

The New Zealand Republic Handbook

By LJ Holden

Foreword by Keri Hulme

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About the Republican Movement

The Republican Movement is a network of New Zealanders who want our head of state elected by New Zealanders. We are a non-partisan group, with members drawn from all walks of life, and all sides of the political spectrum. We are committed to:

- Involving all New Zealanders in the republic debate;
- Providing relevant and reliable information;
- Focusing on ideas, not personalities;
- Winning a referendum to establish the New Zealand republic.

Creating a New Zealand republic does not require a codified constitution, or any change to the Treaty of Waitangi, New Zealand's flag or Commonwealth membership.

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Foreword

To all of us – greetings: monarchy as an idea has had it.

At the turn of the century Richard Seddon trumpeted, "One Empire, one language, one people."

That concept, intrinsically flawed, never took hold, but the soggy remnants persist. Aotearoa New Zealand has two official languages, and we glory in a diversity of peoples here but we are still, symbolically, a dominion of the British Crown; the Queen of New Zealand is an English woman.

I am a New Zealander born and bred (as they say – I've always thought it should be the other way around). On one ancestral line, I can count 23 generations of ancestors; on another, 3, and on the 3rd, 1 (I am talking of tipuna born here.) I have found us to be – let us be generous and bighearted in our estimations of ourselves! – willing to look at all sides of a question, fair-minded – and pragmatic.

Humans have learned a lot over the past 10 decades. We know a little (but hugely more than we did before) about how our brains are constructed, and work. We know that we have a propensity to engage in hierarchies. We also know, now, that most of the hierarchies we have constructed in the past are – in their essence – ludicrous.

People, it is time for us to acknowledge we have grown beyond, way beyond, the idea we are the children of The Great White Mother – or that "Home" is somewhere "over there". Home is here: we are not a juvenile nation. We have grown way past the time when authorities overseas dictated which way we should go.

kia kaha, kia manawanui,

kia ora tatou katoa!

naku noa

Keri Hulme

Introduction

Welcome to *The New Zealand Republic Handbook* – a guide to creating a New Zealand republic. This book answers questions commonly asked about a New Zealand republic.

New Zealand is an independent and sovereign nation with a strong democratic ethos. New Zealanders hold republican values dear: a commitment to egalitarianism, a belief in political appoint by merit, and an aspiration to achieve government of the people, by the people, for the people. The British monarchy, a useless appendix and part of New Zealand's constitution by an accident of history, is opposed to all of these values. We remain linked to a royal family that no longer serves New Zealand's interests.

A growing number of New Zealanders find the monarchy unsatisfactory. The monarchy is not beyond political debate or scrutiny and its value to New Zealand will continue to be questioned. In a democratic society, supporters of the monarchy should expect no less.

If you are sceptical of a New Zealand republic, we hope to present you with a robust case for supporting one. If you are already a republican, then we encourage you to pass this book along to friends and family and discuss republicanism with them.

The move to a New Zealand republic is a simple and yet symbolically important change. It is time we had the courage to take the practical and necessary steps toward becoming a New Zealand republic.

LJ Holden, September 2009

Chair, Republican Movement

Preface to the second edition

I never thought we would be publishing the second edition of *The New Zealand Republic Handbook* so soon. 2010 was a hectic year for the Republican Movement and the New Zealand republic debate.

First, Keith Locke's Head of State Referenda Bill was drawn from the members' ballot just one month after the first edition was published in September 2009. It was voted down, symbolically on 21 April 2010, the Queen's 84th birthday. While this result was disappointing, it led to other developments in the debate. It also showed the opponents of a New Zealand republic will do and say anything to prevent the New Zealand public from having a choice on their head of state.

Second, as part of the National - Māori Party post-election confidence and supply agreement, a constitutional review was announced. While the review did not mention a New Zealand republic in its draft terms of reference, both the Deputy Prime Minister and Māori Party co-leader said the issue would inevitably be raised. The review will probably focus specifically on the place of the Treaty of Waitangi, which is an important issue for the New Zealand republic debate.

Thirdly, in September 2010, the New Zealand Centre for Public Law (NZCPL) hosted a conference called "Reconstituting the Constitution". Former Deputy Prime Minister Dr Michael Cullen, a self-described "token monarchist" put forward a paper that argued a New Zealand republic is inevitable. Dr Cullen proposed changes that needed to be made prior to end of the Queen's reign.

Dean Knight (who is also an associate director of the NZCPL) put forward an excellent paper outlining the changes required to create a New Zealand republic. Dean has kindly agreed for his paper to be included in this second edition as an appendix. All of these events have required a lot of revisions and additions to this book.

From the launch of the first edition of this book the Republican Movement has changed also. Our membership base has grown significantly. The events of 2010 ensured that the New Zealand republic debate was never out of the papers. Republicanism in New Zealand is becoming an unstoppable force - and no-one believes the monarchy is an immovable object.

LJ Holden, April 2011

The facts

This chapter explores what a New Zealand republic is and what it means to New Zealand; what a head of state is; how a person becomes head of state; and what their powers are.

What is a republic?

A republic is a country where the supreme power of the state is dependent on the consent of the citizens it governs. The word republic is derived from the Latin *res publica*, which means “public thing”.

In a republic it is commonly said that political power operates only with the ongoing consent of the people. This is usually expressed through elections. The citizens elect representatives who are in turn responsible to the citizens who have elected them.

The majority of the world’s nations are republics. Not all of them are fully democratic although two-thirds of fully democratic countries are republics. In a republic the head of state is not a hereditary leader. The head of state is either directly elected or is appointed by an elected assembly. They are most often called the president.

What is a head of state?

Each nation-state appoints or elects a person as its head of state, or shares the position amongst a number of people. Some share their head of state with other countries (such as Andorra). This important office represents the state’s historical claim to power and legitimacy within the nation.

Heads of state are given various titles according to whether a country is a republic or a monarchy. Examples include President, Captain-Regent, King, Queen, Emperor, and Emir.

In any country, the state is made up of various legal and political institutions such as a legislative body, the executive and the judiciary. The office of head of state represents the state’s ongoing existence as the nation’s legitimate political authority.

In most cases one person holds the position of head of state. They are given certain political powers according to a country’s constitutional rules. Some have executive powers, such as the power to control government policy. Others have constitutional powers, such as the power to appoint and dismiss government officials. Some countries have a purely ceremonial head of state. Others have a specific constitutional role.

Some carry out the functions of running the government and work as the head of a government. It all depends on the system chosen for that country.

What are the different kinds of republics?

Each individual republic is different according to a nation's history and traditions. They can all be grouped according to the powers of the head of state and how he or she is appointed. It is important not to confuse the different types of republic. Broadly speaking there are three types of republics: parliamentary republics, presidential republics and semi-presidential republics.

Parliamentary republics

In these republics, executive power, the power to control government policy, is kept separate from any constitutional powers. Executive powers are given to the head of government (usually called the prime minister) who is a Member of Parliament (MP).

The head of state (usually called the president) is elected directly or is appointed by parliament. They have limited constitutional powers, and normally perform only ceremonial duties and some constitutional duties. They exist primarily to keep the prime minister and their cabinet in check. Examples include the Republic of Ireland, Iceland, Austria, Malta, Trinidad and Tobago and Finland.

Presidential republics

In such republics, executive powers and constitutional powers are combined in one office. The head of state has executive powers to establish and direct government policy but he or she also represents the continuity of the state and holds constitutional powers. In the United States, the President holds executive powers, while Congress holds legislative powers. The president is directly elected by voters and then appoints an executive administration to run the country under his or her leadership. They are also tasked with ensuring that all executive actions and laws adhere to the United States Constitution.¹ Examples include the United States, Brazil, Argentina and Mexico.

Semi-presidential republics

This system divides responsibilities between the head of state and head of government. In France, the President is directly elected by voters and

¹Donahue, Tom. 2007, *Can Presidential Systems Be Just?*, Yale University, 16 September

then appoints a Prime Minister either from the largest party in the National Assembly or in rare cases from outside the assembly. The Prime Minister then appoints a cabinet to run the country. Executive powers are divided between the President and the Prime Minister. Often, the President will look after foreign policy while the Prime Minister looks after domestic policy. Examples include France, Russia and Taiwan.

What is a monarchy?

A monarchy is a state where the supreme power is assigned to one individual by birthright. They hold the position for life, unless they abdicate. The monarch, as king or queen, is a member of the nation's royal family. There are rules of succession to decide who the next head of state will be. The royal family are often linked to a particular religion, sometimes an official state religion, and claim a divine right to rule.

Monarchies often have historical precedents and traditions that predate the modern nation-state and are a link to the nation prior to the development of the modern state. There are currently 44 monarchies in the world.

What are the different types of monarchy?

Monarchies can also be grouped according to the powers of their monarch, and how the monarch is chosen or appointed. Again it is important not to confuse the different types. There are three types of monarchy: constitutional, absolute and sub-national.

Constitutional monarchy

The monarch is largely a ceremonial figurehead and their role is governed by a written constitution or by a set of constitutional conventions. He or she has limited constitutional powers, and these are constituted by tradition, popular opinion, and by the country's legal traditions. The monarch represents the state and serves as a symbol of its continuity. Political power still rests with voters (the electorate), who are represented by the parliament or other legislature. Executive power often rests with an elected parliament.

Constitutional monarchs often retain certain privileges and powers (for example, to grant pardons or assign honours and titles). Some monarchs retain reserve powers, such as the power to dismiss the prime minister or to dissolve parliament. Examples include Great Britain, the Netherlands and Spain.

Absolute monarchy

An absolute monarch holds complete power and rules the nation-state according to the traditions of their culture, religion or family traditions. As with constitutional monarchs they can either be elected or appointed. Pope Benedict of The Vatican is an elected absolute monarch. Other examples include Brunei, Saudi Arabia and Lesotho.

