

**Superseding MMP:
Real Electoral Reform for New Zealand**

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Executive Summary

After 13 years of Mixed Member Proportional (MMP) representation, Prime Minister John Key has said it is time to ‘kick the tyres’ and see how much support the system enjoys. New Zealand will hold a referendum on the electoral system coinciding with the next election, which may well be a close contest. With this referendum looming, it is both desirable and necessary to revisit New Zealand’s electoral system, its peculiarities, and its history. Beyond that, this is also the time to consider alternatives to MMP.

MMP was introduced in New Zealand in 1996 to bring proportionality to the electoral system through the ‘mixed member’ system. The ‘party vote’ would determine the overall number of seats a party could hold in Parliament, and the ‘electorate vote’ would elect the local MP. This mixed member system was supposed to provide the best of both worlds: accurate national representation and a quality local candidate.

The new world of politics and equitable representation, however, never quite materialised. In fact, MMP created many perverse incentives and largely unforeseen consequences, such as increasing the power of political parties, the cessation of MPs being legitimised by their local electorate, and a reduction of political accountability for laws passed. The compromises that MMP encourages have led to a more consensual style of government, but it has also contributed to ad hoc lawmaking, an inability of government to take proper charge of a legislative programme, and pork barrel politics and ‘back room deals.’

MMP is a system concerned with process rather than outcomes. Although MMP has brought proportionality to parliamentary representation, it has produced political results that can hardly claim to be representative. This is because minor parties have a greater say in contentious legislation than their vote warrants. MMP was also designed to give women and ethnic groups more representation in Parliament. Maori and women’s representation has somewhat improved under MMP, but there is little or no evidence that it was MMP itself that led to this improvement.

Further, the 5% or one-seat electorate threshold that a party needs to be represented in Parliament has created discrepancies in the proportionality of election outcomes. Due to strong local support, the Maori Party won more seats than its party vote warranted at the last two elections. In the 2008 election, the ACT Party won five seats with 3.65% of the vote due to just one electorate seat, while New Zealand First won zero seats with 4.07%. This clearly breaches the principle of proportionality. Indeed, the threshold is designed to include only those with a big enough proportion.

Before adopting the current system, New Zealand had a First Past the Post (FPP) electoral system, which it had modelled on the British system. The most obvious problem with FPP was the immense amount of power invested in the cabinet, which could act as an elective dictatorship with the aid of a traditionally strong party whip system.

A new electoral system should provide for appropriate checks and balances on executive power while still making it possible to govern effectively. These are, admittedly, often contradictory goals. However, we believe MMP fails to satisfactorily deliver either.

Stating the failures of MMP should not be necessarily taken as an endorsement for going back to FPP. Instead of returning to FPP or creating another system such as single member or single transferable vote scheme, we advocate the formation of a bicameral Parliament consisting of a lower house (House of Representatives) and an upper house (Senate) for New Zealand.

- The House of Representatives would consist of 79 members elected by local electorates on the FPP basis for a three-year term. The Senate would consist of 31 members elected on a proportional basis for a three-year term by party vote. As a result, the number of local MPs would increase, while the total number of MPs would reduce to 110. Each voter would still have two votes: one for their local MP in the House of Representatives and one for a party in the Senate.
- The Senate would act as a house of review. All bills would have to pass through both houses, but the Senate would not be able to amend money bills or initiate legislation. Due to the small size of the Senate compared to similar institutions in other nations, relevant Ministers from the House of Representatives would appear before Senate question time.

- Senators would be able to serve as government ministers.
- Maori electorate seats and the Maori electorate roll will cease to exist under this system because they are inconsistent with a modern liberal democracy's commitment to equal rights and a robust democracy.

To a certain extent, the Senate will suffer from the difficulties arising from parties presiding over list selection, but it will bring the following advantages:

- Provide far more transparency through the higher public profile of senators.
- Allow for the representation of minority parties, albeit different to their current role.
- Allow for minority parties to play an important role in the Senate and pass laws but incentivise responsible withholding of support due to their publicly visible role.
- Balance accountability with effective law making and governance.

Introduction

New Zealand's electoral system is marred by oddities and anomalies. We are talking about a country where you can be an MP despite lacking the direct support of your constituency. Where you can be part of the government without taking full responsibility for the government's decisions. Where votes for some parties can count more than votes for others.

It is a strange system that produces results like these:

- In the 2008 election, MPs were re-elected to Parliament and remained as representatives although they had been rejected by their own local voters.
- Former Deputy Prime Minister Dr Michael Cullen spent his tenure as Minister of Finance as a list MP without ever getting the backing of his local voters.
- Former leader of the opposition Dr Don Brash never attempted to stand in an election and convince an electorate to vote for him since the introduction of MMP. His political career was at the mercy of his party.
- Former Minister of Foreign Affairs Winston Peters was officially not part of the government except on foreign affairs issues. He publicly opposed the *New Zealand China Free Trade Agreement* but travelled to Beijing to sign the treaty as the government's representative.

Indirect legitimacy and weak accountability are not the only problems of New Zealand's strange electoral system. Proportional representation is not necessarily proportional, and some voter groups are more equal than others. For instance, the Maori Party won more representation than its proportional 'party vote' warranted.

Matters are even more confusing when you compare voting results and actual representation. Although the electoral system nominally promises some kind of proportional representation, in practice this can be reversed. Thus in 2008, the small free-market ACT Party won a smaller proportion of the vote than the socially conservative centrist NZ First Party. Yet, the former finds itself represented with five MPs while the latter no longer holds any seats in Parliament. Although this is not to say that proportionality should be pursued at all costs—historical experience such as the political fracturing of the Weimar Republic shows that there can be too much of a good thing, but MMP runs into difficulties on its own terms.

The curiosity continues in the current National-led government. In agreements with the main government party, minor parties provide ministers who have free reign on matters not related to their own portfolio.¹ Thus, there is no overarching joint cabinet responsibility.

Clearly, an electoral system that produces such strange and sometimes bizarre outcomes could hardly be called exemplary. Yet, this system was only brought in less than two decades ago to deal with the deficiencies of its predecessors. It could well have been a case of throwing out the baby with the bathwater, as we shall examine in this report.

Part I: Examining reform

The Mixed Member Proportional (MMP) electoral system, which was introduced after the 1993 referendum, changed the electoral landscape dramatically by ending the two-party Parliament. But the anomalies that MMP created in the structure of New Zealand's electoral system have made it controversial enough for the Key government to announce holding the first part of a binding referendum at the next general election.²

Before we analyse why MMP was not the success that its supporters had hoped for, and why a return to FPP would not be desirable either, we shall briefly spell out our own understanding of what a good electoral system should be able to achieve. To a degree, it is unavoidable that a list of requirements are subjective. There is no purely objective way of designing a political system. So we believe we should be upfront about our conceptions:

- I. **Any discussion of electoral reform should be based on the premise that there is no such thing as a perfect electoral system.** There will always be an implicit trade-off between:

We analyse why MMP was not the success that its supporters had hoped for.

- a) the ability to drive through coherent policy programmes or reform programmes, and
- b) an appropriate series of checks and balances on the exercise of power.

In short, there is a fundamental conflict between effective government and accountable government. Opening Parliament to representation by smaller parties makes the legislature more proportional but often collides with the goal of having an effective and strong government. Designing an electoral system is about finding the right balance between a strong legislature and a comparatively weaker executive or vice versa. Having both a strong Parliament and a strong government is wishful thinking, but we must try to avoid having both a weak government and a weak Parliament.

