and discuss some of the events prior to and leading up to the change to MMP and some aspects of the subsequent operation of the new system, concentrating in particular on those aspects which are most commonly raised or debated. I have also referred to various matters that are relevant to, or likely to throw light upon, future decisions on a variety of issues, in the hope that this will be of assistance to those who may in future have to make recommendations about our electoral system.

I am conscious that in the years since the introduction of MMP I have, even though the Commission's Report was unanimous, felt considerable personal responsibility for the decision to adopt the system, particularly at those times when it appeared to have become unpopular with voters. In that situation, it is difficult to be completely impartial, but I have tried to express views that are unbiased and take into account the various factors fairly. The views expressed are my own, and are not to be taken as the views of the other Members of the Commission.

II APPOINTMENT OF COMMISSIONERS

When the then Minister of Justice, Sir Geoffrey Palmer, asked me to Chair the Royal Commission, he indicated that the Government wished to have a totally independent inquiry and that, because of the highly political aspects of the inquiry, he had reached the conclusion that it would be undesirable to appoint to the Commission any past or current MP. No matter how experienced or distinguished, such a person would inevitably be regarded as having predetermined views, with the result that the whole inquiry would become politicised. In response, I indicated that, in my view the crucial requirement was to ensure that the people appointed to the Commission were sufficient in number and had the requisite ability, judgment, and experience to deal with all the issues. I also asked to be consulted about the appointments because I was not willing to Chair the Commission if I did not have full confidence in the independence of the Commissioners.

On several occasions, both in the news media and in a book, Mr Graeme Hunt has alleged that Sir Geoffrey Palmer "stacked" the Royal Commission with people certain to give him the result he was after. That allegation is totally incorrect. Sir Geoffrey did not at any stage discuss with me his or my views concerning proportional representation or any

other issue. Moreover, when I was appointed to chair the Commission, I did not have a view favouring proportional representation or any other system. Both of the above statements are to the best of my knowledge also true of the other members of the Commission, including Professor Mulgan who had written concerning the merits of FPP and the Rt Hon Sir Kenneth Keith QC who had previously commented upon a draft of Sir Geoffrey's book titled *Unbridled Power*, in which Sir Geoffrey discussed the Supplementary Member System (which is not a proportional system). I also requested all Commissioners not to make up their minds on any issue until we had heard or read all of the 800 or so submissions made to the Commission and had visited the countries whose systems were of special interest to us. I thought Commissioners were likely to have differing views about proportional representation. In the event, we ultimately reached unanimous agreement in favour of MMP.

III VALUE OF USING A ROYAL COMMISSION

A Royal Commission with five Commissioners of varied experience proved an ideal vehicle for a far-reaching inquiry with many issues to investigate. Two excellent researchers, Dr Paul Harris (subsequently appointed Chief Executive of the Electoral Commission, a post which he still holds) and Mr Lewis Holden were also appointed. The group proved to be the right size to investigate, debate and assess the extensive evidence we received. A larger group would have been likely to become too diffuse in their views and difficult to chair. As it was, control was able to be kept over all aspects of the work as we considered and drafted the chapters of the Report.

The status and powers accorded to a Royal Commission were also important, the former enabling the Commission, with valuable assistance from the Ministry of Foreign Affairs, to access the appropriate people to assist us with our inquiries overseas, and the latter enabling the Commission to obtain disclosure of information which would otherwise almost certainly have been withheld – for example, the highly sensitive details of the finances of the political parties.

IV CHOICE OF MMP BY THE ROYAL COMMISSION

I next deal with the choice of MMP as the voting system recommended by the Commission. This topic also illustrates the Commission's method of work.² Assessing the merits and demerits of MMP, as against FPP, and every other possible system, was a vast exercise. Moreover, the Commission was required to consider eight other issues concerning our electoral system. We received over 800 written submissions and arranged

² For a detailed account of the Commission's work and the circumstances surrounding the adoption of MMP, see William K Jackson and Alan McRobie *New Zealand Adopts Proportional Representation* (Ashgate, Aldershot, 1998).

to attend 5 hui so that Maori people could, if they wished, make submissions on a Marae. We had the advantage of hearing or reading all the submissions early in our inquiry.

The Commission then proceeded to identify the systems, whether existing or theoretical, which might be of interest. Our research and enquiries rapidly confirmed that, throughout the world, there are divided views as to whether a proportional or first past the post system is preferable. Each system or group of systems has its die-hard supporters who are unlikely ever to accede to a contrary view. We also inclined to the view that it was likely, if we recommended a change to proportional representation, we would be writing for the longer term. Indeed, at the time of the Royal Commission Report, there were very few instances of a country making a major change to its electoral system in other than revolutionary, or near revolutionary circumstances. It was also clear, as those who have studied electoral systems are well aware, that all democratic countries over a period of time tend to mould any given system to suit their particular needs and circumstances, so that two similar systems may operate somewhat differently in different countries. It was necessary, therefore, to look for the best solution for one's own, particular, country.

Bearing those factors in mind, we identified four voting systems that, in our view, merited detailed consideration. We then arranged to visit several countries to make our own 'on the spot' enquiries concerning three of those systems (the fourth was not in use anywhere at that time). Only at the end of that process did we consider which system was the best for New Zealand. This was typical of the procedure we followed for each question we were required to answer. We did not endeavour to reach any view until we had considered the relevant submissions and completed subsequent inquiries. Once we had reached a provisional view on any topic (after research and discussion), one member of the Commission, on occasions with significant assistance from a researcher, wrote a first draft for discussion with other members at future meetings of the Commission. The two researchers also took part in Commission meetings. After discussion, the draft was then rewritten and further considered with that process continuing until we were satisfied and, as eventuated in almost all instances, in agreement.

We ultimately decided to recommend MMP, that is, the German voting system, with a limited number of modifications to suit New Zealand's specific needs. I personally thought it might be a decade before one or other of the main political parties decided to hold a referendum; and that if this happened it would be as a result of voters becoming more and more unhappy about the capricious aspects of FPP in an increasingly diverse electorate, which also wished to see a more representative Parliament. In the event, and for a variety of reasons, the two referendums (the first to choose the preferred new system and the second to determine whether voters wanted to adopt the new system or to stay with FPP), came sooner than I expected.