Sub-national monarchy

There are some monarchies that exist within a nation-state that do not possess any constitutional power. Generally, they are the result of a smaller nation being subsumed into a larger nation state. The Kīngitanga (also known as the Māori King Movement) in New Zealand is an example of this. King Tuheitia Pāki, head of the Kīngitanga is a descendant of the first Maori King, Pōtatau Te Wherewhero. The Kīngitanga has no constitutional role in New Zealand but has a role providing Māori leadership. The Māori King is a symbol of the status of the Māori iwi who support the Kīngitanga.

Is New Zealand a republic or a monarchy?

New Zealand is a constitutional monarchy. Our head of state lives in Great Britain. Unless the Monarch is actually visiting New Zealand, the Governor-General, a person appointed by the Prime Minister, acts as head of state. However, due to New Zealand's constitutional arrangements government of New Zealand functions much like a parliamentary republic.

Who is New Zealand's head of state?

Her Majesty Queen Elizabeth II (the Queen) has been New Zealand's head of state since 1952.² Under New Zealand law she is referred to as the Queen of New Zealand and is constitutionally known as "the Sovereign". The Queen is head of state of 16 of the 53 Commonwealth countries. She is separately the Head of the Commonwealth.

² *The Queen's coronation was in 1953.*

How is New Zealand's head of state chosen?

"I think most New Zealanders don't easily accept unearned privilege. I think we accept, right down deep in our guts, that we're pretty much as good as the next person."

– Footrot Flats creator, Murray Ball.³

Under the current constitutional arrangements, to become head of state you must be a member of the British Royal family. When the Monarch dies or abdicates, a successor is appointed according to law. Under the Act of Settlement 1701⁴ the Monarch's oldest son, provided he is not a Roman Catholic, becomes the new Monarch. If there is no son then the oldest daughter is chosen. The Monarch must always be a member of the Church of England.

In 1947, New Zealand's Parliament passed the Statute of Westminster Adoption Act making New Zealand legally independent. The British Monarch remained New Zealand's head of state. The Queen is legally the "Queen of New Zealand"⁵ independent of her role as Queen of Great Britain.

Under the Constitution Act 1986, New Zealand's head of state is defined as the "Sovereign in right of New Zealand", and the "Governor-General appointed by the Sovereign is the Sovereign's representative in New Zealand".⁶

What does the head of state do?

As head of state, the Queen has a constitutional, ceremonial and community role. The Queen has visited New Zealand ten times in the last 56 years and has spent a total of twenty weeks in New Zealand during her lifetime. When the Queen or a member of the Royal family is in New Zealand, he or she performs a number of public duties. Members of the Royal family are patrons to several charities and organisations. As the Queen is rarely in New Zealand, the Governor-General carries out the role of head of state in the Queen's absence.

Who is the Governor-General?

Sir Anand Satyanand is New Zealand's current Governor-General. He was appointed in 2006. Prior to becoming Governor-General, he was a District

³ Milne, Jonathan. 2004, 'The People vs The Crown', *The Sunday Star Times*, 30 May

⁴ The Act of Settlement 1701 is part of New Zealand law under the Imperial Laws Application Act 1988.

⁵ Royal Titles Act 1974

⁶ Constitution Act 1986, section 2

Court Judge and a Parliamentary Ombudsman. His term is due to end, by convention, in 2011. Sir Anand is Governor-General of the Realm of New Zealand, which is defined as New Zealand together with its territories and associated states – the Ross Dependency, the Cook Islands, Tokelau and Niue.

How is New Zealand’s Governor-General chosen?

“Well, Mr Prime Minister, I understand that the Constitutional Rule is that you will nominate somebody and that I have no choice in the matter.”

– The Queen, to Sir Robert Menzies, former Australian PM .⁷

The Governor-General is appointed by the Monarch on the exclusive advice of the Prime Minister of the day. While the Prime Minister chooses the Governor-General, there is usually some consultation amongst Cabinet members, and ‘consultation’ with the Leader of the Opposition. There have been a number of instances where the Leader of the Opposition was not informed until after the decision was made.⁸

In the past, Governors-General were usually members of the British aristocracy. From 1967, the Governor-General has been a New Zealander.⁹ The Governor-General’s term in office is undefined, but usually lasts for five to six years.¹⁰

What does the Governor-General do?

“The Governor-General’s role is often described as the 3 Cs - constitutional, ceremonial and community. These three roles are seen as overlapping.”

– Dame Silvia Cartwright, former Governor-General.¹¹

The Governor-General carries out all of the Queen’s constitutional and ceremonial functions as head of state in New Zealand and abroad. He or she is regarded as having all the same powers as the Sovereign. As such, the Governor-General is an acting or de-facto head of state. Along with the specific constitutional duties, as set out below, the Governor-General performs all the normal functions of the head of state. They represent

⁷ Menzies, Sir Robert. 1967, *Afternoon Light*, page 254

⁸ For example, in 1977 Bill Rowling complained of the lack of consultation over the appointment of Sir Keith Holyoake as Governor-General.

⁹ The first New Zealand-born Governor-General was Sir Arthur Porritt, 1967 - 1972

¹⁰ Palmer, Sir Geoffrey. 2001, *Constitutional Conversations - Geoffrey Palmer speaks with Kim Hill 1994 – 2001*, Victoria University Press

¹¹ Cartwright, Dame Silvia. 2006, *Address to the New Zealand Institute of International Affairs, Sixteenth Annual Dinner, Wellington, 27 June*

New Zealand overseas, open New Zealand's embassies, greet foreign dignitaries and hand out awards.

The Governor-General and members of the House of Representatives make up Parliament. The Governor-General oversees meetings of the Executive Council. This is the formal meeting of Cabinet, where Government Ministers present regulations and appointments for approval and signature. At the direction of Ministers, the Governor-General appoints members of the judiciary (Judges), Justices of the Peace and other public officers. The Governor-General also signs the warrants for Royal Commissions of Inquiry and may exercise the Royal prerogative of mercy.

Is the Governor-General New Zealand's head of state?

"I would go as far as to say that we are already a de facto republic, as is Australia. We have, to all intents and purposes the nominal head of state in our Governor-General"

— Former Prime Minister Helen Clark.¹²

The Governor-General is not New Zealand's head of state, yet they *act* as New Zealand's head of state. When the Governor-General represents New Zealand overseas, as they are increasingly being asked to do, they are treated in a manner similar to a head of state. Because of this, some argue that New Zealand is already a "de facto republic", with the Governor-General as the de facto head of state.¹³

What powers does the Queen or Governor-General have?

"People tend to think the office of the Governor-General is of little significance, which is wrong, or that it represents a substantial check on the excesses of executive government, which is also wrong."

— Former Prime Minister Sir Geoffrey Palmer.¹⁴

The Governor-General has a specific role and, by convention, acts on the advice of Government ministers. In effect, the actual legal powers of the Monarch or the Governor-General are vague. Governors-General are rarely informed of the Government's actions unless it involves them. Almost all Governors-General have complained of not being informed of

¹²2002, 'Clark: Republic 'inevitable'', *The Evening Post*, 4 March

¹³Brookfield, Jock. 1995, *Republican New Zealand - Legal Aspects and Consequences*, *New Zealand Law Review*, volume 3, page 310-327

¹⁴Palmer, Sir Geoffrey and Matthew. 2002, *When Will New Zealand Become A Republic?, Bridled Power - New Zealand's Government under MMP*, Oxford University Press

decisions made by Governments. During the term of David Lange's Labour Government, Sir Paul Reeves wrote letters to the Queen complaining about the lack of information from the Government.¹⁵ However, Sir Paul did not get any direct responses from the Queen.¹⁶ As a result of Governors-General not being informed by Governments, there have been public statements made which contradict Government policies.

Under the Constitution Act 1986 the Governor-General has all the "powers conferred" on them by law.¹⁷ The Constitution Act refers to the Letters Patent 1983, a law issued as a Royal decree (rather than coming from Parliament) that creates the office of the Governor-General and the Executive Council of Ministers that advises them. The Letters Patent is officially from the Monarch, but they are actually written by the Prime Minister and Executive Council, for the Monarch to sign.

The Letters Patent do not spell out the powers of the head of state either. Their powers are defined by constitutional conventions, most of which are found in the Cabinet Manual.¹⁸ The Cabinet Manual is a manual published by the Cabinet Office that records the constitutional conventions, procedures, and rules of Cabinet.

What are constitutional conventions?

Constitutional conventions are informal procedures and protocols that guide politicians in how they should exercise power. The most important constitutional convention is the convention of responsible government: "the Queen reigns, but the government rules, so long as they have the support of Parliament".¹⁹

The Queen reigns, but the government rules...

Government business is conducted in the name of the Sovereign, because executive power is vested in them. However, the Cabinet rules because the head of state always does what they are 'advised' to do. The Prime Minister and their Cabinet 'advise' the Governor-General to make regulations, fire ministers, or call elections. In practice this means the

¹⁵ *Governor-General 1985 - 1990*

¹⁶ Rudman, Brian. 2008, 'Let's follow Nepal into the new century', *The New Zealand Herald*, June 4

¹⁷ *Constitution Act 1986*, section 3(1)

¹⁸ *The Cabinet Manual, 2008. Department of the Prime Minister and Cabinet*, see: www.cabinetmanual.cabinetoffice.govt.nz

¹⁹ Keith, Rt Hon Sir Kenneth. 1990, updated 2008. 'On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government', *The Cabinet Manual, Department of Prime Minister and Cabinet*

Sovereign or Governor-General almost always does what the politicians want.