New Zealand's electoral history has many instances of such difficult trade-offs. Robert Muldoon's so-called elective dictatorship and the fourth Labour government did not have much in common other than the power to govern effectively. Muldoon used his electoral power to institute draconian controls over the economy, while the latter implemented wide-ranging liberalising reforms. Although there have been no single-party parliamentary majorities since the institution of MMP, the ability of the governing 'bloc' of parties to drive through compromise laws (albeit diluted by the need to reach inter-party consensus) has not been checked.

- II. **The future of MMP requires an honest assessment of how it has worked within New Zealand's constitutional arrangements.** Due to the lack of a written constitution, New Zealand is governed by long-established political traditions and convention, not by (written) laws.³ This makes it particularly important that both Parliament and government follow a clear set of rules and remain transparent. The MMP system, with its 'dilution of Cabinet collective responsibility,' has not been successful in this respect.⁴ In fact, it has muddied the constitutional waters.
- III. **We need to assess whether MMP has achieved its objectives.** One of the reasons for introducing MMP was to strike a balance between efficacy and control in Parliament. The power of the main party in government would be checked not only by the opposition but also by its own smaller coalition partner(s). Instead of producing a robust and considered policymaking process, the MMP system has resulted in the government having to negotiate on legislation and the process becoming more time-consuming and complex.
- IV. **We also need to debate the role of MMP in increasing diversity in politics and at what cost.** One of the rationales for introducing MMP was that with a diminished chance of a single party getting an absolute majority in Parliament, MMP would lead to a more accurate representation of voters' wishes. Proponents of MMP also promised a 'better' balance of local and national representation. Indeed, the 1986 *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* demanded an electoral system that paid attention to these matters.⁵

While we agree that MMP has resulted in a higher degree of parliamentary party diversity, we have to examine the political cost at which this diversity has come. Does diversity of parliamentary parties really equal a diversity of views within Parliament? Is varied representation a legitimate sign of a quality electoral system? Are the list MPs, who now make up half the House of Representatives, an adequate substitute for the electorate MPs they replaced? Does MMP produce more 'streamlined' MPs who tow the party line rather than retain their individual views?

- V. **We need to assess the effectiveness of the MMP system against its goal of making Parliament (legislature) a powerful counterpart to the government (executive).** Instead of providing checks and balances, the House of Representatives now has to deal with a greater degree of compromise and bargaining. Is this healthy for New Zealand's democratic culture? And does it make Parliament a powerful counterpart to government or does it, to the contrary, sometimes make it an accomplice to government?

VI. **Any discussion of reforming the democratic process in New Zealand should focus on MMP and bicameralism**, i.e. whether New Zealand would benefit from having a second house of Parliament. We believe that these seemingly separate issues can be tackled jointly. Repeating the old debates between the supporters of FPP and MMP will not get us closer to a real improvement for New Zealand. Designing the ‘least worst’ system should be the aim, and we believe that a bicameral system will help provide this.

In this report, we first look at how New Zealand’s electoral system in general, and how the MMP system, has evolved. Then we consider a series of reforms with the aim of creating a more robust electoral system—a system that finds a better balance between what is good about proportional representation and the need for more effective government.

The MMP system has resulted in the government having to negotiate on legislation and the process becoming more time-consuming and complex.

Brief electoral history

The Legislative Council

In its early days, New Zealand’s parliamentary system used to be almost a carbon-copy of the British system. The bicameral Parliament was established under the *New Zealand Constitution Act 1852* and consisted of a lower house or the House of Representatives, elected under a First Past the Post (FPP) system, and an upper house, or the Legislative Council, which was an appointed body.

The upper house, which reviewed the legislative process, was based on the British House of Lords. It originally comprised a minimum of 10 members who were appointed by the Governor and served life terms. In 1891, terms were reduced to seven years, and new members of the Legislative Council were appointed by the government of the day. With few exceptions, the role of the upper house was only to rubber stamp legislation that the lower house wished to pass. It was a weak institution, with its only function being that of a reviewing body. The Legislative Council hardly ever played a substantial role in legislation, and nobody seemed to miss it after it was abolished by the National government in 1951⁶—a further indicator of its lack of purpose and importance.⁷

From FPP to MMP

The key features of New Zealand’s Parliament before 1996 were as follows:

I. **Unicameral Parliament:** New Zealand’s Parliament is unicameral with only the lower house or the House of Representatives. There is no upper house such as a Senate.

Although the bicameral legislature was abolished in 1951, Parliament continued to resemble the two-party British Westminster model, albeit on a much smaller scale. As population grew, so did the numbers in the House of Representatives—consisting of 99 MPs in 1993 elected for a three-year term.⁸ The party (or coalition) winning a minimum of 50 seats took the election and formed the government.

II. **Two-party Parliament:** As with most FPP systems, New Zealand’s electoral system produced a two-party Parliament, which meant that the winning party did not need 50% or more of the vote. Since 1954, the highest percentage of vote for any one party was 48.8%.⁹ Nevertheless, winning parties usually gained comfortable parliamentary majorities since the votes for smaller parties rarely translated into seats. For example, in 1981 Social Credit won 22% of the vote but gained only two seats.¹⁰

III. **Party discipline:** One of the arguments in favour of FPP is that it produces MPs who are independent of their parties, thanks to the legitimacy they receive from their constituencies. Ironically, this supposed advantage was muted in New Zealand with the FPP system entrenching a strong culture of party discipline. Having said that, party discipline has increased because the incentive for list MPs to be independent of their party is poorer

under the MMP system. MPs rely on party bosses rather than local electors for their political fortunes.

Party discipline operates through party whips and profoundly affects how Parliament works. Originally introduced by the Labour Party and adopted by the National Party in the 1930s, this rigid regime of party discipline has since ensured that debates mainly occur within the parties and not in Parliament, where all members of a particular party vote along party lines on major issues.¹¹

As a result of these three factors, democracy in New Zealand was defined by two parties, strong party discipline, and no correction through an upper house, which meant that the governing party had absolute power to implement its policy agenda. From Sid Holland's government in 1950 through to Jim Bolger's government in 1996, New Zealand's democratic culture was as an ingrained 'winner takes all' culture.

Over time, this increase in perceived absolutism raised criticism of the FPP system, becoming stronger under the Muldoon government because of the autocratic leadership of Sir Robert (who was Prime Minister and Minister of Finance) and the damaging effects of his policies. FPP critics also focused on the lack of parliamentary representation of smaller parties, which was not considered to reflect their growing national importance.

FPP produced an effective two-party system by consigning smaller parties to political irrelevance. In the 1978 election, Social Credit won 16% of the vote but only one seat out of 92; in 1981, it increased its share to 21% but won only two seats. In 1984, the New Zealand Party won 12% of the vote but no seats.¹² In 1978 and 1981, the National Party ended up governing despite winning less of the popular vote than the opposition Labour Party.

Until the later years of the Muldoon government, curbing executive power had not been perceived as an important issue. New Zealand governments tended toward conservatism: changing little and just tinkering with what had been changed. Elections were fought over who would be the better 'manager' of the government and the economy. However, in the last years of Sir Robert's reign, the systemic flaws could no longer be overlooked as he had become more autocratic and imposed draconian measures that placed severe constraints on the economy.