V FACTORS INFLUENCING VOTERS' CHOICE OF MMP

The second referendum (MMP v FPP) needs to be viewed against the background of a voting public largely unfamiliar with other electoral systems, and quite often not very knowledgeable about their own system, coupled with feelings of considerable unhappiness about politicians in successive governments of different political persuasions. An increase in the unpopularity of politicians appeared to be taking place in many democracies as governments tried to cope with rapid change and ever increasing demands for health, education and other services, while at the same time endeavouring to reduce or hold taxes. In New Zealand, feelings of unhappiness with politicians were compounded by the introduction of free market reforms and other changes that were arguably contrary to the words or spirit of both major parties' election manifestos or were, at the least, embarked upon without prior warning or a mandate.

In the light of these factors, it is not infrequently suggested that electors voted for MMP in 1993, not because they knew or cared whether it was a better system, but simply to give the politicians "one in the eye". That contention, however, overlooks that, prior to the vote, the Electoral Referendum Panel was required to undertake a programme to inform voters on the issues and that there was also a spirited debate stimulated by a prominent businessman, Mr Peter Shirtcliffe, who led a very effective anti-MMP campaign, called the Campaign for Better Government (CBG), which was in turn responded to by the Electoral Reform Coalition. In the outcome, I consider that voters both made a reasonably informed choice and had positive reasons for supporting MMP. This is borne out, for example, by the detailed research carried out by the authors of *Towards Consensus*, who conclude that "... the vast majority of voters appeared to have good reasons for making their choice" in the referendum.³ In particular, voters wanted to increase the representativeness of Parliament and also to introduce greater checks and balances in our unicameral system which, under FPP, enabled a large Cabinet to dominate caucus, with Cabinet itself often being heavily under the influence of the Prime Minister and other powerful figures. Voters also chose MMP despite the very considerable unpopularity of an increase in the number of MPs from 99 to 120 consequent upon the adoption of the new system. I mention the above circumstances by way of background and as an aid to memory, because they are very relevant to voters' reaction to what occurred in and after the first MMP election.

3 Jack Vowles *Towards Consensus?: The 1993 General Election in New Zealand and the Transition to Proportional Representation* (Auckland University Press, Auckland, 1995) 192.

VI MAJORITY REQUIRED FOR CONSTITUTIONAL CHANGE

All the matters discussed above raise the question whether the introduction of a significant constitutional change should require more than a simple majority, for example, a majority of all eligible (instead of actual) voters, or 60/40, or 70/30 (as suggested by the CBG in 1993), or a turnout requirement. That might ensure that there was less controversy over the result and implementation of a referendum. But, based on the experience in other countries where the constitution requires more than a simple majority, it is clear that such a requirement makes it very difficult to achieve constitutional change or amendment. While a constitution should not be lightly changed (and some provisions may require a greater protection from change than others), any constitution does from time to time require amendment to cover altered circumstances. For that reason, I favour our present requirement of a simple majority of voters in a referendum (or 75 per cent of MPs) to change the "entrenched" provisions of special importance.

The issues concerning the required majority for change lead to the related question whether, in the constitutional area, relatively significant change should be embarked upon in other than the most extreme situations. Citizens become used to and comfortable with, longstanding constitutional arrangements. As a result, they often feel uneasy with or even threatened by change and will possibly never, or not for a long time, like the new way of doing things. They may also be so accustomed to one way of viewing things that nothing will quickly change their outlook, for example, the assumption that a "hung parliament" is always best avoided may not for a generation or so be displaced in New Zealand by the knowledge that coalition or minority government does not necessarily lead to ineffective government.

To my mind, there is no definitive answer to the above question. All must depend on the circumstances – how bad is the constitutional problem we wish to cure, how complex is the cure, how substantial will the change be, will it in the end be easy or complicated to understand – and a sensible balance must be determined in relation to each proposal for amendment which should then be tested in a referendum. Of one thing, however, I am satisfied. It is undesirable to drive through major constitutional change, or indeed significant change of any sort, without first ensuring that voters have the chance to accept or reject it (normally, if not a constitutional change, as part of a party's election manifesto). For a Government to embark on major change with no such forewarning, and possibly on the basis that if voters were to be consulted they would oppose the change, is an error. The tactic may succeed, but it is inimical to voters trust and confidence in the parliamentary system and denigrates the participatory and consultative aspects that we value in our democracy. Moreover, voters *can* be persuaded to accept major change, which initially appeared unlikely to be acceptable to them. Thus, in Australia in 1998, the

Liberal Party successfully went to the electorate on the basis that they would if elected introduce a GST-type tax.

VII EVENTS SUBSEQUENT TO THE FIRST MMP ELECTION

Events subsequent to the first MMP election for a time, well and truly dented many voters' hopes for MMP. While the majority of voters were pleased with and supportive of the considerably more representative Parliament that resulted from the election, they were immediately surprised by the period of time it took to form the new Government (some eight weeks). This was the case even though there were adequate caretaker government conventions concerning which no problem arose, and government of the country on a caretaker basis proceeded smoothly in the period following the election. Provided there are adequate caretaker government conventions it is not in my view particularly significant for a voting system to regularly provide a clear result on or very close to election night.⁴ A period of delay does not, for example, seem to greatly affect financial and investor confidence. Rather, it is the likely composition of the eventual government, which may or may not have that effect. After the first MMP election, some members of our financial community, who often appeared to be unfamiliar with government under proportional systems, were much more vocal than their overseas counterparts about the effect of a period of uncertainty concerning the outcome of an election. They did, however, by their comments temporarily create some uncertainty in the minds of some overseas investors.

Be that as it may, the public, despite pre-election warnings of the high likelihood that a government would not be known on election night, and despite this having occurred in several relatively recent elections under FPP (for example, 1981 and 1993), were surprised and disconcerted by the time involved, which in some other countries with a proportional system would not be thought unduly lengthy. Thus, in the Netherlands, the *average* time for formation of a government is nine weeks and three days, in Belgium five weeks, and in Germany three weeks and one day.⁵ The two main parties also allowed a third party, New Zealand First, to conduct what has been described as an "auction". This, voters thoroughly disliked. Public disapproval turned in some instances to outrage when New Zealand First finally chose to go into coalition with the National Party, even though the supporters of New Zealand First, and indeed voters throughout the whole country, had formed the

4 If speed in formation of Government is thought to be important this can be assisted in a variety of ways: see the chapter on "Government Formation" in Jonathan Boston *Governing Under Proportional Representation: Lessons From Europe* (Institute of Policy Studies, Victoria University of Wellington, Wellington, 1998).