...so long as they have the support of Parliament

To become Prime Minister an MP needs the support of Parliament to form a government. They need to lead the party or coalition of parties that has a majority of seats in Parliament. This usually happens after a general election. Following a general election, Parliament holds a vote of confidence in the government. If there is a successful vote of no confidence, the convention requires the government and Prime Minister to resign. The Governor-General only has to listen to the Prime Minister when the Prime Minister has the support of the Parliament. Otherwise, it is up to the Governor-General's discretion. When the Governor-General acts on this discretion, they use what are called "reserve powers".

What are the reserve powers?

Usually Cabinet, led by the Prime Minister, carries out the day-to-day business of government. The Governor-General does what they are told to do by the Cabinet and Prime Minister. In rare circumstances the Governor-General may act without (or even against) the advice of the Prime Minister. As we saw above, this only happens when the Prime Minister loses a vote of confidence – that is, they lose the right to lead the government and give advice to the Governor-General.

The Governor-General's reserve powers include the powers to:

- Dissolve or postpone Parliament and call an early election;
- Dismiss the Prime Minister and their Cabinet and appoint someone else (who may command the support of the House and form an alternative government); and
- Refuse to grant the Royal assent to a Bill of Parliament.

The use of each of these powers is covered below. There may also be other circumstances when the Governor-General acts even when the Prime Minister still has the confidence of Parliament. This was evident in Australia in 1975, as outlined below. The circumstances where such actions are taken are very rare and very controversial.

The use of the reserve powers cannot be challenged in the courts, and are said to be “non-justiciable”.²⁰ In a republic executive actions can usually be challenged in court.

Dismissing the Prime Minister

In rare circumstances, the Governor-General can dismiss the Prime Minister. The Governor-General may dismiss the Prime Minister if they do not have the support of Parliament, or if they are about to lose it. Dismissal is not an issue most of the time, but when it comes to constitutional crises it can be controversial. If the end result is that the Governor-General cannot act as a proper check on the power of the Prime Minister, their only recourse is to fire the Prime Minister, or risk getting fired or forced to resign themselves.

In Australia, Prime Minister Gough Whitlam was dismissed in 1975 under very unusual circumstances. It occurred when a dispute arose between the upper and lower houses of the Australian Parliament.²¹ The issue in Australia was whether the Government of the day had the ability to govern, with the possibility that the Australian Senate (the upper house) would block the federal budget. At that stage the Senate was controlled by the Opposition. Whitlam wanted to call a half-senate election so his party could gain a majority in the Senate.

Whitlam pointed out to the Governor-General Sir John Kerr that he could dismiss him as Governor-General if he did not do what he wanted. In response Kerr sacked Whitlam and appointed the Opposition leader as Prime Minister, who promptly advised the Governor-General to dissolve Parliament and call an election.²² Kerr took the most extreme course of action: he dismissed a majority government that had not actually lost a vote of confidence.

Can the Queen stop the dismissal of a Governor-General?

It has been suggested that the Queen would refuse to remove the Governor-General should a Prime Minister attempt to have them dismissed. This is highly unlikely, as the Queen knows that any political intervention, particularly in the democratic process, exposes the

²⁰Cox, Noel. 2007, ‘The Royal Prerogative in the realms’, *Commonwealth Law Bulletin*, Volume 33, Number 4

²¹Such a dispute could not happen in New Zealand, because our Parliament only has one chamber (the House of Representatives).

²²Hocking, Jenny. 2005, ‘History by Numbers’, *The Dismissal*, edited by Sybil Nolan

monarchy to controversy. For this reason, there have been almost no interventions by the Queen in the politics of her Commonwealth realms.²³

Secondly, should the Prime Minister advise the Queen to dismiss the Governor-General immediately, the Sovereign would be forced to act, as the Queen is bound by constitutional convention.²⁴ If the Queen did intervene, it would contradict the primary argument made for the monarchy, which it is that the Sovereign and Governor-General are “above politics”.

Within the Commonwealth, there are precedents where the Prime Minister has cut the Governor-General’s term short – as happened in Papua New Guinea and the Irish Free State.

Can the Governor-General refuse to sign a bill into law?

The extent of this reserve power is a contentious subject for constitutional lawyers. Many – such as former Prime Minister Sir Geoffrey Palmer – argue that the Governor-General has no power to refuse the Royal assent to legislation (that is, they cannot refuse to sign an act of Parliament into law, that would cause a political crisis).²⁵ Others say leeway exists for the Governor-General to say no where democracy is under threat.²⁶ British constitutional writer Walter Bagehot famously said that if the Monarch were advised to sign his or her own death warrant, they would be “constitutionally obliged to do so”.²⁷ No British Monarch has refused Royal assent in 300 years – since the time of Queen Anne. No Governor-General in New Zealand has ever refused to sign a bill into law.

In other Commonwealth realms such as Canada and Australia, Royal assent has been withdrawn after the fact. In Australia, this was due to a procedural error.²⁸ In Canada, the Bill was ruled unconstitutional by the Canadian Supreme Court.²⁹

²³*The Queen’s only “interventions” have actually been refusals to do anything. Examples include situations where the British government has taken issue with a Commonwealth member’s government – such as Rhodesia in 1965.*

²⁴*Stockley, Andrew. 1996, ‘Becoming a Republic? Issues of Law’ in Republicanism in New Zealand, edited by Luke Trainor, Dunmore Press.*

²⁵*Palmer, Sir Geoffrey and Matthew. 2002, Bridled Power – New Zealand’s Government under MMP, Oxford University Press*

²⁶*Joseph, Philip. 2007, Constitutional and Administrative Law in New Zealand (3rd edition), Thomson Brookers*

²⁷*Bagehot, Walter. 1867, The English Constitution, chapter 3 ‘The Monarchy’*

²⁸*The wrong Bill was presented to the Governor-General for signature.*

²⁹*The Bills in question were ruled to be in breach of Canada’s Constitution.*

When would the reserve powers be used?

There is much academic debate over when the reserve powers would be used. While the Governor-General appears to have immense powers to make and unmake Governments, they cannot really use them. This is because so long as they have a majority in the House, the Prime Minister can dismiss and replace the Governor-General at any time. The Prime Minister has the sole right to advise the Queen on appointments to the office.

Because the Governor-General has no defined term in office, and “...shall hold office during Our [the Queen’s] pleasure”,³⁰ the Prime Minister can cut short the Governor-General’s term in office. This happened in the Irish Free State in 1932 and Papua New Guinea in 1991, but has never happened in New Zealand. In all of these examples, the Governors-General in question resigned instead of being removed from office.

Why does New Zealand have a head of state if the Government makes all the decisions?

The British monarchy is the remnant of an absolute monarchy: a system of authority the British Parliament gradually replaced. Great Britain was once an absolute monarchy, where the head of state also had executive power. But over hundreds of years, power has slowly been taken away from the Monarch, and handed to Parliament. In turn, the position of head of government (known as the Prime Minister) has evolved from the leader of the elected legislature.

Today, the position of head of state represents the continuity of the state over and above any changes in the Government. In a parliamentary system keeping the roles of head of state and head of Government separate is important. In a parliamentary republic an elected head of state would carry them out. This elected head of state would be accountable to the public in a way that the Governor-General is not.

At present New Zealand has an absentee head of state. The Monarch’s representative, the Governor-General, does everything New Zealanders would expect the Monarch do if she or he were actually living in New Zealand. The Prime Minister, however, appoints, and can dismiss, the Governor-General, making them useless in the event of any constitutional crises. These points form the basis of the arguments against the monarchy, and in favour of becoming a New Zealand republic.

³⁰*The Letters Patent 1983, article II*

The case for a New Zealand republic

The transition to a New Zealand republic is a relatively straightforward legal and political process. Before New Zealanders make that decision, however, a national discussion needs to take place. It is essential that people are well informed and are aware of the reasons why becoming a republic is the best option for New Zealand.

The arguments for a New Zealand republic fall into three categories:

- Independence – New Zealand should have a New Zealander as the head of state;
- Nationhood – the constitution and head of state of New Zealand should reflect New Zealand’s national identity, culture and heritage;
- Democracy – New Zealand should have a democratic and accountable head of state.

Independence

New Zealand will not be fully independent until we have a New Zealander as head of state. New Zealand likes to think of itself as an independent country. However, it cannot objectively be argued New Zealand’s current head of state represents this.

A New Zealand republic means a New Zealander as head of state

“Is New Zealand to continue to have an appointed Governor-General... or should we move to an elected president? This will not happen because of any lack of affection or love for our Queen in London, but because the tide of history is moving in one direction.”

– Former Prime Minister Jim Bolger.³¹

Our current head of state is not a New Zealander and does not represent New Zealand. When the Queen travels overseas, she does so in order to represent Great Britain.³² The Queen works to strengthen British economic and political ties, and does whatever the British Government

³¹ Bolger, Jim. 1994, *Address-In-Reply debate, Parliamentary Hansard, March 24*

³² *The British Monarchy website states that the Queen “Represents Britain to the rest of the world” See: <http://www.royal.gov.uk/MonarchUK/HowtheMonarchyworks/TheRoleoftheSovereign.aspx>*

asks of her. In fact, whenever ‘our’ head of state visits New Zealand, the Queen has to ask for permission from the British Government to leave Britain.

If the Queen wanted to be a citizen of New Zealand, she would not meet the legal requirements to become a citizen. The Citizenship Act 1977 requires an applicant for New Zealand citizenship to have been resident in New Zealand for five years before citizenship is granted. The Queen has spent a total of no more than six months in New Zealand.

The Governor-General is not a proper head of state. While the Governor-General may increasingly act in ways that befit a head of state, the reality is that New Zealand is still not regarded as being fully independent of Great Britain. Appointing the Queen’s representative in New Zealand is inadequate. A New Zealand head of state will make it clear that New Zealand is an independent country. It will signal New Zealand’s independence and maturity to the world.