From 1984, the fourth Labour government began implementing a programme of radical structural change. Many felt that Labour did not have a mandate to push these policies; within the party, many complained that the cabinet policy committee presented changes as a fait accompli. The Muldoon and Rogernomics eras did not have much in common, but both were perceived to operate as 'elective dictatorships.' Only a handful of key players in government actually made

policy, which was then passed on to cabinet and presented to caucus as party policy.¹³ The final vote was seen as a rubber stamp on executive decisions, which ensured its passing into legislation thanks to strict party discipline. The same criticism was later levelled at the subsequent National government led by Jim Bolger and Ruth Richardson. In many ways, it appears that the New Zealand public were dissatisfied at a decade of rapid policy change and the system that made such policy movement possible. In this sense, the reforms of the 1980s and '90s are as responsible, if not more, for a new electoral system as the imperfections of the system itself.

Dissatisfaction with New Zealand's democratic processes kept growing. In 1986, the *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* recommended a proportional voting system based on the then West Germany (see p 10) with some changes to account for local conditions in New Zealand. Unsurprisingly, neither large party wanted MMP as it would have meant giving up the power they had had for a decades. However, pressure to reform the system was strong enough to force them to promise a referendum on the issue.¹⁴ The referendum was held in 1993, and MMP was voted for by a margin of 54% to 46%.

The reforms of the 1980s and '90s are as responsible, if not more, for a new electoral system as the imperfections of the system itself.

MMP at thirteen

Five elections have been held in New Zealand since the introduction of MMP in 1993. These have resulted in one coalition government (National/NZ First) and five minority governments.¹⁵

In 1996, the first government of the MMP era was drawn together under a detailed and lengthy coalition document. That government eventually broke up in 1998, and the National Party continued to be a minority government until the 1999 election. In subsequent elections, arrangements have become looser and less prescribed, allowing for more flexibility in party relationships within Parliament. Elected governments since 1999 have been minority governments with confidence and supply arrangements from minor parties. This has meant the major governing party was certain to have sufficient numbers in the House of Representatives to pass money bills. The arrangements tend to involve policy concessions or promises from major parties in return for votes, or abstention, on many bills.

MMP initially offered a wide range of different parties, a number of whom were open to coalition partners from either side of the house. Over time, however, these parties have shrunk, and parties with similar political goals have gravitated towards each other. There are now two opposing blocs. The 'left wing' consists of the Labour Party, the Greens, and Progressives; the 'right wing' includes the National Party and the ACT Party. Of the others, NZ First is no longer represented in Parliament, and United Future is down to just one MP with an electorate seat. At the time of writing, the parliamentary future of the minor parties (Progressives, United Future, ACT, and NZ First) looked uncertain and grim.

The Maori Party holds a special place in New Zealand's political system. Formed as a response to the *Foreshore and Seabed Act 2004* before the 2005 election, it was originally a one-issue party and all of its seats are Maori electorate seats. Under a confidence and supply arrangement with the National Party in 2008, the Maori Party has two Ministers outside cabinet. Due to the newness of MMP, and the Maori Party as a political movement, it is difficult to predict what role the party will play in the future.

The 'performance' of MMP

In the years following the abolition of the Legislative Council in 1951, the executive enjoyed what former Prime Minister Sir Geoffrey Palmer called 'unbridled power.'¹⁶ The introduction of MMP was an attempt to introduce more checks and balances and make the political process more democratic, transparent and representative. Under MMP, every vote would count; every vote would have a marginal influence on the composition of Parliament.

At face value, MMP has achieved a higher degree of representation. In fact, that MMP is a more representative system than the previous FPP system is almost a truism because MMP is 'proportionally' representative by definition.

There is a difference between achieving formal representation and producing representative outcomes, though. Under FPP, the seats in Parliament did not reflect the national vote. However, the effective two-party system forced both parties to gravitate towards the centre. This way, political outcomes came close to representing the median voter's preferences, and so it could be argued that FPP actually achieved a quasi-representative outcome.

Under MMP, a majority party enters into an agreement with one or more smaller parties after an election. So despite a Parliament being completely representative of the electorate, the actual policies tend to move further from the policy preferences of the average voter.

In addition to this move away from the median voter, political outcomes also become less predictable. In a two-party FPP system, the winning party gets to implement its manifesto and can be held accountable for its promises. Under MMP, political results depend on negotiations between governing parties. What a voter eventually gets from a party may be quite different from what the party initially promised, cancelling the idea of representation of voter preferences.

The central design flaw of this system is that it is undemocratic—voters vote for a party but after the election, parties hammer out what the government should be.

Governing by coalition or confidence-and-supply arrangements can well undermine the degree of representation gained by MMP. Recent examples are the policy concessions extracted by the NZ First Party out of the Clark Labour government (prize money for racing stakes and support for the fishing industries, incidentally both large donors to NZ First), and by the Maori Party and ACT Party from the Key National government (the Maori Party got concessions on emissions trading legislation and the Act Party on local government). The central design flaw of this system is that it is undemocratic—voters vote for a party but after the election, parties hammer out what the government should be—this can hardly be described as representative. Although the parties of government are elected, unless there is a clear majority, the government is not.

Representative process versus outcome

Two key documents sum up the advantages and disadvantages of the move towards proportional representation. One was prepared by the Royal Commission on Electoral Reform in 1986, and the other was a lengthy report into New Zealand's constitutional arrangements authored by academics Tyler Cowen, Alexander Tabarrok, and Penelope Brook Cowen for the New Zealand Business Roundtable (NZBR) in 1992. The Royal Commission's report was a catalyst for the introduction of MMP, whilst the NZBR report considered a number of constitutional arrangements but, ultimately, argued for retaining the existing FPP system on grounds that it would produce the most desirable policy outcomes for New Zealand.

Of the many academic articles and reflections on MMP and its operation, the NZBR report is the most important document because it coherently lays out the most valid objections to MMP. Although its conclusions regarding the consequences and desirability of MMP government are different from those of the Royal Commission, both reports broadly agree on the likely outcomes of the MMP system.¹⁷

The NZBR report analyses different electoral systems focusing on the operation of the incentives:¹⁸

1. The incentive to mirror the preferences of the median voter.
2. The incentive to serve special interests and lobbies.
3. The incentive to maximise revenue and redistribute resources from productive citizens to the government.
4. The incentive to favour particular regions and districts at the expense of other regions and districts.
5. The incentive for politicians to indulge their own policy preferences or ideology.
6. The incentive to respond to international constraints.

The NZBR's focus was on the outcomes of the electoral system and not just formally achieving more proportional representation. On the other hand, the Royal Commission's focus in its criteria for judging alternative electoral systems was on procedure rather than the outcomes of the political process.¹⁹ Based on the following 10 criteria, the Royal Commission recommended MMP as the most desirable electoral system for New Zealand.

1. Fairness between political parties
2. Effective representation of minority and special interest groups
3. Effective Maori representation
4. Political integration
5. Effective representation of constituents
6. Effective voter participation
7. Effective government
8. Effective Parliament

9. Effective parties

10. Legitimacy

Both the above sets of criteria are a useful reference point to consider how MMP was supposed to operate (the guiding criteria of the Royal Commission) and how it has operated in practice (the incentives provided by the NZBR).

The table below from a 2006 paper, in which political scientists Jack Vowles, Susan Banducci, and Jeffrey Karp evaluate electoral change in New Zealand, summarises the main arguments for and against MMP by the Royal Commission and the NZBR, respectively.²⁰ The table is divided into three main categories: Responsiveness and Accountability, Representation, and Legitimacy. Most of the predictions about MMP's potential failings have turned out to be accurate.