5 See Boston, above, 25.

impression during the election campaign that New Zealand First would support the Labour Party.

These events had a number of consequences for MMP. First, they highlighted the criticism made of MMP and all proportional systems, that they frequently result in voters not directly choosing the Government. The Royal Commission had pointed this out in its Report, but had also pointed out that voters would normally know beforehand which parties would join in a coalition after the Election. When we were preparing the Commission's Report I considered, and I think other Commissioners shared the view, that a political party would not risk misleading the electorate on this issue because, unless there was some very good reason, it would be likely to produce an electoral backlash. In the event, New Zealand First only just survived the next election because the leader of the Party, Mr Winston Peters, managed by a very narrow margin to hold the Tauranga constituency, which in turn resulted in the waiving of the five per cent Party Vote threshold and the election of four list MPs.

All political parties appear to have learned from the events surrounding the formation of the first coalition government under MMP. For example, in the next election the Labour and Alliance parties announced, in advance of the election, their intention to form a coalition. As a result, in the second MMP election voters had reasonably accurate knowledge of which parties were likely to form a coalition with which other parties. Moreover, Labour and Alliance were able speedily to form a minority Government with the support of the Green Party.

Subsequent to the formation of a Government following the first MMP election, an immediate further disappointment was delivered to electors. They had in some quarters been led to expect that MMP would improve the behaviour of MPs in the House. The electorate was, and remains, very unimpressed by what is regarded as unattractive behaviour in the House and petty point scoring. It is likely that many voters were also unaware that a good part of the business of the House was not the subject of dispute and that there was often co-operation in Select Committee work. In the period leading up to the referendum, on almost every occasion when I talked about MMP, I made a point of indicating that the Commission had *not* suggested that MMP would improve MPs behaviour (though the system does require more negotiation between parties). It would, however, not have been an unreasonable assumption that MPs' behaviour would improve. Indeed, I have a vivid memory of a member of the Parliament of Norway speaking to me after observing the New Zealand Parliament in session. After indicating that he had been surprised by the behaviour he had seen, he said "You would find our parliamentary debates very boring – we discuss the *issues*". I however considered, and I think other Commissioners also considered, that New Zealand MPs were so accustomed to a basically adversarial way of conducting the House, that it would take some time for attitudes to

change. But what I did not anticipate was that, because of the way in which negotiations for formation of the Government had been conducted, and their outcome, the behaviour of MPs at the beginning of the first MMP Government was, if anything, worse than under FPP. Some MPs appeared to have an almost visceral dislike of others. Though these attitudes have since diminished, voters remain unimpressed by the behaviour of MPs in the House. In the current Parliament that is unfair to the majority of MPs, who in my view work hard, are well motivated and who, particularly in Select Committees, quite frequently show that they are able to give constructive and principled consideration to the scrutiny of legislation and the conduct of Select Committee enquiries.

VIII BUSINESS INTERESTS AND MMP

For the next comment, I return to the time prior to the second referendum. The opposition to MMP was, as I have said, to a substantial extent headed by Mr Peter Shirtcliffe, who was also associated with the Business Round Table, a business lobby group, whose chief executive, Mr Roger Kerr, spoke and wrote in opposition to MMP. From my own contacts in the business world, I gained the impression that, broadly speaking, the Business Round Table was reflecting the view of at least part of the business community that MMP would in some way disadvantage the world of business. Possibly there was an unspoken premise that in recent times under FPP business interests had to some extent "gained the ear" of the two main political parties, both of which had embraced free market policies and had driven through reforms which were generally welcomed by the business community.

Whatever the reason, the opposition from business interests surprised me. On the basis of our inquiries, I had considered that a proportional system such as MMP would be neither more nor less favourable than FPP to business interests and the operation of a sound economy (which seems to be borne out by research and experience overseas). Nor did I consider that MMP would be better for one or other of the main political parties. And in personal terms, with a background of practice as a commercial barrister, I would not have wished to promote a system unfavourable to sound and successful business operations. A number of business people appeared to take the opportunity to criticise the system to overseas business interests who were in general terms not at all concerned about New Zealand adopting proportional representation, because they lived and operated under such systems. I think, however, that in some quarters the impression was left that New Zealand had adopted a strange and idiosyncratic system, rather than one tested by experience. That view, incidentally, is still shared by some New Zealand voters. I continue to meet people who are surprised to learn that the system (or one very similar) is used in Germany and also in the new Scottish Parliament and the Welsh Assembly.

IX POLITICIANS AND MMP

A further factor which contributed towards early perceptions of MMP stemmed from the fact that many – by far the majority – of MPs in both the Labour and National parties were strongly opposed to MMP and often criticised the system both publicly and, especially, privately. Thus, I heard a former Minister comment to a large National Radio audience that he did not wish to be a Minister in an MMP Government because it would take twice as much time to be half as effective. That, if it were correct, would apply to all coalition and minority governments and also, as I later mention, does not in the case of MMP appear yet to have eventuated (though I accept that, for Ministers, being part of a coalition or minority government increases the need to negotiate and agree policies). Listening to comments by politicians, commentators, and the public during the first MMP Government, one quite often had the impression that MMP was being blamed for everything that the Government was doing which people did not like, including implementation of matters of policy. Broadly speaking, this seems to be borne out by the regular polls where a question is asked concerning voters' preference for FPP or MMP. Support for MMP tends to go up and down with the popularity of the Government and voters' perceptions as to whether MMP is beneficial for the party they support.⁶

On the other hand, there were also MPs who took the attitude that, having been given the system, they must try to make it work well. Thus, the Rt Hon J B Bolger, who had been opposed to the introduction of MMP, but was the first MMP Prime Minister, together with his colleagues in Government, demonstrated that even in the difficult circumstances with which they had to deal, effective government could be achieved. I will return to the issue of effective government in the next section of this paper, but following the second MMP election, which produced an outcome which voters thought legitimate, and where the resulting Government has certainly been effective in obtaining the passage through Parliament of legislation implementing the Labour and Alliance parties' major election promises, the popularity of MMP has increased. Like Mr Bolger, the current Prime Minister, the Rt Hon Helen Clark and the Deputy Prime Minister, the Rt Hon Jim Anderton, together with the other members of the Government, have to date, worked to achieve fully effective government and as a result electors' views of the system have become more favourable though, according to the latest opinion polls, MMP only has majority support if coupled with certain modifications, to which I will later refer.