Deciding the rules for ourselves

In recent years, the British Parliament has attempted to amend the succession law. The problem is the Statute of Westminster 1931, the law that granted independence to Canada, Australia and New Zealand.³³ The Statute requires “consultation” on changes to the succession before any changes to the succession law. While this provision is not binding, it is still an important constitutional convention. The most recent attempt in 2008 failed for this reason: the British Government did not want to have to consult with all the parliaments of the Commonwealth realms.³⁴

New Zealand’s Parliament could change the law of succession unilaterally, but that would go against the convention established by the Statute of Westminster. Change can only be enacted if the governments of all the 15 Commonwealth realms are consulted, probably by Britain. In a New Zealand republic, the New Zealand Parliament will make the rules governing New Zealand’s head of state. They will change as New Zealanders decide they need to, not because of events in Great Britain.

Nationhood

New Zealand is a unique, dynamic and diverse country. New Zealand’s constitutional arrangements, national symbols and head of state should reflect this.

³³ *Statute of Westminster 1931, preamble*

³⁴ 2008. ‘British ministers rule out change to succession law’ *The Daily Telegraph*, 30 April

A New Zealand republic affirms New Zealand's sense of nationhood

“We exhibit symptoms of retarded nationhood: a widespread insecurity about what others think, a search for applause and endorsement by visitors; and, conversely, a begrudging willingness to extend applause here at home.”

– Simon Upton former National MP.³⁵

Becoming a New Zealand republic and electing New Zealand's head of state will foster a deeper and more sophisticated sense of nationhood. It will clarify to New Zealanders, and to the world, what New Zealand stands for.

How New Zealanders understand their place in the world is crucial to New Zealand's success in an increasingly globalised world. New Zealand excels in sport, in its human rights record, in business and in the arts. New Zealand's constitution lags behind these achievements. Our current constitutional arrangement causes confusion overseas as to whether New Zealand is linked to Britain, or whether it is part of Australia. We send conflicting messages about who we are and what we stand for.

The debate and discussion around becoming a New Zealand republic affirms the values that are important to New Zealanders. It will promote discussion about New Zealand's history and future. It will clarify the values we all see as important. Becoming a New Zealand republic will be a celebration of New Zealand's unique culture and heritage. It will demonstrate New Zealand's confidence and independence and it will symbolise a shared sense of nationhood.

Democracy

A New Zealand republic will make New Zealand more democratic

A New Zealand republic will ensure we have a head of state that is democratically elected and accountable to voters. As a result the head of state will be a more effective constitutional safeguard. This will decrease the risk of political instability.

Electing the head of state is a basic democratic right. Republicanism is based on the principle that government authority is reliant on the consent of citizens. The monarchy is based on the principle that hereditary privilege alone should decide the head of state. It represents a belief that government authority is embodied in a single individual (the

³⁵Upton, Simon, 2001. 'Ourselves, alone', *The New Zealand Listener*, 6 January

Monarch). In a New Zealand republic the head of state would be elected – either directly by voters, or indirectly by parliament.

Replacing the Governor-General

At present, the Prime Minister chooses the Governor-General and advises the Monarch of their choice. They usually choose someone who will not challenge them, and someone who has something to do with their own party.

In the past, this has meant a number of openly political appointments. National Prime Minister Jack Marshall gave his friend Sir Denis Blundell the job in 1972.³⁶ In 1977, Robert Muldoon appointed former Prime Minister Sir Keith Holyoake to the job. This was primarily because the next best candidate, Sir Edmund Hillary, had signed a petition in 1975 supporting Labour Prime Minister Bill Rowling.³⁷ Sir Michael Hardie Boys was a known constitutional conservative with National Party leanings.³⁸ In 1985, Labour Prime Minister David Lange appointed the Reverend Sir Paul Reeves. Sir Paul was known for his activism for the anti-apartheid and anti-nuclear movements. Dame Catherine Tizard was appointed to the office in 1990 by the outgoing Labour Government. She was the former wife of Labour Deputy Prime Minister Bob Tizard.

While individually there has been good appointments made, there have also been a number of openly political appointments. Many of those, particularly the appointment of Sir Keith Holyoake, were very controversial. Creating a transparent democratic process will ensure that the replacement of the Governor-General will not be as controversial.

A New Zealand republic means an effective constitutional safeguard

A New Zealand republic will create a head of state in New Zealand that could act in times of constitutional crises. The Monarch and the Governor-General do not have the political power or democratic legitimacy to do this. The Governor-General is unable to resolve constitutional crises because the Prime Minister holds the power to dismiss and replace the Governor-General at any time. The Monarch will never get involved in New Zealand politics, because they are “non-political”.³⁹ Having a head of state able to act effectively in times of

³⁶ Hayward, Margaret. 1980, *Diary of the Kirk Years*, Reed, page 62

³⁷ Sir Ed later stated he regretted signing the petition.

³⁸ McLean, Gavin. 2006, *The Governors - New Zealand's Governors and Governors-General*, Otago University Press, page 336.

³⁹ Monarchist League, 2000. 'Monarchy or Republic - A Factsheet', see: http://www.geocities.com/cox_nz/factsheet4.htm

crises will be a better restraint on the power of the executive – the Prime Minister and Cabinet.

A 2011 Parliamentary Library research paper pointed to this fact:

New Zealand is the only OECD nation to not have any of the following institutional constraints on executive power: a codified constitution, an upper house, an elected head of state, or devolved powers.⁴⁰

Of the OECD countries measured, 65% had elected heads of state.

The Monarch is an absentee and constitutionally ineffectual head of state. The position is unaccountable to New Zealanders. In a New Zealand New Zealand republic, New Zealanders will choose the head of state. They will work on behalf of all New Zealanders regardless of their political beliefs.

The benefits of becoming a New Zealand republic

A New Zealand republic will empower voters

A New Zealand republic will empower New Zealanders by increasing their democratic rights. Having the right to choose the head of state is a basic and fundamental right. At present, the office of head of state is supposed to embody the state yet voters have no say in choosing who that person is. Becoming a New Zealand republic will give power to voters and reinvigorate the democratic process.

A New Zealand republic will get rid of outdated succession laws

A New Zealand republic will give the state new legitimacy and encourage a wider culture of egalitarianism – the idea that no one is born ‘better’ than anyone else. The principles of a New Zealand republic apply to all of the institutions of the state without exception. Equality in a New Zealand republic will exist as a fundamental and irrefutable principle.

At present, the monarchy represents a system of social hierarchy and privilege. Its existence at the centre of New Zealand’s constitution upholds the belief that some people are innately better than others and so deserve more rights. The monarchy represents a class system that promotes the idea that some people are born ‘better’ than others. Our current head of state is still chosen under archaic laws of succession. The monarchy discriminates against all New Zealanders on the basis of gender, religion, birth, nationality, ethnicity, family status and political

⁴⁰ Parliamentary Library. November 2011, ‘Parliamentary voting systems in New Zealand and the referendum on MMP’ see <http://www.parliament.nz>

opinion. This contradiction highlights the irrelevance of the monarchy to New Zealand. The monarchy's supporters have shown little support for reform of the succession laws governing the selection of the Monarch.⁴¹

A New Zealand republic will make New Zealanders citizens, not subjects

A New Zealand republic will demonstrate that New Zealanders are committed to egalitarianism. A clear majority of New Zealanders believe in appointment by merit. It is a better system and achieves better results. New Zealanders would not accept a hereditary Prime Minister or a hereditary captain of the All Blacks – so why should New Zealand accept a head of state determined on the same basis? Even the Kīngitanga, New Zealand's own monarchy, elects its head rather than choosing them solely by birth.

A New Zealand republic will clarify New Zealand's foreign policy

New Zealand is respected amongst the members of the United Nations as a country that obeys international law. We are a small nation but because we show respect to other countries and cultures, New Zealand's views are listened to. New Zealand's constitutional ties to the monarchy interfere with and confuse this perception.

For example, New Zealand's Government did not support the US led invasion of Iraq in 2003. Yet New Zealand's head of state authorised the invasion of Iraq by 'Her Majesty's Armed Forces', as the head of state of Great Britain.⁴² If an Iraqi asked you to explain why New Zealand's head of state supported the invasion, what would you tell them? The Monarch's position is not a symbol of New Zealand's political independence.

A New Zealand republic will affirm the separation of Church and State

Most New Zealanders believe in the separation of church and state.⁴³ New Zealand's constitutional arrangements should reflect this. New Zealand is a diverse country with people of many different faiths and beliefs. The monarchy is a barrier to New Zealand's secular principles. Part of the Queen's title declares Her Majesty as "Defender of the Faith". In Britain she is the Supreme Governor of the Church of England. There is no reason why the head of a church should hold such a position. A New Zealand

⁴¹ Cox, John. 2003, 'A reply to a Monarchist avant garde', *New Zealand Monarchy*, May

⁴² House of Commons, 2003. *Hansard Debates part 48*, 18 March

⁴³ Research New Zealand, 2007. 'Limited Support for Christianity as official religion', 17 June

republic will affirm that New Zealand's head of state will be neutral on matters of religion.

A New Zealand republic will bring the head of state home

In a New Zealand republic, the head of state will live in New Zealand. They will work on behalf of all New Zealanders. They will be accessible and will remain connected to the concerns of ordinary New Zealanders. Having a New Zealander as head of state ensures that, politically, the buck stops here. The head of state will answer to, and speak on behalf of, the people of New Zealand. Becoming a New Zealand republic would bring the head of state "home", much like creating New Zealand's own Supreme Court in 2003, removing the right of Westminster to legislate for us in 1986, or gaining legislative independence in 1947.