Table 1: Main expectations about changing to MMP and possible outcomes

	<i>Advocates</i>	<i>Opponents</i>
<i>Responsiveness and Accountability</i>		
Coalition government	More responsive	Less responsive
Dismissing unpopular governments	No impact	More difficult
Small parties	Coalition arrangements will be known before election	Coalition arrangements may produce or continue unwanted or unexpected government coalitions
Party strength	Increase	Increase
List MPs	Accountable to voters and more responsive through the parties	Accountable only to parties
Electorate MPs	Stronger ties to constituents. Less beholden to parties	Harder to defeat because parties can keep them in parliament by placing them on the list
Policy	More deliberation	Inability to respond quickly to external shocks
<i>Representation</i>		
Representation of women and Maori	Greater	Greater
Voter preferences	Representation for more ideologically diverse views	Less representation for the median voter
<i>Legitimacy</i>		
Understanding of the System	MMP will not be difficult for voters to understand with sufficient education	MMP too difficult to understand leading voters to cast votes inconsistent with their preferences
Small parties	Voice for those previously excluded	Legitimacy threatened by small parties exerting too much influence
List MPs	No impact	Less legitimacy because they are not elected by voters
Confidence	Greater	No difference
Turnout	Higher	No overall increase but shift incentives for participation

Source: Jack Vowles, Susan A. Banducci, and Jeffrey A. Karp, 'Forecasting and Evaluating the Consequences of Electoral Change in New Zealand,' *Acta Politica* 41 (2006), 269.

Responsiveness and accountability

Since the introduction of MMP, the most important development concerning responsiveness and accountability has been the style of coalition arrangements—and how unpredictable they have been. Although it has been reasonably predictable since 1999 who might partner whom in government, the arrangements governing support agreements have never been disclosed prior to polling day. This has led to surprising coalition and minority government deals, and the policy concessions extracted by minority parties have been relatively unforeseen. Overall, this has made government less predictable, as positions on policy are subject to constant renegotiation during the term of government. This has meant less accountability in government, as politicians and parties are not compelled to ‘own’ their decisions.

Legitimacy

In terms of legitimacy and understanding of MMP, there is still ‘a continuing perception that list MPs lack the status of their constituency colleagues,’²¹ suggesting that the public are unsure about the role of list MPs and, consequently, do not value them as highly as their directly elected colleagues. The phenomenon of high-ranking cabinet members never having or dispensing with an electorate seat, and MPs losing electorate seats but being returned to Parliament via the list backdoor, serves, rightly or wrongly, to reinforce this perception.

The public are unsure about the role of list MPs and do not value them as highly as their directly elected colleagues.

Another aspect of legitimacy, voter understanding, is also proving to be problematic. Recent research by the Electoral Commission reveals that 30% of people surveyed think MMP is difficult to understand²² and, post the 2008 election, only 52% of voters correctly identified the party vote as the most important vote for determining the final composition of Parliament.²³ Further, only 30% of voters knew that one electorate seat, or a 5% margin, was required to cross the ‘threshold’ to enter Parliament.²⁴ If the substantial legitimacy of a voting system derived from its widespread understanding is the criterion used to justify an electoral system, MMP fails this test.

The diversity argument

It is often claimed that MMP has made a big difference for the representation of politically marginalised groups. Certainly prior to MMP, Parliament was rather homogenous (the fact being that it was dominated by middle-aged white men). As such, Parliament was probably acceptable to, if not representative of, the median voter. However, it was considered by some that certain groups in society were under-represented or unrepresented in Parliament. This is a simplistic and unreasoned assertion. It assumes that parliamentary representatives must share certain characteristics of the people whom they represent or they are unrepresentative—an impossibility given the variations in each electorate and nationally. For example, based on this logic a local female MP is not as good a representative for men in that electorate as a male MP is—a clearly misguided claim. People tend to elect the candidate they like the best—and due to cultural and social change over the past couple of decades, diversity of Parliament has increased and is a positive occurrence—but it fundamentally reflects the will of voters.

To many of its proponents, changing the parliamentary monoculture and increasing ‘representativeness’ was the greatest achievement of MMP. Objections to the legitimacy of that concept aside, was it MMP itself that was actually responsible for this increase in diversity? We examine this below.

In Table 2 below, Vowles et al. examines the diversity of Parliament under both systems up to 2005.

Maori representation

Maori representation increased by approximately 3.2% between 1996 and 2005, but it had more to do with seats created solely for Maori rather than MMP.

Table 2. The New Zealand Parliament and descriptive representation

	<i>Women</i>			<i>Maori</i>			<i>Pacific Island</i>			<i>Asian</i>		
	<i>E</i>	<i>L</i>	<i>All</i>	<i>E</i>	<i>L</i>	<i>All</i>	<i>E</i>	<i>L</i>	<i>All</i>	<i>E</i>	<i>L</i>	<i>All</i>
<i>SMP</i>												
1987	14.4		14.4	5.1		5.1	0		0	0		0
1990	16.5		16.5	5.1		5.1	0		0	0		0
1993	21.2		21.2	7.1		7.1	2.5		2.5	0		0
<i>MMP</i>												
1996	15.4	45.5	29.2	10.8	16.4	13.3	1.5	3.6	2.5	0	1.8	0.8
1999	23.9	39.6	30.8	13.4	13.2	13.3	3.0	1.9	2.5	0	1.9	0.8
2002	27.5	29.4	28.3	14.5	17.6	15.8	4.3	0.0	2.5	0	3.9	1.7
2005	23.2	46.2	33.1	10.1	25.0	16.5	4.3	0.0	2.5	0	3.8	1.7

Source: NZ Electoral Commission (2003, 178–182) and 2005 election returns.

Note: E = Electorate MPs. L = Party List MPs. All figures are percentages.

Source: Jack Vowles, Susan A. Banducci, and Jeffrey A. Karp, 'Forecasting and Evaluating the Consequences of Electoral Change in New Zealand,' *Acta Politica* 41 (2006), 267–284.

Women's representation

It is far too simplistic to claim that MMP was responsible for the increased representation of women in Parliament. Women's representation was trending upwards prior to MMP: it increased from 16.5% to 21.2% between 1990 and 1993. According to Vowles et al., 'Under the SMP (FPP) system the Labour Party had been selecting increasing numbers of female candidates in winnable seats. Some other parties were beginning to do the same.'²⁵

At the first MMP election in 1996, women's representation in Parliament increased to 29.2% (45.5% were drawn from the list) and by a further 3.9% in 2005. But it hasn't been a consistently upward trend, nor has it been exclusively a product of the list. In 2002, many female Labour MPs were voted in electorates rather than drawn from the list.

The increased representation for women appears to be the result of initially promoting female MPs through the list system, at the 1996 election when MMP began, rather than the continued operation of MMP. To claim that MMP is entirely to thank for this rise is to make a bold claim. Moreover, because lists deliver fewer than half the seats, 'there is a ceiling on their effectiveness in increasing women's representation.'²⁶

Pacific Peoples and Asian representation

Representation of Pacific Peoples has not increased under MMP, and while Asian representation has increased by a small amount, it has not translated into a real increase of Asian representation in the House of Representatives.