⁶ For an analysis of poll results, see the discussion in Jack Vowles *Proportional Representation on Trial: 1999 New Zealand General Election and the Fate of MMP* (Auckland University Press, Auckland, 2002) (Forthcoming).

X EFFECTIVE GOVERNMENT

Before the adoption of MMP, it was strongly contended that the new system would lead to weak or ineffective government because it was likely to produce coalition or minority government (though under MMP a majority Government is always achieved if more than 50 per cent of the electorate vote for one party). In New Zealand, this argument needs to be viewed against the background that under FPP a clear majority of seats was usually obtained, though recently in New Zealand normally with a lesser share of the vote than 50 per cent, and on occasions with fewer votes than the losing party. Moreover, any possible failure to achieve a majority for one party was commonly referred to as a "hung Parliament" and treated as a potential disaster. Apart from the three years prior to the first MMP election, there was little recent New Zealand experience of coalition government and little knowledge that minority or coalition governments operate satisfactorily in a number of countries. The Royal Commission had expressed the view that, while under MMP government would need to be carried out in a more negotiatory way, and some legislation might be slowed down by the need to obtain the approval of a coalition partner (or another party in the case of a minority government), it was likely that, as, for example, in Germany and Australia, coalition governments would be able to act effectively and obtain the implementation of their policies, on occasions with some modification or amendment necessary to obtain a majority. This indeed has been the case in all three Governments, since MMP came into operation. In fact, government has been notably effective in the sense of achieving the passage into legislation of election policies and promises. Thus the National Party in the period 1996 to 1999, first in coalition with New Zealand First, and then as a minority government, pushed through a number of policies which could fairly be said to be controversial, for example, the deregulation of New Zealand Post, welfare reform, the break-up of ECNZ (Electricity Corporation of New Zealand), and the introduction of competition in a number of areas, including the ACC (Accident Compensation Corporation). Following its accession to power after the 1999 election, the Labour/Alliance Government, as I previously indicated, has also been successful in speedily obtaining the passing of the necessary legislation for the implementation of its core policies. On the evidence, therefore, there is as yet little reason to suggest that MMP leads to ineffective government.

XI POWER OF MINOR PARTIES

A further contention put forward in the lead up to MMP, which relates to the previous issue, is that MMP gives minor parties too much power. This contention is a cause of concern for many New Zealand voters. They generally seem to dislike uncertainty and some voters, despite approving of negotiation in theory, do not in practice like its often untidy aspects, and are attracted to so called "strong" government and "strong" leaders.

During the Royal Commission inquiries, I formed the view that under MMP minor parties would be able to exercise some influence, but that they would be unable to take things to excessive lengths because the major party would be likely to refuse to be pushed too far, which then leaves the minor party with only the option of bringing the Government down. In most circumstances that would be unacceptable to voters who would almost certainly punish the minor party in the ensuing election. That is broadly speaking what happened in the second MMP election. In the first MMP election, New Zealand First had in post-election negotiations achieved agreement on what were reasonably significant changes to some of the policies set out in the National Party's election manifesto (without, however, altering its basic thrust). After a period in Government, New Zealand First made demands which National could not accept, with the result that the coalition broke down and National continued to govern for the rest of the term as a minority government with different combinations of parties and Independent MPs supporting National's legislative proposals. A similar sequence of events was one of the possibilities, which I, and I think other Commissioners, had envisaged might occur during the initial period of MMP as parties settled down to the new system.

Since the second MMP election the Labour/Alliance Government has, as I have indicated, governed successfully in terms of the passage of legislation through the House, sometimes with a different combination of parties supporting particular pieces of legislation. Interestingly, it has often been the case that concessions made as a result of negotiations to obtain the support of another party, have resulted in a Bill incorporating provisions which appear to be more acceptable to the majority of voters. Nevertheless, it seems to remain the case that some voters are irritated when objections by a minor party hold up progress of a Bill. They simply do not like the negotiatory aspects of coalition or minority government. Some also dislike the multiplicity of voices that are now heard in the political arena. They prefer the more straight-forward or predictable attitude of one side versus the other which FPP encourages and appear willing to countenance abrupt policy changes from one Government to another. MMP also makes the process leading up to a compromise more transparent. In FPP, the compromises that are essential in the political process tend to happen in Caucus or at earlier Party meetings when policies are being developed. As a result, one quite frequently hears MMP criticised for giving too much power to minor parties when the evidence to date does not support that contention.

XII LIST MPS

Perhaps the most controversial aspect of MMP, for NZ voters, was the creation of List MPs whose election to Parliament is determined by their party's share of the First or Party Vote and the number of electorate seats obtained by their party. This type of MP is required in order to ensure that the outcome of the election is substantially proportional. If one can judge by the letters to the editor that appear in our print media, quite a number of

voters regard list MPs as "unelected". Initial unfavourable views of list MPs were influenced by the advertising campaign carried out by the CBG, and any adverse views were strongly reinforced by the conduct of a very limited number of newly elected list MPs following the first MMP election. It should also be said that some heavily criticised list MPs were, with the benefit of hindsight, not treated very fairly by the media and the public.

I was not surprised that New Zealand voters valued our system of constituency MPs elected in a local electorate. Indeed all Commission members were agreed that, in New Zealand, constituency MPs should be considered an integral and essential part of our electoral system, and voters would not countenance a reform that eliminated constituencies. This was a strong factor in our choice of MMP, as the best proportional system for New Zealand. We were also conscious that, despite the vitriol poured on politicians, many New Zealand citizens felt rather differently about their local MP. Most New Zealanders are also unaware that many proportional systems used in Europe only have list seats, and do not have constituency MPs at all. As previously mentioned, the media also had a field day with the alleged foibles and failings of one or two list MPs and it became common to see some list MPs regularly referred to by that designation rather than simply as MPs, particularly if the list MP was a first-time MP who had said or done something likely to attract criticism or controversy. On the other hand, the appellation of "list MP" was not often attached to well-regarded list MPs.