A New Zealand republic will signal New Zealand's maturity to the world

New Zealand needs to demonstrate and signal to the world its uniqueness and independence. There are plenty of people around the world who do not think or perceive New Zealand as being independent. Some think New Zealand is still a British colony; others think New Zealand is a part of Australia. For example, it is not easy explaining to many Japanese tourists why New Zealand's \$20 note has a picture of the Queen of Great Britain on it. The Japanese understand monarchy; they have one of their own. What they do not understand is why New Zealand keeps Great Britain's as the head of state yet calls itself independent.

Symbols matter. New Zealanders have an affinity with the koru and kauri, with the silver fern, the Kiwi, with our mountains and rivers, with the beauty of the Pohutukawa trees in summer time. These things form part of what it is to be a New Zealander.

Most members of New Zealand's diplomatic community understand the importance of symbolism. Richard Nottage – New Zealand's former Secretary of Foreign Affairs and Trade – argued for a New Zealand republic in 1998, stating that the position of the British Monarch as New Zealand's head of state "looks strange in Asian eyes".⁴⁴ While it would be wrong to make constitutional changes because of what other people think of New Zealand, it should be asked *why* they feel that way. New Zealanders need to be aware of what keeping the monarchy is saying about New Zealand.

⁴⁴1998, 'Top Diplomat Calls for Republic', *National Business Review*, 27 March

Some people argue that it is ‘petty nationalism’ to change the head of state on the basis of national identity. Yet they are often the first to say that the Monarch is just a symbol and does not affect the governance of New Zealand’s in any way. Similarly, supporters of the monarchy have claimed that it is “mature” to remain a constitutional monarchy. All of these arguments boil down to a question of symbolism. Whether they like it or not, the monarchy is a colonial hangover. The monarchy can no longer represent the diversity of cultures living New Zealand. A New Zealand republic will solve that problem.

The time is right for a New Zealand republic

In a New Zealand republic, the head of state will be democratically elected and be accountable to all New Zealanders. At present, no New Zealander can aspire to be head of state; no matter how much ability they have, no matter how much they contribute to the country. The role is reserved exclusively for a member of the British Royal family. The monarchy clashes with New Zealand’s cultural traditions of egalitarianism and appointment by merit.

Becoming a New Zealand republic does not mean rewriting history or casting aside British contributions to New Zealand’s heritage. It is about affirming New Zealand’s unique place in the world. New Zealand will still be a member of the Commonwealth. The status of the Treaty of Waitangi will not change. The flag and national anthem does not have to change.

Most Commonwealth countries are already republics and New Zealand is not alone in raising these issues. Australia, Canada, and even Great Britain are all heading down the same path. Becoming a New Zealand republic will represent New Zealand’s coming of age as a nation.

The case against a New Zealand republic

“As long as the monarchy has a function to perform, or even just a meaning, it will not be out-of-date.”

– *The New Zealand Herald*, 1970.⁴⁵

This chapter identifies the arguments against a New Zealand republic. Some are well thought out; others are factually incorrect. They all fall down on close scrutiny. This chapter looks critically at the arguments supporters of the monarchy have used so far.

The arguments against a New Zealand republic fall into three categories:

- Republics as a form of government;
- The monarchy works (“if it ain’t broke, don’t fix it”);
- The monarchy represents “our history and traditions”.

Republics as a form of government

Like monarchies, republics are characterised by diversity. Some are poor, politically unstable and dictatorships. Others are wealthy with long traditions of political equality and democracy.

Republics are unstable

Whether a country is politically stable has got little to do with whether it is a republic or a monarchy. A nation’s political history, wealth and geographic location are more accurate indicators.

The argument relies on a poor understanding of what a republic is. It often deliberately points to dictatorships and ‘banana republics’ as evidence that all republics are somehow flawed. They are often accompanied by examples of failed or unstable republics, or by extreme claims that New Zealand is heading for disaster if it becomes a republic.⁴⁶

Arguments against republics in general ignore the fact that a lot of unstable republics started life as unstable monarchies. Sierra Leone and Pakistan are good examples of this. Both were Commonwealth realms with the Queen as their head of state. Both had coups *before* they

⁴⁵ 1970, *The Monarchy and New Zealand - Herald Resource Book*. A.H. Reed.

⁴⁶ O’Connor, *Simon and Palmer, Sean*. 2008, ‘Becoming a republic way to court disaster’, *The New Zealand Herald*, 17 January

became republics. The Solomon Islands, considered to be a failed state by the UN, has the Queen as its head of state. A coup there in 2001 led to foreign military intervention.

The monarchy was no use to Fiji in 1987. The military first ignored the Queen's representative, then overthrew them, then appointed the former Governor-General as President. There is no sound basis to claim a New Zealand republic by definition would be unstable.

Republics are less democratic

The 2008 Freedom House survey of democracies found that of the 28 "functioning" democracies in the world, the majority (16 countries) were republics.⁴⁷ The Global Peace Index 2009 found that 10 of the top 20 most peaceful countries were republics.⁴⁸

The type of republic voters choose reflects the cultural and political heritage of the country. New Zealand is politically stable and has an exemplary democratic record. We have high levels of wealth, education and literacy. Corruption is low; the rule of law is respected. Fairness and good governance are expected at all times. We share these traits with Switzerland (a republic) and Sweden (a constitutional monarchy).

Republics are less gender balanced

As with notions of political stability and democracy, it is problematic to link measures of gender equality to whether a country is a republic or monarchy. Ironically, there actually appears to be a strong trend toward republics being *more* gendered balanced. A 2008 study by the World Economic Forum compared gender equality around the world. Of the top ten countries, five were Republics (Iceland, Philippines, Finland, Iceland, Latvia) and five were Monarchies (Sweden, Norway, New Zealand, Denmark and the Netherlands). Of the top fifty countries, 38 were republics. New Zealand was fifth overall.

Becoming a New Zealand republic will help New Zealand further improve New Zealand's levels of gender equality. It will decrease the influence of the Royal family - a political institution that upholds inequality and which actively privileges men over women.

⁴⁷Freedom House. 2008, 'Freedom in the World - Report 2008'

⁴⁸Vision of Humanity, 2009. 'Global Peace Index Report - 2009'

A New Zealand republic means a ‘politicised’ head of state

“The case for constitutional monarchy is not sentimental... It rests upon a solid constitutional base which provides a head of state who is politically neutral”

— *Former Prime Minister Sir Geoffrey Palmer.*⁴⁹

Like many others this argument relies on presupposing the kind of republic New Zealanders will choose. In general, supporters of the monarchy mean one of four things when they argue the head of state in a New Zealand republic will become “politicised”:

- That the head of state will have wide executive powers (as in Presidential republics);
- That the head of state will be a current or former member of Parliament (the “President John Key” argument);
- That the head of state will interfere with the day-to-day running of the government, in a partisan way (for example, a head of state associated with the Labour Party might somehow frustrate a National Government’s legislative program).
- That the head of state will have a policy agenda.

Supporters of the monarchy claim the office of Governor-General is ‘non-political’. What they actually mean is that the Governor-General is ‘non-partisan’. The Governor-General is a non-partisan political role. The office is part of the political and constitutional structure of a country and is therefore ‘political’. It is ‘non-partisan’ in that it cannot show favour to any one political party or group. The only reason put forward that a New Zealand head of state would act any differently is that an elected head of state has a ‘mandate’. This issue will be discussed next.

Governors-General are appointed by the Government of the day, and so their appointment is always a political decision. As outlined in the previous chapter, appointees often have links to the Prime Minister of the day. Despite these political appointments no-one has ever argued that the appointments were failures. The appointees all upheld the neutrality of the office.

It is unlikely that New Zealanders will choose a presidential republic.⁵⁰ The office represents the state above and beyond changes in

⁴⁹Palmer, Sir Geoffrey and Matthew. 2002, *Bridled Power - New Zealand's Government under MMP*, Oxford University Press

Government. The person who fulfils the role will be expected to act with great mana and dignity.

Electing the head of state will cause instability

This argument is based on the view that an elected head of state would be elected on some sort of policy platform, a ‘mandate’ with moral authority to act. This mandate would therefore cause instability. Professor Noel Cox, formerly of Monarchy New Zealand, has argued that electing the Governor-General would give them a “mandate” that would upset the “fine constitutional balance” between the Prime Minister and Governor-General and that an elected Governor-General would be a “potential rival” of the Prime Minister and Cabinet.⁵¹ The same arguments are applied to an elected head of state.

This argument assumes that an elected position would mean politicking along the lines of Members of Parliament or the Prime Minister. It ignores the reality that in a parliamentary republic the head of state does not have the ability to direct policy, make laws or interpret them. Their powers are limited. They can only appoint and dismiss Governments on the basis of the number of members each party has in parliament after elections, not whether they disagree with them or not.

In a parliamentary republic the head of state would be better able to prevent constitutional crises. There would not be the sort of meltdown in relations that leads to such rivalry in the first place. There will not be an upsetting of the “fine constitutional balance” between the Prime Minister and the head of state because the head of state could hold the Prime Minister to account. The Governor-General is at the moment a “potential rival” to the Government and could cause instability by using the reserve powers.

Aside from the obvious political implications of conflict between the Prime Minister and the head of state (which the Australian example shows has occurred with a Governor-General), the nature of the office in a New Zealand republic means that no Prime Minister would desire a situation where they came into open conflict with the elected head of state. The head of state, by virtue of being elected, would win. In contrast, the Prime Minister and the Governor-General currently have the power to

⁵⁰Rose, Dennis. 2008, ‘Executive Power and the Head of State’, *Institute of Policy Studies, Victoria University of Wellington*, 16 May

⁵¹Cox, Noel. 2006, ‘Governor-General role needs update’, *The New Zealand Herald*, 8 February

dismiss one another. The potential for conflict between a Prime Minister and an elected head of state would be less than it is with the monarchy.