Summing up, the claims that MMP has increased diversity may be true but they are also overstated. The increases in diversity are quite small, and whether they are actually due to MMP or other factors is far from clear. The initial surge in representation for both Maori and women after 1996 has levelled out. It is also worth noting that in 2005 and 2008, the 'overhang' seat situation²⁷ created by the election of the Maori Party MPs in Maori electorate seats enhanced Maori representation but only through an anomaly in the system. There has been no substantive increase in representation for Pacific Peoples or Asians.

Overall, the argument that MMP has been largely responsible for increasing representative diversity in Parliament (namely that of women, Maori, Pacific peoples, and Asians) is weak. The introduction of MMP did make a contribution, and some may argue that any increase in

It is far too simplistic to claim that MMP was responsible for the increased representation of women in Parliament.

minority representation is a welcome development. However, the claim that MMP alone ended the ‘bad old days’ of middle class white male domination of Parliament, even if that was the legitimate task of an electoral system, does not stand up to close scrutiny.

MMP, made in Germany

When New Zealand became dissatisfied with its First Past the Post (FPP) system, it looked to Germany for an alternative. Germany’s electoral system combined the best of both worlds: proportional representation in Parliament for all parties combined with MPs who had a direct mandate from their local electorates. In short: Mixed Member Proportional (MMP)—or as the Germans called it, *personalisiertes Verhältniswahlrecht*.

Not only did it sound like a good idea in theory, but German democracy had also stood the test of time. After all, MMP in West Germany and then Germany had been practised since 1949.

It was probably the good reputation of German democracy that encouraged New Zealand to go for ‘the German model.’ Germany had experienced a long phase of political stability since World War I. It had developed a strong parliamentary republic from the ruins of National Socialist dictatorship. Maybe its system—foreign as it may have seemed to a nation that was only used to FPP Westminster-style democracy—was worth trying out?

When Germany introduced MMP in 1949, it was far from uncontroversial. The Parliamentary Council tasked with drafting a constitution for West Germany could not agree on an electoral system to put into the Basic Law, the country’s constitution. However, they decided to try a combination of constituency and party list voting for the first election to the Bundestag, the new Parliament.²⁸

The stakes could not have been higher. The catastrophe of National Socialism was in part blamed on the deficiencies of the Weimar Republic that preceded it. Under the Weimar system, Parliament was composed of dozens of fractured political groups and parties. This was one of the reasons why Germany had become ungovernable—and the rise of Hitler was a response to this failure of parliamentary democracy. The ‘fathers and mothers of the Basic Law,’ as the Parliamentary Council became known, sought to prevent a repeat of these difficulties with a better democratic order.

In the first MMP election in 1949, every voter had one single vote, which counted towards the constituency candidate and the candidate’s party list. Although it was already an MMP system, the votes could not be split between, say, a Social Democrat as a constituency candidate and a vote for the Christian Democrat party. In the second election in 1953, this changed and the single vote was split into two votes. From then on, voters had one vote to choose a candidate in their constituency (*Erststimme*). The second vote (*Zweitstimme*) determined the overall party-political composition of the Bundestag. In the third election in 1957, the rules regarding how to calculate the precise numbers for each party and each federal state were modified. German MMP became a complex system, and even constitutional lawyers struggle to understand it. The basic structure with *Erststimme* und *Zweitstimme*, however, is still in use.²⁹ And this was the model for New Zealand’s MMP system.

So was the German MMP experience successful enough for it to be worthy of emulation by supporters in New Zealand? The answer is almost as complex as the electoral system itself.

Let’s deal with political stability first. Over the first three decades of its operation, MMP led to party-political concentration. The following three decades were a period of fracturing political movements.

In the first Bundestag in 1949, there were no fewer than 11 parties. Among them, some obscure groupings have since faded into oblivion and are known to only historians. Four years later, in 1953, the number of parties had shrunk to seven. In 1957, there were only five parties left; by 1961, only four parties survived in Parliament. Two of them, the Christian Democrat Union (CDU) and the Christian Social Union (CSU), were effectively one party since the CSU only contested in the state of Bavaria and its sister party, CDU, only stood in the federal states outside Bavaria. CDU/CSU formed the strongest Parliamentary group, followed by the Social Democratic Party (SPD). The smallest party, the Free Democrats (FDP), held the balance of power between the Christian Democrats and the Social Democrats. The FDP, however, only ever managed to gain roughly 5% to 10% of the vote.

To an outside observer, it may be surprising how a system that guarantees proportional representation in Parliament managed to produce an effective 'two-and-a-half' party system. In truth, there is little causality between the two.

What observers of German politics often ignore is the special character of the two big political groups, the Christian Democrats and the Social Democrats. They are often referred to as *Volksparteien*—people's parties. This is as much a characterisation as it is a self-set ideal, namely to be a party that does not serve single groups or plays to certain lobby groups. Instead, the ideal of a *Volkspartei* is an organisation that is both large and wide. As such, it naturally consists of political wings. Thus you could find trade unionists, employees, employers, and entrepreneurs in both large parties (albeit in different proportions). This ensured a gravitational pull towards both the Christian and the Social Democrats.³⁰

This system began to change when the new environmental movement broke off from the Social Democrats in the late 1970s and formed the Green Party. It got more complicated when after German unification, the former East German Communist Party established itself to the left of the Social Democrats, fracturing the political left into three parties. The SPD in 2010 is only about half its size in the 1970s when it governed under Chancellors Willy Brandt and Helmut Schmidt. The current fracturing of the left has made forming coalition governments more difficult because no parties yet wish to enter into a coalition government with the ex-communists, although the Social Democrats are rethinking their options.

It is this breaking up of the political landscape that has caused much concern in recent years. With the SPD winning just 23% and the CDU/CSU a little more than 33% in the 2009 election, many experts have declared the death of the *Volkspartei* concept. Former German president Roman Herzog went further and wondered whether FPP voting could lead Germany back to its former political stability.³¹ However, the smaller parties (FDP, Greens and ex-communists) are now so strong and well-established that such a change looks unlikely.

If the German MMP system has not been able to provide stability in the long run, has it at least ensured a strong bond between the constituency MPs and their local electorates? Some MPs have held their constituencies for decades despite their careers peaking a long time ago. This would not have been possible if their local party organisations had not renominated them time and again. A good example is Ernst Hinsken. He has been an MP for the CSU since 1980, and in 1998 he briefly served as Under-Secretary of State in the Agriculture Ministry in the Kohl government. His candidacy was not secured through the CSU list, so he had to be re-elected as a constituency member. But since his constituency is a traditional conservative stronghold, he does not have to fear for his job (he was re-elected in the 2009 election with 55% of the vote). In all likelihood, Hinsken will remain a backbencher in Parliament as long as his local party lets him.

The case of Hinsken also demonstrates another thing: Although the *Erststimme* was meant to choose between individual candidates irrespective of their party affiliation (because the composition of the Bundestag only depends on party votes), voters rarely differentiate between the two votes. Thus, in a stronghold of either of the big parties, the parties could nominate a broomstick or a scarecrow and they would still get elected. The idea of a personal choice between candidates remains high theory with little practical relevance. Germans, who never ever had a pure FPP system, are conditioned to think in terms of parties. That may be the reason why they fail to make use of the choice of different candidates at constituency level.