German commentators and members of their Parliament had stressed to the Royal Commission that in Germany the public made no distinction between list and constituency MPs, and the wave of criticism of list MPs in New Zealand was greater than I had expected. The volume of the criticism has now reduced but those who object to list MPs are not mollified by, and indeed often decline to accept, that there is anything to be said in their favour, for example, that they are without doubt elected by the party vote; that the composition of each party's list is required to be determined by a democratic method of selection; that the situation is not greatly different from that under FPP where the candidate chosen by the party has, in the many safe seats which exist under FPP, effectively been chosen as the MP; that the vast majority of electors vote along party lines; that a good MP who fails to win in a marginal constituency seat can be retained in Parliament, provided he or she is also given a reasonably high place on the list; that a list MP can focus upon work, for example, as a cabinet minister or on select committees, having time to concentrate on major or specialist issues; that, alternatively the list MP can, as in fact often happens, open an office and carry out constituency work, frequently in a constituency which is not held by his or her party, thereby giving to voters in the constituency a choice of MPs to approach.

Another feature of the New Zealand system of list MPs is that it gives voters the ability to cast two votes so that they can, without affecting the chances of their preferred party, vote for a good constituency candidate who is not a member of that party (provided the voter gives his or her party vote to their preferred party). In both MMP elections to date a large number of voters have split their vote in this way: in 1996, 37 per cent, and in 1999, 35.2 per cent. I have always thought that this is an attractive feature of MMP; and, most importantly, MMP also gives a vote that counts to all those electors who under FPP were in a "safe" seat, so that it did not matter how they voted. Elections have ceased to be contests won or lost according to the result in a few marginal seats.

If, despite the positive factors resulting from the use of list MPs, voters wish to change the situation while retaining MMP, there are at least two possibilities. First, voters can be given the ability to amend the order of the list (or strike off a candidate). This would require regional lists, both in order to have list candidates whom voters have a reasonable possibility of knowing and judging, and also in order to have a voting paper which did not contain too great a number of candidates. It should be noted that in countries that give voters the right to amend the list, not many voters avail themselves of the opportunity.

Secondly, MMP can be operated (either as a one or two vote system) with the best losers in each constituency being chosen to fill the list seats to which the party is entitled. The problem with this is that there is then no ability in the party to order the list so as to achieve a good variety of list MPs. The best losers are simply those who stood in constituencies in which the party had good support, though not enough to win the seat. Indeed the candidate best suited to become a list MP may, for example, be one who only obtained a modest number of constituency votes because he or she stood in a constituency where their party had little support, or, alternatively, where there was a close three or four-way contest between candidates.

All the above possibilities were considered and rejected by the Royal Commission and I remain of the view that it is best to stay with the existing system for choosing and electing list MPs. If, however a majority of voters would like to see these modifications made to the system, it is quite feasible to introduce them.

XIII PARTY LOYALTY

In the period following the first MMP election, one circumstance which particularly displeased some voters arose from what came to be called "party hopping" that is, those MPs who after being elected as a member of one party, changed their political allegiance during the inevitable re-formation and change of parties consequent upon a change in the voting system. The fact that their defection enabled the National Party to retain power was a powerful irritant to the opposition parties and their supporters. Many voters thought there should be some way of compelling an MP who changed parties, and thereby

affected to some extent the proportionality of the election outcome, to resign from Parliament. As a result, in the next election campaign, promises were made by various parties that, if elected, they would take steps to amend the law to enable the MP's original party to seek the removal of the MP from Parliament.

The adverse reaction of voters to party hopping, which can occur under any electoral system, is understandable. My personal view, however, is that the impact on proportionality and a Government's majority is usually small, that the MP defecting may be the one who wants to keep the party to the principles upon which it was elected, that, once elected, MPs have a widely representative function, and that, if party hoppers are seen to have acted in a way open to criticism they will inevitably disappear from Parliament in the next election because they will not find a place on any party's list and will have no chance of success in a constituency. This is what in fact happened in the second MMP election. No MP who changed party in the period 1996-9 was re-elected either in a constituency or on a party list. Legislation enabling removal of a party hopper has now, however, been passed, though it does contain a "sunset" clause.⁷

XIV MAORI REPRESENTATION

In the Royal Commission's view, the need to provide effective representation for Maori people is vitally important to New Zealand's future. We, therefore, gave particular attention to this, both in our enquiries and in the preparation of the Report, for which the first draft of the chapter on Maori Representation was written by or under the supervision of the Maori member of the Commission. I emphasise that all Commissioners were in agreement in relation to the recommendations concerning the Maori seats. Maori submissions to us had concentrated on the need to retain the seats as a concrete expression of the Maori place in New Zealand's constitutional arrangements. Our research, however, clearly demonstrated that the seats had been ineffective in protecting Maori interests. I personally consider that separate seats, if maintained, may continue to prove ineffective and ultimately even divisive (although I am not of the view that every person in our community must be treated in exactly the same way). At all events, we concluded that the Maori seats should be abolished, provided it was certain that any new voting system would protect Maori interests. In addition, to protect the Maori place in New Zealand's constitution, we suggested that Parliament and Government should enter a process of consultation and discussion with Maori with a view to the definition and protection of the rights of the Maori people and the recognition of their constitutional position under the Treaty of Waitangi. We did not think that changing New Zealand's constitutional arrangements would be easy to achieve and could understand why Governments of

⁷ Electoral (Integrity) Amendment Act 2001.

various political persuasions might be reluctant to embark on the task. We considered, however, that the issue needed to be faced, though not on an overly simple basis, such as, that The Treaty of Waitangi requires Maori interests to be allocated a 50 per cent share of the seats in Parliament or in any other governance situation. Rather, Maori rights and interests require protection in a variety of ways and to differing extents depending on the particular right or interest. In the Report we endeavoured to indicate some of the differing ways in which Maori constitutional interests could be fairly protected.⁸

As far as the voting system was concerned, we were satisfied that Maori interests would be adequately protected by MMP, both through the party lists (since the parties would wish to compete for Maori votes by placing good Maori candidates high on the list), and because MMP gives Maori the opportunity to promote a Maori party or parties. Indeed, we considered that MMP gives to Maori a greater ability to gain effective representation in Parliament than any other system based on one person one vote. For my part, our conclusion on this issue was an important reason for recommending MMP as New Zealand's electoral system.