Some have questioned whether an elected head of state would be able to function if the reserve powers remain undefined.⁵² As the Head of State (Referenda) Bill shows re-stating the existing constitutional conventions easily rectifies this problem.

There is also a precedent within the Commonwealth for codifying the Governor-General's powers. In Jamaica the reserve powers of the Governor-General are set out in their constitution. In Trinidad and Tobago, a republic within the Commonwealth, the President's powers are similarly defined. New Zealand voters may choose to codify and define the head of states reserve powers in order to clearly prescribe how much power they exert over parliament on behalf of voters.

The monarchy works

The monarchy is not broken

“The New Zealand monarchy... is broken. It is broken in this important sense: that it is one of a raft of wrong symbols”

– Colin James, journalist and political analyst.⁵³

This argument is often expressed by the slogan “If it ain't broke, don't fix it”.⁵⁴ Supporters of a New Zealand republic argue that New Zealand's constitutional arrangements are ‘broken’. They are undemocratic, they no longer reflect the diversity evident in New Zealand society and they no longer provide clear constitutional safeguards.

New Zealand cannot claim to be a fully functioning democracy when voters are denied their right to choose the head of state. The monarchy contradicts the values underlying New Zealand's national identity. New Zealand cannot claim to stand up for equality when the head of state is chosen using arcane and discriminatory practices. The monarchy is broken.

The monarchy is a source of stability

When faced with a crisis, New Zealand's constitutional arrangements could easily fall apart. New Zealand is generally a stable society, but

⁵² Quentin-Baxter, Alison. 2007, *Speech for Dominion Status Symposium, 26 September*, see www.nzhistory.net.nz/media/sound/alison-quentin-baxters-dominion-symposium-speech

⁵³ James, Colin. 2002, ‘Time to rethink our national symbols?’, *The New Zealand Herald*, 19 February

⁵⁴ Milne, Jonathan. 2006. ‘Ditch Queen, say former Governors-General’, *The New Zealand Herald*, August 2

constitutional safeguards need to be effective in times of crisis. New Zealand's democracy may be functional under normal conditions, but in trying times things might be different. Like preparing for a natural disaster, it would be wise for New Zealand to prepare our constitutional arrangements for a potential emergency.

This argument is based on the argument that New Zealand's democracy has always been stable. This is not the case. There have been many times in New Zealand's history when land wars, social inequality, racism, industrial turmoil, protests, conflicts, and crises have undermined fair and effective government. Despite all of this, New Zealanders have always found a way resolve their differences and move forward.

Supporters of the monarchy often state that because the Monarch is "above politics", they do not cause the sort of division an elected head of state would. As we have seen, this division is largely fictional.

Instead the monarchy has become a potential source of instability. It lacks the power and inclination to intervene in New Zealand politics when needed. The Monarch provides no check on the powers of Government and does nothing to protect democracy. The Prime Minister holds the power to appoint and dismiss a new Governor-General at will. This means the Governor-General is unable to act in times of constitutional crises unless the Prime Minister agrees. This is a recipe for future instability.

The monarchy limits the power of 'politicians'

This argument is cynical and tries to capitalise on the low opinion many people have for MPs. Whether deserved or not, unfortunately there is a lot of dislike for 'politicians'. In confidence ratings, New Zealanders rank MPs below used car salesmen - voters are therefore suspicious of any constitutional change that might increase politicians' powers. Some monarchists try and use this by deliberately implying that a New Zealand republic will give more power to politicians. This is not true.

The monarchy does not limit the power of Parliament or politicians in any way. In fact the opposite is true. Supporters of the monarchy often argue that a New Zealand republic would lead to 'more power for politicians'. This is based on the mistaken belief that the Monarch acts as a check on the power of Parliament. But when pressed for more detail it is never explained what power is being denied, or when it is being denied.

Neither the Queen nor the Governor-General has ever acted to check the power of the New Zealand Parliament. The Queen has never intervened in the politics of any the 16 Commonwealth realms, even in cases when they

experienced military coups and other forms of constitutional break down. Her son Prince Charles once told a New Zealand MP that he does not want to get involved in any constitutional conflicts.⁵⁵ Like his mother, Prince Charles knows any political intervention in New Zealand is likely to damage the monarchy's image here and at home in Great Britain.

The Sovereign has little or no leeway to refuse to sign a statute into law. In fact the argument has been made that he or she would have to sign their own *death warrant* if so advised. The way the monarchy operates hands power on a gold platter to politicians. Through the Royal prerogative, the monarchy allows them almost unlimited powers.

If New Zealand's elected representatives are regarded so low, our system of government needs improving. Part of the problem may be an ineffectual head of state. While a New Zealand republic cannot provide all the answers to this problem, presidential elections in the Republic of Ireland have shown that a non-executive head of state tends instead to lead a wider national conversation about where the country is heading. If this occurred in New Zealand then New Zealanders may choose to direct this conversation toward the behaviour they expect of parliamentarians. They might also empower a new head of state to raise the standards of parliamentary behaviour.

The monarchy costs less than a New Zealand republic

It is claimed by supporters of the monarchy that the institution costs New Zealanders "virtually nothing".⁵⁶ This is not true. The monarchy requires the New Zealand taxpayer to maintain the Governor-General. The Queen's representative costs the taxpayer around \$7.6 million per year.⁵⁷ New Zealand taxpayers also have to pay for Royal tours. The Queen's last one in 2002 cost taxpayers about \$1 million.⁵⁸

The head of state of a New Zealand republic need not cost any more than the Governor-General. There would not be any need for extra advisors or a "presidential palace". The Governor-General has adequate support staff; there is no reason why the number of staff would change.

⁵⁵ Laidlaw, Chris. 2005, 'Charles never to reign over us?' *The New Zealand Herald*, 4 March

⁵⁶ Monarchist League of New Zealand, 2002. *Monarchy or Republic? A fact sheet*, see: www.geocities.com/cox_nz/factsheet4.htm

⁵⁷ New Zealand Treasury, 2009. *Budget 2009 - Vote Department of the Prime Minister and Cabinet - Government House*, May

⁵⁸ Department of Internal Affairs, 2002. *2001 - 2002 Annual Report - Vote Ministerial Services*

It is useful to compare the costs to republics of New Zealand's size. In 2009 the cost of the Irish President was about NZ\$8 million.⁵⁹ The President of Israel - a non-executive head of state elected by the Israeli Parliament - costs about NZ\$6.2 million per year.⁶⁰ Presidents in parliamentary republics cost about the same as New Zealand's Governor-General currently does.

Monarchy represents “our traditions and heritage”

“Our” heritage is British

The argument relies on a selective and narrow definition of New Zealand's heritage. While it is true that New Zealand was once a British colony we are now a very diverse and different country. Our cultural traditions are from Maori culture, from the Pacific, from the Netherlands, Australia, Europe, Asia, India, and North America. In the last twenty years immigrants from Africa and South America have added their own cultural heritage to New Zealand society. When people say ‘our heritage’ they usually mean only British history and traditions. They ignore all of the other cultures in New Zealand, including Māori.

Nothing about republicanism will remove the influence of British culture from New Zealand. Shakespeare will still be taught in schools, cricket will still be played, British music, film and the arts will still be popular. The monarchy will not be written out of history. Becoming a New Zealand republic will uphold important British traditions of democracy, the rule of law and selection by merit.

Republicanism is anti-British

Labelling republicans ‘anti-British’ is a silly argument and relies on the myth that Britain and its Royal family are inseparable – that ‘everyone in Britain loves the Queen’. Around 30% of British voters currently support Britain becoming a republic. There is a republic movement in Britain just as there is in Australia and Canada.

Most of New Zealand's constitutional and legal links to Britain have already been severed. All that remains are a few provisions relating to regency and the succession. The move to an elected head of state is the next logical step in New Zealand's progression toward full nationhood. The Queen's role as Queen of New Zealand does nothing for New Zealand; it does not stop the British Government from slapping a carbon tax on

⁵⁹ *2008 Budget of the Republic of Ireland: Irish Department of Finance: Note 3. “President's Establishment”, 2008 - currency converted on 5 November 2008*

⁶⁰ *Israeli Treasury, 2004. Budget - President's Office*

New Zealanders visiting Great Britain, and will not stop the abolition of ancestry visas. The monarchy is constitutionally useless and symbolically flawed.

Anyone with an understanding of Great Britain's history will know that the monarchy was briefly abolished from 1649 - 1660, but it has survived because Great Britain became a “disguised republic”. The Magna Carta, Habeas corpus, the Petition of Right, the critical wins of Parliament in the English civil wars, the Act of Settlement and the Bill of Rights 1688 were all fought over curtailing the Monarch's powers. It is no coincidence that the British monarchy, stripped of its powers, survived where more absolute monarchies in Spain, France, Germany and Russia did not. In addition, most of the great thinkers behind the American war of independence were English – John Locke, Edmund Ludlow and Thomas Paine. Robbie Burns, the famous Scottish poet, composed a number of openly republican verses. Republicans in Great Britain draw on this long tradition.

New Zealanders benefit from living and working in Great Britain

Working holiday entitlements are not linked in any way to the monarchy. In addition New Zealanders travelling in countries with no New Zealand embassy or consulate office can, in an emergency, contact the nearest British embassy or high commission. This is because all members of the Commonwealth (whether they are monarchies or republics) agree to deal with their citizens on a government-to-government level. A republic would not change this arrangement.⁶¹

Ancestry visas and immigration rules for citizens of Commonwealth countries are currently under review in Great Britain. This has nothing to do with becoming a New Zealand republic. Under the current rules, New Zealanders have an entitlement to live in Britain by ancestry, if a grandparent was born there. This is unlikely to last much longer. Great Britain now has open border arrangements with 26 European Union countries. This relationship and changes to immigration controls will soon end Britain's arrangements with its former colonies.