This does not mean that constituency candidates do not aim to form a special bond with their constituency over time. Strangely enough, this also happens with MPs who only get their seats through a list ticket. They too usually become engaged in local activities although, technically, they do not represent the area. However, this is the only chance for the smaller parties (FDP, Greens, ex-communists) and the larger rival party in a stronghold to establish some kind of local presence. (German lists are state-based, so list MPs are relatively 'local' compared to New Zealand.)

In practice, this means that the differentiation between list and constituency MPs gets blurred. There are no first or second class MPs, and the legitimacy of either group is not questioned. The only exception is the special problem of overhang mandates, where one party wins more constituency seats in a federal state than it would get based on its proportional result. For example, in the 2009 election the CSU managed to win every single Bavarian constituency (45 seats), although with only 42.6% of the vote it should have got only 42 seats. However, it could keep the excess three mandates won in the direct votes—resulting in an 'overhang' of three seats.

This practice of overhang mandates has another unfortunate result in combination with the technicalities of Germany's electoral system. It means that in some odd cases, a party winning more than a certain number of votes in one state could actually lose a seat in another state. The Constitutional Court has declared this bizarre practice illegal and given the legislature until 2011 to come up with a better system.³²

Germany's MMP system has worked relatively well for as long as the two major political parties were able to bind together voters from different backgrounds. With the gravitational pull of these parties diminishing, though, there are clouds over the future of Germany's MMP system. It will be difficult, if not impossible, to fundamentally reform Germany's entrenched electoral system. Germany can only hope for the current political system to stabilise in a way that delivers a broad choice between two blocs: a centre-right bloc consisting of CDU/CSU and FDP on the one hand and a centre-left bloc consisting of SPD, Greens and ex-communists on the other. This would still require coalition government of two or three parties but, at least, it would be able to offer voters a choice between different directions. However, if Angela Merkel's CDU continues to shift to the left as she has done over the past five years, there could soon be a situation in which there are no right-wing parties left to choose from. Germans would be faced with a choice of social democratic parties under different names.

In conclusion, Germany's MMP system does not necessarily lead to greater stability and clarity than an FPP system. The benefits of FPP voting at constituency level cannot be adequately realised as long as voters treat their *Erststimme* as a party vote rather than a vote for their preferred candidate. Germany's electoral system may be an interesting case study for political scientists, but one thing it is certainly not: a panacea for other countries' political problems.

Part II: The Senate

Most Western democracies have some form of an upper house. In Australia, the federal government and all states (except Queensland) have upper and lower houses. Senates traditionally provide a check on powers of the executive. Of course, there are many different types of upper houses. The House of Lords in England is mainly appointed, although formerly it was a strictly aristocratic institution. The Senate of Canada is appointed by the Governor-General on the advice of the Prime Minister. In Australia, the Senate is proportionally elected by region using the STV ranking system. In Germany, the upper house consists of representatives of state governments.

The difficulty for a Senate is to make itself relevant. In his critique of upper houses, Emmanuel Joseph Sieyès says, 'if a second chamber dissents from the first, it is mischievous; if it agrees it is superfluous.'³³

So what is the point of having an upper house? Isn't it just a way of creating more politicians and another tiresome process? Won't it just make decision-making more time-consuming and complicated than the MMP system New Zealand currently has? Or could it be that an upper house could improve the political process by providing a house of review?

Proposals for an upper house—summary

In this section, we outline the case for the reintroduction of an upper house in New Zealand in the form of a proportionally elected Senate. Members to the House of Representatives will be elected on the basis of FPP, and Maori seats will be abolished.

Number of Members of Parliament

The total number of MPs should be reduced to 110 with 79 in the House of Representatives and 31 in the Senate. This would allow greater local representation (more local MPs, no more list MPs) and provide for a substantial Senate to review laws with proper accountability.

Method of election

Election to the House of Representatives will be conducted under the FPP system.

Election to the Senate will take place under a proportional model in which the proportion of elected representatives will reflect the proportionality of the vote. The preferred system is a proportional list vote on a regional basis.

Maori seats

Maori seats will be abolished. Maori representation, if it continues to occur through a vehicle such as the Maori Party, can be achieved through the proportional vote in the Senate as well as through policies of individual parties and electorate seats. Separate Maori seats, while introduced for good reason, cannot be justified under a system of proportional representation that the Senate would provide. Indeed, Maori seats already undermine the concept of proportional representation under MMP.

Operation of the Senate

A New Zealand Senate would have a unique form of operation. There would be no need for a double dissolution trigger as the term served by senators would be the same as that of members of the House of Representatives. It is the Prime Minister's prerogative to call an election at any time (or at least advise the Governor-General to do so) so that with minimal reason, a double dissolution would always be available to break any legislative deadlock.

In other countries with upper houses, Ministers often sit in the upper house and all major portfolios have upper house spokespersons. For example, in Australia the Senate spokesperson on finance answers all finance questions on behalf of the government in the Senate. The same goes for other portfolios. In New Zealand, a large increase in the number of parliamentarians would be needed in order to have a Senate large enough for the two major parties to have spokespersons. In order to avoid increasing the number of parliamentarians and still maintain accountability, we propose that the concerned Minister be present in either house to answer questions on matters of policy. Most ministers would be drawn from the House of Representatives, so they would appear before the Senate to answer queries at question time.

The Senate's lawmaking powers would be equal to that of the House of Representative, aside from money bills. The Senate could not initiate or amend money bills affecting the ordinary operational expenses of government. However, Senate can refuse to pass any bill and make amendments to financial legislation.

Why a proportionally elected Senate?

The idea of a Senate has its roots in the concept of separation of powers, or a check on powers. This is a central concept in democratic political systems and involves a clear demarcation between the three branches of government: legislative, executive and judiciary. It is primarily designed to act as a house of review, that is, provide a check and hurdle for the passing of legislation. It is important to note that *Towards a Better Democracy* did not explicitly examine New Zealand's electoral system in the light of these concerns; instead, it focused on the way Parliament operated.³⁴

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Electing a senate proportionally has two substantial advantages. First, it means that senators are elected by the public rather than appointed as in some countries; second, the two chambers of Parliament are elected on a different basis—the lower on a 'winner takes all' local system and the Senate on a regional proportional vote.

The Senate would carry 31 senators elected on a regional proportional basis. There would still be two votes for the electors, one for the local MP and one for the Senate. The new ballot paper would be presented in the same way as the current ballot, creating minimal disruption in future elections.

Fig 1. Sample ballot paper

ELECTORATE
1

No. on Ballot
To be used has one
page this
Use this

Initials of
Issuing Officer

30001

YOU HAVE 2 VOTES 30001

PARTY VOTE

Explanation
This vote decides the share of seats which each of the parties listed below will have in Parliament. Vote by putting a tick in the circle immediately after the party you choose.

ELECTORATE VOTE

Explanation
This vote decides the candidate who will be elected Member of Parliament for the **AGIRAKI ELECTORATE**. Vote by putting a tick in the circle immediately before the candidate you choose.