Prior to the second referendum, when the final form of MMP was under consideration, a hui was held at Turangawaewae Marae. In preparation for the hui, some leaders of Maori opinion spear-headed a campaign against the abolition of the Maori seats. I was present at the hui, and felt considerable doubt that it had been adequately conveyed to all those attending, how significant MMP could be for Maori people. The Government, however, accepted what it believed was nearly unanimous Maori opinion and MMP was introduced with Maori seats and on the basis that the number of seats would increase or decrease according to the number on the Maori roll. As a result, we have seen campaigns at the time of the five yearly revisions of the roll to persuade Maori to change from the general roll to the Maori roll. At the same time it appears from anecdotal evidence that Maori are realising the value of MMP, but where that will lead is not yet clear. I remain of the view that the seats should be abolished, though only when the constitutional issues are settled in a satisfactory way.

XV THE NUMBER OF MPS

The Royal Commission recommended a Parliament of 120 members whether under MMP or FPP, being well aware that an increase to 120 would not be popular (and, indeed, we said that, had it not been for the strength of public opposition to any increase, we would have recommended a House of 140 members). Public opinion remains strongly

⁸ See Report of the Royal Commission on the Electoral System *Towards a Better Democracy* (Government Printer, 1986) paras 3.90-3.111.

opposed to the increase to 120 and in a relatively recent indicative referendum 81.5 per cent of voters opted for a House of 99 members.

I still consider that 120 MPs are desirable, among other things, to provide adequate membership of select committees. There is limited public appreciation of the importance of the work done by select committees, both in relation to the scrutiny and improvement of legislation and the power to conduct inquiries. Maintaining the number of MPs at 120 would also help to prevent a small Government caucus being dominated by a large Cabinet. A Parliament of 120 MPs is likely to increase the diversity of representation in the House and help protect the effectiveness of South Island representation. It also helps to prevent the physical size of electorates from becoming too large (or, alternatively, avoids too great a decrease in the number of list MPs). The last point is particularly important since MMP will not operate satisfactorily, if there are insufficient list MPs to maintain proportionality.⁹

A Parliament with 120 members is not large by way of comparison with other democracies with similar populations. The organisers of the original campaign against MMP clearly hoped that emphasising MMP was to have 120 members against 99 for FPP, would cause many electors to vote against MMP (and it seems that, at least to some extent, that was the case). Similarly, a current attempt to achieve at the time of the next election an indicative referendum on the future of MMP endeavours to link MMP with 120 seats.

XVI REFERENDUMS

When the Royal Commission reported in relation to referendums it said that, generally, it did not favour the use of referendums other than for constitutional issues. I will not here recapitulate the Commission's reasons, particularly since in 1993 Parliament passed an Act permitting indicative (ie, non-binding) referendums.¹⁰ Since then, there have been four referendums, one of which, on superannuation, was promoted by the Government. The other three were indicative referendums, one relating to penalties for crime (with three propositions rolled into a question requiring a yes or no answer), and another to the number of MPs. The referendums revealed support for higher penalties and fewer MPs.

The referendum results indicate current public opinion, but in many instances the opinion appears to have been formed with very limited knowledge of the facts. In most countries that utilise referenda, it is considered essential to give the voting public at least a summary of the basic facts and contentions on each side of the issue. I believe accurate

9 For a discussion of the need to maintain sufficient list seats see: *Proportional Representation on Trial*, above.

10 Citizens Initiated Referenda Act 1993.

knowledge of facts influences all but the most prejudiced person. I appreciate that it would have been difficult to state the relevant facts in relation to at least one of the referendum questions to which New Zealand voters have recently been asked to respond, but if a question is properly drafted it should be possible to prepare an impartial statement of the relevant facts and issues in succinct and accurate form (as was done in relation to the referendums on MMP and superannuation). If that is not provided for voters, referendums will in many instances result in inappropriate recommendations.

XVII THRESHOLD

Under New Zealand's MMP requirements a party must win five per cent of the party vote or one constituency seat before it can obtain proportional parliamentary representation. There has been some pressure to reduce the five per cent threshold to four per cent, which was the figure recommended by the Royal Commission. To my mind, the decision on the correct threshold was a close call, but five per cent rather than four per cent is significant in increasing the difficulty that a small party faces in gaining representation. Based on New Zealand experience to date, and also on overseas experience, I now quite definitely favour five per cent in order to guard against the possibility of ineffective government if there are too many small parties.

The other aspect of the Party Vote threshold which has attracted differing views is its waiver if a party wins one electorate seat. The desirability of this provision is also a close call. Some voters regard the waiver of the threshold as a feature of MMP that adds interest and spice to the election campaign. It also helps to prevent wasting the votes of electors who vote for a party, which does not pass the five per cent threshold and, if the party has some support outside the electorate, helps to avoid a Sole-MP party. I, however, incline to the view that the waiver provision is seen by voters as encouraging bargaining or "wheeler dealing" between two parties as to whether or not both should field a constituency candidate in a particular electorate; and thereafter leading to an arrangement in which Party A withdraws its candidate in a constituency in order to encourage voters who would otherwise have given their electorate vote to Party A to give their vote to Party B which is a potential coalition partner for Party A, and which is struggling to pass the five per cent threshold. This both indicates to voters that the two Parties are aligned and, if Party B then wins the seat at the election, renders Party B eligible to gain list seats even though it has won less than five per cent of the votes. In a close election, this can make the difference between Party A being able to form a governing coalition, or ending up in opposition. Though at the time of the Royal Commission Report, I supported the waiver of the threshold, I now incline to the view that the New Zealand voting public is so unhappy and cynical about political conduct that anything which can have an aura of clever practice is better avoided. I would, therefore, abolish the provision under which the threshold is waived for a party that wins a constituency seat.