There are no good arguments for keeping the monarchy. It is of no benefit to New Zealand and does more harm than good. Electing a New Zealander as head of state is the final step in the long road to full independence.

⁶¹ Lloyd, Lorna. 2007, *Diplomacy with a Difference: The Commonwealth Office of High Commissioner, 1880-2006*, Keele University

New Zealand's national identity

“Republicanism was not merely about making a nominal change to the head of state but reviving and extending the concepts of citizenship and democracy...and combining the issues of national identity, egalitarianism and democracy.”

– Bruce Jesson, New Zealand journalist and republican⁶²

The question of monarchy versus republic in New Zealand is a question of national identity. National identity is the predominant theme of republicanism in New Zealand - signalling New Zealand's independence to the world, bringing New Zealand's head of state home and finding New Zealand's sense of nationhood.

There is no doubt that at one stage the British monarchy was part of New Zealand's national identity – for New Zealanders of Anglo-Saxon descent at least. But New Zealand has had a long history of republican agitation.

What is national identity?

National identity is something that is hard to define, but it is a critical concept in the republic debate. Jock Phillips, Chief Historian for the Ministry of Culture and Heritage, has defined national identity as:

“...the recognition by a population of itself as a community of interest at the national level”⁶³

Dr. Phillips argues that national identity is concerned with the "...perceptions which individuals and communities hold of their nation and of their relationship to it". Dr Phillips sets out a number of factors that define New Zealand's national identity: egalitarianism, tolerance for religious and ethnic diversity, and a 'fair go' for everyone.

National identity evolves over time. While there has almost always been republican sentiment in New Zealand, it has not been until recently that it entered the political mainstream. For a long time, New Zealand was wed to an identity of ourselves as a part of the British Empire, then the British Commonwealth. Over the last century there has been a weakening of those links, to the point where one final constitutional link to Great Britain exists: the monarchy.

⁶² Jesson, Bruce. 1999, *To Build A Nation, Essays by Bruce Jesson, edited by Andrew Sharp.*

⁶³ Phillips, Jock. 1997, *Speech to the Population Conference, 12 November*

A timeline of national identity

This timeline looks at the development of New Zealand's national identity and the growing support for a New Zealand republic.

- 1834** Northern Māori chiefs, under the banner of the United Tribes of New Zealand, choose New Zealand's first national flag to fly from their ships trading overseas.
- 1835** The Declaration of Independence / He Wakaputanga o te Rangatiratanga is signed by 34 northern Māori rangatira (chiefs). The declaration is the first attempt to create a New Zealand state.
- 1839** A twelve-member council of the New Zealand Company's colony at Port Nicholson (Wellington) convenes under the United Tribes' flag. William Wakefield is elected as "President" of the council. The council creates rudimentary courts.
- 1840** The Treaty of Waitangi / Tiriti o Waitangi is signed between representatives of the British Crown and Māori (named as the United Tribes of New Zealand) establishing New Zealand as a British colony, initially as part of New South Wales.
- Lieutenant-Governor William Hobson (later Governor from 1841) declares sovereignty over all of New Zealand in May that year, and sends a detachment of troops to bring to an end the "Wellington republic".
- 1845** Ngapuhi chief Hone Heke, inspired by the United States, takes an axe to the flagpole flying the Union Jack at Kororareka in the Bay of Islands. Heke repeats this symbolic act of defiance three times, despite the armed resistance of British troops.⁶⁴
- 1848** Samuel Revans founds the Wellington Settlers' Constitutional Association. Revans advocates a New Zealand republic.
- 1852** The British Parliament (Westminster) passes the New Zealand Constitution Act, which creates democratic parliamentary government for the first time in New Zealand.
- 1853** The first New Zealand Parliament meets, but is drawn into conflict with the Governor over whether it has the power to appoint Ministers. Parliament eventually wins the impasse, although the Governor retains "Native Affairs".

⁶⁴*Wheelan, Allan and Cook, Barrie. 1997, New Zealand Republic, page 8*

- 1860s** The British Crown – backed by Imperial troops and colonial militia – fights Māori iwi and the Kīngitanga (Māori King Movement) in the New Zealand Wars.
- 1867** Te Whiti o Rongomai and Tohu Kahahi found Parihaka, an autonomous settlement based on principles of peaceful resistance to the British. In the 1870s, alarmed at the campaign against European settlement in Taranaki, the people of Hawera declared themselves the Republic of Hawera, and formed their own volunteer units to oppose Te Whiti.
- 1881** The Republic of Hawera is superseded when government troops invade Parihaka and arrest Te Whiti.
- 1907** Sir Joseph Ward's Liberal government passes a resolution declaring New Zealand a dominion. The change means New Zealand is responsible for all domestic, but not foreign, affairs.
- 1911** Colonel Allen Bell, a candidate for the Reform Party at the general election, causes a sensation when he advocates the abolition of the monarchy. He was asked to resign his commission as a Colonel, which he reluctantly did in January 1912.
- 1917** As a result of becoming a dominion, the Letters Patent are re-issued. The office of Governor is renamed Governor-General, to signify the powers of the office have been curtailed.
- 1926** The Balfour Declaration declares that the Dominions of the British Empire are "freely associated" states in their own right. The declaration leads to Westminster passing the Statute of Westminster 1931, which grants formal independence to Great Britain's self-governing colonies. The Statute required ratification to become law in Australia, New Zealand and Newfoundland. Canada and the Union of South Africa are the first to ratify.
- 1939** Great Britain appoints its first High Commissioner to New Zealand. By 1941 the Governor-General has ceased to be the official line of communication between the governments of Great Britain and New Zealand.
- 1947** The New Zealand Parliament adopts the Statute of Westminster 1931, being the last state named by the statute to do so. The statute legally separates the New Zealand Crown from the British Crown; meaning New Zealand's head of state is legally distinct from Great Britain's, even though in practice they are the same person.

At the same time, Westminster passes the New Zealand Constitution Amendment Act, which grants the New Zealand Parliament the ability to amend or repeal the New Zealand Constitution Act 1852. Westminster could still legislate at the request of New Zealand's Parliament, however.

- 1948** As a result of adopting the Statute of Westminster, New Zealand's Parliament passes the British Nationality and New Zealand Citizenship Act 1948. This Act makes New Zealanders "British subjects and New Zealand citizens" rather than solely British subjects.
- 1952** Queen Elizabeth II becomes Queen of Great Britain and therefore New Zealand; Her Majesty is declared "Queen of New Zealand and Great Britain" by New Zealand's Parliament under the Royal Titles Act 1953.
- 1966** Bruce Jesson establishes the Republican Association of New Zealand in Christchurch, later moving it to Auckland.
- 1967** The first New Zealand born Governor-General, Sir Arthur Porritt, is appointed. All Governors-General since 1967 have been New Zealanders.
- 1973** New Zealand's parliament amends the Constitution Act to allow it to legislate extra-territorially. A high court case rules that New Zealand and Great Britain are legally separate countries.⁶⁵
- Great Britain becomes a member of the European Economic Community (EEC, now the European Union), which leads to declining trade ties between Great Britain and its former colonies. Prior to Great Britain's membership of the EEC, 65% of New Zealand's exports went to the Great Britain. By the year 2000, only 6% of New Zealand's exports go to Great Britain.⁶⁶
- 1974** The New Zealand Parliament passes the Royal Titles Act 1974. The Queen is declared solely to be the "Queen of New Zealand" under the Act. Many New Zealanders consider this a significant statement of nationalism.
- 1977** *God Defend New Zealand* is declared to be one of New Zealand's official national anthems, alongside *God Save the Queen*.

⁶⁵ *Re Ashman*, 2 NZLR 224. 1976.

⁶⁶ *Statistics New Zealand. 2003, Exports (including Re-Exports) to Principal Countries statistics*, see www.stats.govt.nz

The Citizenship Act defines New Zealanders as "New Zealand citizens" dropping the reference to "British subject"; hence any mention of the Great Britain is removed from New Zealand passports.

- 1983** The Letters Patent are re-issued, further reducing the Governor-General's powers.
- 1986** The Constitution Act 1986 repeals the New Zealand Constitution Act 1852, and removed the right of Westminster to legislate for New Zealand at the request of New Zealand's Parliament. A further Act in 1988 sets out which British statutes apply to New Zealand (including the Habeas Corpus and Magna Charta).
- 1989** Sir Paul Reeves is the first Governor-General to represent New Zealand overseas, attending the funeral of Japanese Emperor Hirohito. Until that time it was considered that only the head of state (the Queen) could represent New Zealand overseas. Governors-General representing New Zealand overseas became a common occurrence in the coming decades.
- 1990** Following the re-design of New Zealand's banknotes, the Reserve Bank removes the Queen from all but one (\$20 note), replacing the head of state with famous New Zealanders; Sir Edmund Hillary, Kate Sheppard, Sir Apirana Ngata and Lord Ernest Rutherford.
- 1992** Public interest in republicanism intensifies in response to the high profile debate in Australia, prompted by Prime Minister Paul Keating.

At a non-binding referendum, the New Zealand public vote in favour of changing the First Past the Post (FPP) electoral system with a new system.

- 1993** The New Zealand public votes in for Mixed Member Proportional (MMP) electoral system over FPP at a second binding referendum.
- 1994** The Republican Coalition of New Zealand is formed by a group of students at Victoria University.

In March, Prime Minister Jim Bolger publicly endorses a New Zealand republic, telling Parliament that the big constitutional question facing New Zealand revolves around the role of the Governor-General in the new MMP environment.