OFFICIAL MARK

Vote for only one party

<input type="radio"/>	BUSINESS PARTY
<input type="radio"/>	UNION PARTY
<input type="radio"/>	SOCIAL DEMOCRAT PARTY
<input type="radio"/>	HERITAGE PARTY
<input type="radio"/>	WORKER'S LEAGUE
<input type="radio"/>	ENVIRONMENTAL PROTECTION PARTY
<input type="radio"/>	LIBERTY PARTY
<input type="radio"/>	FREE TRADE PARTY
<input type="radio"/>	FREEDOM PARTY
<input type="radio"/>	CHATHAM ISLANDS PARTY
<input type="radio"/>	KOTAHITANGA PARTY
<input type="radio"/>	NZ FABIEN PARTY
<input type="radio"/>	NZ SOCIALIST PARTY
<input type="radio"/>	TRANSUBSTANTIATION PARTY

Vote for only one candidate

<input type="radio"/>	BROWN, John <small>BUSINESS PARTY</small>
<input type="radio"/>	EGGERS, Fiona <small>UNION PARTY</small>
<input type="radio"/>	HENKEL, Graeme <small>SOCIAL DEMOCRAT PARTY</small>
<input type="radio"/>	JOHNS, Wayne <small>HERITAGE PARTY</small>
<input type="radio"/>	LADD, Karen <small>WORKER'S LEAGUE</small>
<input type="radio"/>	McINNES, Mavis <small>ENVIRONMENTAL PROTECTION PARTY</small>
<input type="radio"/>	PERO, Jonathan <small>LIBERTY PARTY</small>
<input type="radio"/>	STARR, Ruth <small>FREE TRADE PARTY</small>
<input type="radio"/>	WEISS, Mike <small>FREEDOM PARTY</small>

SAMPLE

Final Directions

1. If you spoil this ballot paper, return it to the officer who issued it and apply for a new ballot paper.
2. After voting, fold this ballot paper so that its contents cannot be seen and place it in the ballot box.
3. You must not take this ballot paper out of the polling place.

Source: New Zealand Electoral Commission. <http://www.elections.org.nz/voting/votingsub/sample-ballot-paper.html>. Voting paper will not be greatly changed by change to a bicameral system. The party vote will become the Senate vote and will be elected on the same basis as the list currently is.

The Senate would hold powers similar to the current Australian Senate, which is a chamber designed to provide a different type of representation (regional proportionality by state) and give Senate parliamentarians a slightly different parliamentary role. The Australian Senate's role is to review legislation and provide an extra hurdle for bills to pass before they become law.

The Senate and accountability

As it currently stands, MMP does not encourage transparency or accountability. List MPs are accountable to no one for their career except their party. Parties are not directly accountable to the electorate due to coalition and minority governments with confidence and supply arrangements. Changes in promised policy can now be laid at the door of coalition expediency. Parties can and do regularly claim that 'compromise' is the reality of MMP. It lacks accountability and encourages behind-the-scenes negotiations between major and minor parties.

A proportionally elected Senate would help to remedy some of these problems. First, it would make list MPs (now senators) far more visible in the decisions they make. Senators would have to prove why they should not pass a bill. There will be an incentive for senators and parties occupying the Senate not to be seen as disruptive merely for the sake of political expediency.

Second, if senators or parties holding seats in the Senate have good reason for amending bills, they can publicly send bills back to the House of Representatives and explain their reasons. This can be frustrating for governing parties, but that is how a Senate is supposed to work. The three-year electoral cycle also provides a check on obstructive voting. In Australia, where senators are elected for six-year terms, but only half the Senate is up for election at every general election,³⁵ a mechanism known as the double dissolution trigger is brought into play. This trigger is activated when a government bill is voted down twice by the Senate, after which the Prime Minister can dissolve the House of Representatives and the Senate and hold a full re-election of both houses. This mechanism helps resolve major deadlocks between the House of Representatives and the Senate.

In Australia, the electorate has little time for senators who vote down laws for little reason. New Zealanders' innate dislike of politicians suggests that this would apply in Wellington as well. Another advantage is that as the Senate is entirely decided on party vote, there would be little incentive for political parties to keep unpopular senators who may turn off voters. Under MMP, the party vote exclusively decides the government, so unpopular MPs can more easily free ride on the fact that electors will often prioritise parties over candidates.

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The upper house and minority representation

As previously mentioned, one of the standard arguments in favour of MMP is that it promotes representation of minorities in a way that the FPP didn't. We think that claim is exaggerated, and although acknowledging that diversity within Parliament has increased with its advent, this hasn't necessarily been caused by MMP. A common objection to returning to FPP (for the House of Representatives) is that it would stifle diversity because of its inbuilt bias towards a strong two-party system. Here lies another advantage of a Senate.

Parties would be required to win a 4% threshold³⁶ in order to qualify for seats in the Senate, 1% less than the current MMP threshold. There would be no 'winning seat' clause like the one that currently exists, whereby if a small party wins an electorate seat it no longer has to win 5% of the vote to qualify for representation in the House. This immediately means the Senate has a more equitable standard of entry for all parties.

If proportional representation is important for gaining or retaining minority representation, then the Senate provides an excellent avenue for this to occur. Politicians and political parties representing minority interests can find a natural home in the Senate, where they can provide a check on the government, review and amend bills, and reflect the concerns of their particular political constituency. This may lead to obstruction, but it is transparent, politically accountable, and is the price of a properly checked democracy. A Green Party in the Senate may, for example, provide review and amendment on environmental issues contained within a bill; the Maori Party may reflect on the implications of the Treaty of Waitangi or how a bill might affect Maoris.

It would, of course, be naive to assume that the kind of horse trading and pork barrelling that occurred under MMP arrangements between the government and minor parties would cease. Recent examples are of Winston Peters securing money for the racing industry, the Maori Party gaining concessions for Maori and large Iwi out of the *Emissions Trading Act 2009*, and the ACT Party getting the government to fund more private school scholarships drawn out of a lottery for lucky recipients. These kinds of deals would unfortunately still occur under bicameralism, but they would be more transparent and less of a fait accompli.

A Senate would still provide representation of minority interests and allow for the diversity within politics, should those electoral features reflect the will of the electorate.

Local representation

New Zealand has 63 electorates, each with populations of approximately 60,000. In total, there are 70 if Maori electorate seats are included. Of these seats, 16 are mandated for the South Island, due to its size but lower population, and seven Maori seats are spread nationally. Eligible voters can either register on the Maori electoral roll and vote for their local Maori electorate or

they can register on the national roll and vote in their local electorate. We propose increasing the number of local seats to 79, an increase of 15 local electorates over the total population. The overall total number of local MPs would, however, only increase by 10 due to the abolition of Maori seats.

This increase in the number of lower house MPs would have some advantages. New Zealand has a strong tradition of local representation, and MPs play an important role in their communities. Part of the problem of MMP is that list MPs have been perceived as having less legitimacy than local MPs—those who actually have to face up to a geographic group of people and present themselves for election. While we acknowledge this can also be a criticism levelled at a proportional Senate structure, we believe it will be less so. A senator’s job is fundamentally different to that of a member of the House of Representatives. A senator will review laws and provide a check on the parliamentary and the executive in the pursuit of quality democratic lawmaking, whereas a list MP of the House of Representatives under MMP simply ‘makes up the numbers.’³⁷

Abolishing the Maori seats

Our most controversial proposal is probably the abolition of the Maori electoral role and Maori electorate seats. The idea of race-based electorate seats in a modern liberal democracy seems anachronistic, to say the least. The only way this could be justified would be by proving systemic bias against Maori in the electoral system preventing them from entering Parliament. No such bias exists.

Maori representation, measured by seats in Parliament held by those who consider themselves

Maori, exceeds the percentage of the population that consider themselves Maori. This, of course, assumes that someone has to be Maori in order to adequately represent the interests of Maori electors and interests as they relate to the Treaty of Waitangi. Whether this is actually the case may well be disputed, though.