XVIII TERM OF PARLIAMENT

In two referendums (1967, 1990), voters have, rightly in my view, rejected changing the term of Parliament to four years. The control exercised by voters as a result of three-yearly elections is desirable when under FPP there is a unicameral Parliament, usually dominated by the majority party, and with that party itself being frequently dominated by a powerful "inner cabinet", which can in effect pass any legislation it wishes. MMP, unless a majority Government is elected, places a check on the power of Cabinet and the main Government party. That in my view is sufficient to overcome the objections to a four year term, which otherwise has a number of advantages in relation to effective government (all discussed in the Royal Commission Report¹¹ but, for the sake of brevity, not set out here). With the advent of MMP, other voters may also be inclined to this view, and I would support the holding of a further referendum on the term. If a four year term is adopted, we should, as in a number of countries with four or five year terms, link the increased term with a prohibition on the ability to call an election before the expiry of the greater part of the current term, unless the Government has lost the confidence of the House. This prevents Governments choosing a particularly advantageous time to go to the electorate and also avoids the destabilising effect of speculation about whether or when there will be an election.¹²

XIX POLITICAL FINANCE

This is a large and complicated topic upon which the Royal Commission spent considerable time. Almost everything the Commission said remains relevant.¹³ It is also urgent to ensure that the rules are clear so that all concerned know where they stand. If this is not done, there will inevitably be problems concerning political finance, which will in the eyes of the public further damage the image of political parties and MPs.

In short order, the issues can be stated as follows. Elections are expensive for political parties. If a party does not or is not able to spend money, both on the development of sound policies and on election campaigns, it will not do well. Most parties have very limited resources. In those circumstances there is considerable pressure to find funds. In other democracies this has led to dubious or improper activities and associations. In order to create an approximately level playing field most democracies give some financial assistance to political parties, with the quid pro quo being a limit on expenditure and donations coupled with disclosure of the sources of finance.

11 Report of the Royal Commission, above, paras 6.13 – 6.32.

12 Report of the Royal Commission, above, paras 6.33 – 6.34

13 For a recent discussion of some of the issues, see Andrew Geddis "Hide Behind the Targets, In Front of All the People We Serve" (2001) 12 Public LR 51.

There is some State assistance for political parties in New Zealand in terms of free time and money for election broadcasting, though voters tend to overlook this. The free time, however, is insufficient and, in addition, the legislation under which the time and money are allocated is completely unsatisfactory. Unfortunately, at least two problems hinder reform. First, the political parties have differing views, and secondly, the whole question is a potential disaster area for the parties, with the public generally being unhappy about any form of financial assistance at all. But the issues will not go away and, with a full appreciation of the difficulties involved, I remain of the view that it is important and worth the endeavour to obtain better provisions and rules concerning all aspects of political finance.

XX ELECTORAL COMMISSION

There is a clear need for ongoing monitoring and consideration of improvements to any electoral system, both in relation to matters of administration and wider issues of principle. At present that monitoring is carried out by the Justice and Electoral Select Committee, upon which most parties in Parliament are represented. That supervision should continue and the Committee should keep all aspects of the system under consideration. The Office of the Clerk of the House of Representatives services the Committee and that too should continue. Enrolment of voters is the responsibility of the Electoral Enrolment Centre, a business unit of New Zealand Post, under contract to the Ministry of Justice; and the conduct of elections and referendums is the responsibility of the Chief Electoral Office, a division of the Ministry of Justice.

In principle, and in practice, it is desirable for overall responsibility for the administration of the system to be with a body entirely independent of the Government of the day, which is not the case with a Department of State like the Ministry of Justice, but is with the Electoral Commission. However, governments to date have not exercised an improper influence on the Ministry and in the light of that experience it could be argued that it is unnecessary to embark upon any change. But the right to vote in a free and fair election is such a fundamental building block of our democracy, enabling us to maintain the other civil, economic and social rights, that in my view total independence of administration is an essential safeguard. Transferring overall responsibility to the Commission would require some enlargement of the Commission, but it could continue to contract New Zealand Post to carry out the enrolment work.

The Electoral Commission's educational work is also of real importance, especially in ensuring that voters understand the MMP system and, in particular, the importance of the party vote. There is a tendency for political parties to fudge the importance of the party vote in order to persuade voters to give that vote to their party. This needs to be countered by clear advice prior to the election concerning the function of the two votes and other relevant aspects of MMP. The educational work of the Commission has to date been

effective, but the Commission needs to have appropriate funding for that purpose. Polls show that knowledge of the system, and especially the function of the two votes, falls off between elections.

There is a wider educational need, which concerns our whole community. New Zealand citizens, by and large, have a poor understanding of the basic features of our democracy and our constitution. If they do not know about the importance to them of our democratic rights, they are likely to cease to value those rights, to the detriment of all. In many other democracies there is emphasis on providing good teaching about those rights at school, and this despite the crowded curriculum. We would be wise to emulate their example.

XXI CONSTRUCTIVE VOTE OF NO CONFIDENCE

So far there has under MMP been no significant threat of instability (by which I mean inability to form and maintain an effective majority or minority Government). But circumstances conducive to instability can arise under any electoral system. One sensible requirement in relation to stability is the constructive vote of no confidence. In Germany, for example, the Bundestag can express its lack of confidence in the Federal Chancellor only by electing a successor from amongst its members. There are similar requirements in some other countries with proportional systems. These requirements assist stability in the same way as a fixed minimum term discussed earlier.

XXII CONVENTIONS CONCERNING COALITION AGREEMENTS

In the number of democracies, conventions have been developed concerning written coalition agreements. In addition to their value to the party and the public, they also, if sufficiently detailed, provide certainty for state servants in relation to government policy objectives.¹⁴ In my view, it would again be sensible to heed the experience of other countries with proportional systems.