A Senate will give a natural home for a party like the Maori Party if it manages to convince enough of the national electorate to vote for it. Most Maori Party seats are currently held due to the local *mana* (reputation of community standing) of the members involved. There is no reason why this should not continue under

a bicameral system if the candidates continue to be strong enough.

At present, the Maori Party holds more representation than its party vote allows based on the local seats it has won. In a modern New Zealand, there are few convincing arguments for retaining Maori seats despite their historical role in parliamentary representation.

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Conclusion

New Zealand’s electoral system has few checks and balances; the incentives for some MPs are skewed towards doing what the party and, therefore, their careers require rather than what is in the interests of voters. This has led to a rise of party apparatchiks and prioritising consensus and government building over sound policy and effective government.

MMP is clearly not an electoral system suited to achieving sound outcomes in New Zealand, but a return to FPP is not particularly desirable, either. FPP gave rise to an ‘elective dictatorship,’ and although it was advantageous for the fact that it reflected the will of median voter and was a good system for getting important reform through, it also facilitated short-sighted and dictatorial government with the cabinet essentially ‘ruling’ the country.

With the Key government announcing a referendum on the future of MMP, viable alternatives should be discussed. We believe that a bicameral system provides the best way forward for New Zealand and will come closer to striking a balance between effective government and essential checks on power than either of our previous two electoral systems. Copying an electoral system from Germany, which was formed under very different historical circumstances, to a culturally different New Zealand was never going to work. And Germany’s current policy gridlock is perhaps a warning for the future.

The proof is in the pudding. After 14 years of MMP, around half the voters still do not understand how it works. Surely the legitimacy of an electoral system is underpinned by its widespread understanding? If this is the case, then simplicity aids legitimacy, and a system that is not understood cannot be called particularly democratic.

A Senate can provide a brake on poor legislation, an extra chamber of review, and help revive simplicity. The House of Representatives will be determined by the FPP system, and a party vote will decide who sits in the Senate and provides a check on House of Representatives. The bonus is fewer MPs in Parliament providing a more robust parliamentary democracy.

At this stage, it is unclear whether the New Zealanders like MMP or want change. But one thing is sure—it is an impoverished debate if the choice is between FPP, MMP or a diluted version of either. A Senate is an option worth exploring for New Zealand.

Endnotes

- 1 National-Act Confidence and Supply agreement, 7. 'Act agrees that its leader and any Minister or associate minister shall fully represent the government's position and be bound by Cabinet Manual provisions *in respect of any areas within their portfolio responsibilities* and to support all areas that are matters of confidence and supply. Where there has been full participation in the development of a policy initiative outside of any portfolio responsibility held by the leader of ACT, and that participation has led to an agreed position, it is expected that all parties to this agreement will publicly support the process and the outcome.' (Authors' emphasis)
- 2 The New Zealand Press Association, *Cabinet Preparing for MMP referendum: Key, The New Zealand Herald* (7 September 2009).
- 3 Cabinet Office, *Cabinet Manual 2008* 5:3.
- 4 Jack Vowles, Susan A. Banducci, Jeffrey A. Karp, 'Forecasting and Evaluating the Consequences of Electoral Change in New Zealand,' *Acta Politica* 41 (2006), 274.
- 5 *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Wellington, 1986), 11.
- 6 New Zealand Parliament, Evolution of Parliament over the years.
- 7 For a fuller explanation of the development and abolition of the New Zealand legislative assembly, see Keith Jackson, *The New Zealand Legislative Council* (Dunedin: University of Otago Press, 1972).
- 8 This number could vary under certain electoral circumstances.
- 9 New Zealand Electoral Commission.
- 10 As above.
- 11 Austin Mitchell, *Government by party: New Zealand's House of Representatives 1854–2004* (Palmerston North: Dunmore Press, 2004), 166–167.
- 12 All electoral statistics sourced from the New Zealand Electoral Commission.
- 13 In Sir Robert Muldoon's case, he was often the only person who made decisions as he was both Prime Minister and Minister of Finance.
- 14 These promises were made in the lead up to the 1990 election.
- 15 The first term of MMP Parliament had a coalition government until 1998 and a minority government for the remainder of the electoral term after the National/New Zealand First coalition dissolved.
- 16 Geoffrey Palmer *Unbridled Power: An interpretation of New Zealand's Constitution and Government* (2nd edition) (Auckland: Oxford University Press, 1987).
- 17 Vowles et al., as above, 268–269.
- 18 NZBR Analysis of proposals for Constitutional Change in New Zealand 1:3.
- 19 New Zealand Electoral Commission.
- 20 Vowles et al., as above, 267–284.
- 21 Elizabeth McLeay and Jack Vowles, 'Redefining Constituency Representation: the Roles of New Zealand MPs under MMP' *Regional and Federal Studies* 17:1 (2007), 77.
- 22 New Zealand Electoral Commission, *MMP understanding post-election monitor 2008*, 4.
- 23 As above, 1.
- 24 New Zealand Electoral Commission, *Voter and non-voter satisfaction survey 2008*, 6.
- 25 Vowles et al., as above, 274.
- 26 As above, 275.
- 27 In 2005 and 2008, the Maori Party won more constituency seats than their party vote allowed for. This created a situation of 'overhang' whereby there are more than 120 seats in the parliament and the Maori Party hold a greater share of seats than their proportional vote allowed for. This is due to

- the strong local support Maori Party candidates receive in Maori seats, but levels of votes it gains nationally are lower. It is supposed to be a temporary aberration in New Zealand's electoral system.
- 28 The extensive debates of the Parliamentary Council, which led to the decision for MMP, still make an interesting read as they consider the pros and cons of a two-party system in great detail; see Deutscher Bundestag and Bundesarchiv (ed.), *Der Parlamentarische Rat 1948–1949: Akten und Protokolle* (Munich, 1996).
- 29 The German website www.wahlrecht.de/lexikon/history.html provides an excellent summary of changes to Germany's electoral system over time.
- 30 The German political scientist Franz Walter has analysed the rise and fall of the idea of a *Volkspartei* in numerous publications, for example, in his latest book *Im Herbst der Volksparteien?: Eine kleine Geschichte von Aufstieg und Rückgang politischer Massenintegration* (Bielefeld, 2009).
- 31 Eine fundamentale Veränderung unseres Regierungssystems, *Süddeutsche Zeitung* (5 March 2008).
- 32 BVerfGE (Official collection of the decisions of the Federal Constitutional Court), 'Negatives Stimmgewicht,' 121, 266.
- 33 Nicholas Aroney, 'Bicameralism and Representations of Democracy,' in *Restraining Elective Dictatorship: The Upper House Solution* (Crawley: University of Western Australia Press, 2008), 28.
- 34 'Wallace [the chair of the Royal Commission] wondered if the scope of the enquiry could be narrowed, perhaps separating parliamentary and electoral matters, although he appreciated that this was not what [Geoffrey Palmer] wanted. He also wondered whether the related question of an upper chamber had been deliberately omitted (inviting the annotation 'Yes' from Palmer).' In Keith Jackson and Alan McRobie, *New Zealand Adopts Proportional Representation* (Ashgate, 1998), 109.
- 35 Senate elections don't have to coincide with general elections but tend to.
- 36 Calculated under the Saint-Lague formulation as the current system is.
- 37 Geoffrey and Matthew Palmer, *Bridled Power: New Zealand's Constitution and Government* (Auckland: Oxford University Press, 2004), 141–143.

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