XXIII CONCLUSION

A The Commission's Expectations

In part, this paper is intended to indicate how far the events surrounding the development, introduction and operation of MMP have proved consistent with the Royal Commission's expectations. It would, I think, be a fair summary to say that the new voting system was adopted sooner than we expected. It then had a rougher initial ride than we contemplated, even bearing in mind that we considered that such a significant change,

¹⁴ In the same way the recent rewriting of the 2001 Cabinet Manual assists state servants. See *Cabinet Manual* (Cabinet Office, Wellington, 2001).

which involved a sudden and steep learning curve for both politicians and the public, would encounter some difficulties and would take time for politicians and voters to adjust to. Thereafter, MMP obtained a greater degree of support than we might have anticipated in the face of such a rough beginning, with subsequent progress being to a real extent due to the good sense and ability of some of our leading politicians and public servants.¹⁵ It is clear, however, that public opinion and judgment concerning all electoral issues can gyrate considerably, sometimes sparked by events that are not of fundamental significance. Thus, the current problems of the Alliance Party, if not remedied, may temporarily affect some voters' views about MMP, particularly if the problems enable opposition parties to endeavour to cast the spectre of instability over the Coalition Government. In reality, parties will always come and go under every voting system and, as a matter of principle upon which to judge a system, the occasional demise of a party will not have any great significance and will not generally lead to unstable or ineffective government.

B Too Soon for a Further Referendum

No electoral system can fully meet all the requirements of any given society or country, but any new system needs to better meet the requirements of the society it serves than its predecessor. To date there has been a considerable "settling down" of MMP but there is still limited experience of the operation of the system. At least for the majority of voters, it is in my view, as yet, too early to ask them to make a final judgment. Indeed, many voters at present seem to judge MMP, not on the basis of its merits or demerits, but rather on their views of the Government of the day or whether MMP is resulting in electoral success for their chosen party.

The Electoral Act 1993 which provided for the introduction of MMP required the appointment, as soon as practicable after 1 April 2000, of a select committee to review the operation of the new system. The committee was duly appointed and has now reported, largely on a divided basis. The Government in response to the Report accepted such of the recommendations as were unanimous. It observed that it could not recommend action on issues over which the committee remained divided and that further changes to the electoral system would require a "high level of consensus between the political parties and among the public".¹⁶

¹⁵ The State Services Commission produced a number of helpful publications, for example, State Services Commission *Working Under Proportional Representation: A Reference for the Public Service* (State Services Commission, Wellington, 1995).

¹⁶ Select Committee *Government Response to Report of MMP Review Committee on Inquiry into the Review of MMP* [2001] AJHR A.5 5.

It is, of course, clear that it is undesirable to chop and change electoral systems, but it is also clear that it is the people's right to determine what system they wish to have. So I agree that, once there has been sufficient experience of the new system and if a significant number of voters - for instance, the number necessary to obtain a Citizens Initiated Referendum - wish to have a further referendum, one should be held. That also seems to be a view that is adopted by many electors in recent polls. MMP has not resulted in the dire predictions made by opponents. There has been no constitutional crisis. Nor has there been gridlock. Nor does MMP appear to be causing problems or difficulties that are harmful to our country. But it remains to be seen whether the majority of voters will in due course give the system their full approval. If there is a future referendum involving MMP and FPP, we will in essence need to decide whether politicians and voters wish to continue with the MMP system which more fairly turns votes into seats in Parliament, creates a more representative House and requires a more negotiatory way of conducting government. Alternatively, do we wish to return to the "decide, announce, defend" adversarial approach adopted by the usually outright winner under FPP?

C Requirements if there is a Further Referendum

If a further referendum is held, it will be essential to ensure that the questions are both appropriate and clearly expressed. This is a matter of some complexity which requires consideration by an independent person or body, such as the Electoral Commission, to determine the issues upon which the voters wish to express their views, for example, whether the Single Transferable Vote (STV) or Supplementary Member (SM) systems should be options. In a unicameral State, with a small population and Parliament, it would be a mistake to return to pure FPP without considering other options. SM at least goes some modest way towards proportionality. The attractiveness of STV lies in the direct power it gives to voters in relation to the election of candidates. As the result of recent legislation, STV is to be used for District Hospital Board elections in 2004 and may also be used for other Local Authority elections. Other possible issues which will need to be considered are the number of MPs under MMP and those matters earlier discussed as possible modifications to MMP. I refer to those matters, not to give MMP a better chance of being accepted, but because they are at present issues being raised by voters.

It will also be essential, if there is a future referendum, to ensure that voters are adequately informed about the issues by way of an impartial education programme similar to that carried out before the referendums, which resulted in the adoption of MMP. This also could be carried out by the Electoral Commission. Such a programme is important because of the lack of public knowledge about many of the issues. Thus, for example, in a survey conducted in 2000 it emerged that 55 per cent of the respondents incorrectly thought that FPP was more proportional than MMP.

D Final Comment

It is important to keep in mind that MMP, though it is a significant change, has not turned our constitution on its head. Most features of the constitution remain unaltered. What MMP has changed in constitutional terms is the relationship between the Executive and Parliament. Assuming no party gains more than 50 per cent of the seats, the power of the Executive is lessened, though it remains considerable, while the power of the Parliament is increased.¹⁷ The extent of the decrease and increase depends on various factors, for example, whether there is a strong and united coalition that can ensure passage of legislation. As a result of the change to MMP there is more negotiation and consultation in the legislative process. Ministers may generally have a more difficult role to perform. Parliament is considerably more representative. Since the introduction of MMP, governments have to date performed effectively on the basis which MMP compels, that is, that a majority of the Members of Parliament, representing the majority of voters, must approve, or at least not oppose, every measure. That appears to me to be a sound democratic basis.

Some of the opposition to MMP seems to come from those who, at heart, are somewhat distrustful of democracy and dislike the inefficiencies, which are found in every democratic country. There may also be a touch of the old attitude that the less successful are not to be trusted and that they should as far as possible be governed by an efficient educated elite. But ultimately, such a Government ceases to have legitimacy.

In the search for the most satisfactory arrangements there are various possible combinations of direct and indirect democracy. Whichever we choose, democracy will often be turbulent and wasteful, but it is the best way we have so far found. Our electoral system should be that which for our specific country best achieves outcomes accepted as fairly reflecting voters' intentions while also promoting effective government.

¹⁷ For a discussion of this, and other aspects of the change in the balance of power between the executive and the legislature, see Sir Geoffrey Palmer "MMP and the Legislative Process: No Longer the Fastest Law-makers in the West" (Presentation to the BILA's New Zealand Public Law Forum, 2001).