- 1996** The National government's proposal to abolish the right to appeal to the Privy Council fails to win the support of Parliament.
- A committee to reform the honours system recommends abolishing British honours in New Zealand.
- After the first MMP election, NZ First proposes an addendum to its draft coalition agreement with National requiring a referendum on any move towards a New Zealand republic. The addendum does not feature in the final agreement.
- 1999** The Third New Zealand Study of Values is released, showing support for a New Zealand republic doubling from 16.2 per cent in 1989 to 33.3 per cent in 1998 – with 62.2% opposed to a New Zealand republic.
- The Republican Coalition changes its name to the Republican Movement of Aotearoa New Zealand and develops closer links with the Australian Republican Movement.
- A republic referendum in Australia is defeated by a margin of 4.5% of the popular vote.
- 2000** The Victoria University Institute of Policy Studies hosts the “Building the Constitution Conference” at Parliament in Wellington.
- 2001** Keith Locke, a Green Member of Parliament and republican, introduces his Head of State (Referenda) Bill, which would bring about a referendum on the New Zealand republic issue.
- 2003** Legislation is introduced to abolish appeals to the Privy Council. Appeals to the Privy Council were replaced by appeals to the new Supreme Court of New Zealand from 1 July 2004.
- 2006** The 1983 Letters Patent is amended so that the Governor-General no longer has to ask for permission from Buckingham Palace to leave New Zealand.
- 2009** In October, Keith Locke's Head of State Referenda Bill is drawn from the members' ballot.
- 2010** On April 21, the Queen's birthday, Keith Locke's Bill is defeated 63 votes against and 58 for.
- In September, a second constitution conference is held at Parliament.

A New Zealand republic and the Treaty of Waitangi

“In strict legal terms, if New Zealand became a republic tomorrow it would make no difference to the Treaty of Waitangi. Speaking as a lawyer, it’s a long-established principle that successive governments take on responsibility for previous agreements.”

– former Monarchy New Zealand Chairman Professor Noel Cox.⁶⁷

This chapter summarises Māori support for a New Zealand republic and examines whether a New Zealand republic will affect the Treaty of Waitangi, Tiriti o Waitangi. The Treaty of Waitangi is an issue often raised in the New Zealand republic debate. Some see the Treaty as a ‘deal breaker’: they support a New Zealand republic on the condition it does not interfere with the Treaty.

Some opponents of a New Zealand republic have tried to raise fears that becoming a republic will override the Treaty or that it will somehow undermine the settlement of Treaty claims. These fears are ill founded, and intended to prolong the life of the monarchy.

The issue of the Treaty is not actually that complicated. The Treaty is not a barrier to becoming a republic and a republic would not change or undermine the Treaty’s status.

Becoming a republic is an opportunity to improve the relationship between Māori and Pakeha and the ongoing debate over becoming a New Zealand republic will help clarify the Treaty issue.

Māori views on the Crown and a New Zealand republic

Like all New Zealanders, Māori opinion on a New Zealand republic is divided. As we will see, the overall number of New Zealanders who support a New Zealand republic is about 40%. A 2000 New Zealand Herald poll found 63% of Māori respondents favoured a republic, while the 1996 New Zealand Study of Values found 65% of Māori respondents supported a New Zealand republic. Māori voters are more likely to support becoming a New Zealand republic than Pakeha voters.

⁶⁷ Milne, Jonathan. 2004, ‘The People vs The Crown’, *The Sunday Star Times*, 30 May

The Treaty of Waitangi

The Treaty of Waitangi, Te Tiriti o Waitangi, is an agreement signed in 1840 between representatives of the British Crown and Māori iwi (tribes). The Treaty came about because the British War and Colonial Office were determined to annex New Zealand. Because of the Declaration of Independence 1835, the Colonial Office believed best way to do so was to initiate a treaty of cessation whereby Māori leaders would cede their sovereignty to Britain.⁶⁸

By 1840, the British Monarch had ceased to have any real political power. The newly crowned Queen Victoria was a constitutional monarch and the government of the day was led by the Whig party Prime Minister Lord Melbourne. In 1839 his Colonial Secretary the Marquess of Normanby sent Captain William Hobson to the Bay of Islands with detailed instructions on establishing New Zealand as a British colony.

On February 5, Hobson presented English and Māori versions of the Treaty to Māori. Following some discussion as to what the Treaty would do for Māori, it was signed by a gathering of Iwi leaders on February 6. It was then circulated more widely among other Māori leaders throughout the new colony.

Since that time there has been considerable conflict and debate over what the Treaty promised Māori. The problems have been caused primarily by the differences between the English and Māori versions of the Treaty. The exact nature of the authority that Iwi ceded to the Crown is still an ongoing debate. This book does not look at that wider issue. It instead seeks to clarify whether becoming a New Zealand republic will affect the status of the Treaty of Waitangi.

Did Queen Victoria actually sign the Treaty?

At the time of the Treaty, Queen Victoria was twenty years old and had been on the throne for only three years. Like the Queen today, she was only a figurehead. Britain was actually run by the British Parliament.

In discussions held with Māori prior to signing the Treaty, a great deal was made of Queen Victoria's wishes and of her ability to protect Māori. The British representatives spoke in terms they knew Māori would understand and emphasised Victoria as a great Ariki. The concept of Victoria as a constitutional monarch, with only nominal powers, was never fully explained.

⁶⁸Orange, Claudia. 2004, *An Illustrated Guide to the Treaty of Waitangi*, Bridget Williams Books

When Captain William Hobson signed the Treaty on behalf of ‘Victoria, Queen of Great Britain’, he was, in effect, signing on behalf of the British Government under instruction from the Colonial Secretary. The Treaty was originally an agreement between the British Crown and Māori iwi. It was not an agreement between the Royal family and Māori.

Why are there ‘two Crowns’ in the Treaty relationship?

“[O]ne British official put it to me... there are “two Crowns” when it comes to the Treaty.”

– Historian Paul Moon on the Treaty of Waitangi⁶⁹

In 1947 New Zealand adopted the Statute of Westminster. King George VI became the King of New Zealand independent of his role as the British Monarch, and the New Zealand Crown was legally divided from the British Crown.⁷⁰

The sovereignty originally vested in Queen Victoria by the English version of the Treaty passed from the British Crown to the New Zealand crown. With the passing of that statute ‘the Crown’ became ‘the Crown in right of New Zealand’.⁷¹ This legal process is nothing new and happens all the time in international law.

A New Zealand republic would transfer the Treaty’s responsibilities again, as was done in 1947, to the new head of state. Responsibility for the Treaty would be where it has always laid: with the New Zealand Parliament and its executive Government. Governments first ignored the Treaty and, more recently, set about making amends. It has been the Government that has made apologies and paid reparations to iwi, not the British Parliament or Government.

With the establishment of colonial self-government in 1853, Great Britain delegated the colony’s government to the colonial settlers. Confiscations carried out by ‘the Crown’ were prompted by the colonial government, not by the British Parliament. British-appointed Governor often fought with colonial Premiers over their policies towards Māori.

There were several Māori delegations (including one led by King Tāwhiao) to London in the years following the Treaty of Waitangi. They were all

⁶⁹ Moon, Paul. 2009, ‘Key can take credit for this year’s trouble-free build-up’, *The New Zealand Herald*, 4 February

⁷⁰ Wilson, John. 2007, *New Zealand Sovereignty: 1857, 1907, 1947, or 1987?*, Parliamentary Library, see: <http://www.parliament.nz>

⁷¹ Cox, Noel. 2001, ‘The Development of a Separate Crown in New Zealand’, *Australian Journal of Law and Society*

dismissed, and sent back to the colonial government in New Zealand, which ignored them.⁷² This has led some, such as Māori lawyer and academic Moana Jackson, to argue that the real party to the Treaty is not “the Crown” in a practical sense, but “Kawanatanga”, as defined by the Treaty: the New Zealand Government, formerly the Colonial Government.⁷³

What happens to the Treaty in a republic?

“[T]he belief that the Queen provided [Māori] special protection was more imagined than real”

– Muriwhenua leader and Labour MP Shane Jones.⁷⁴

If New Zealand becomes a republic, responsibility for the Treaty will be transferred from the New Zealand Crown to New Zealand’s new head of state. As show above, this is the ‘default’ legal position. Even the former Chairman Monarchy New Zealand, Professor Noel Cox, has stated that this is the case (see the opening quote to this chapter).

We can further clarify this in law. Keith Locke’s Head of State Referenda Bill contained special provision for the Treaty of Waitangi. Part 6 (clause 67) of the Bill made it clear that the Treaty would continue as before.

Some supporters of a New Zealand republic mistakenly believe becoming a New Zealand republic annuls the Treaty of Waitangi. Some people think this is a desirable change, as they oppose the existence of the Treaty or the Treaty settlement process. The legal reality is that the Treaty itself is part of New Zealand law because of the Treaty of Waitangi Act 1975.

This Act came about because of a ruling of the Privy Council in 1941. It was held that in order for the Treaty to have validity in New Zealand law, it would have to be adopted into the statute books. Māori campaigned for an Act of Parliament, which led to the 1975 Act being passed.

There are a many benefits to the Treaty relationship in creating a new Zealand republic. An elected head of state would have increased mana to act as an independent arbiter in the relationship between Government and Māori.⁷⁵

⁷² King, Michael. 2003, *The Penguin History of New Zealand*, Penguin, Chapter 12 - *The Tangata Whenua Respond*

⁷³ Tunks, Andrew. 1996, ‘*Mana Tiriti*’ in *Republicanism in New Zealand*, edited by Luke Trainor, Dunmore Press, page 119

⁷⁴ Milne, Jonathan. 2004, ‘*The People vs The Crown*’, *The Sunday Star Times*, 30 May

⁷⁵ Hayward, Janine. 2000, ‘*Who Should be Head of State?*’, *Building the Constitution*, edited by Colin James, Victoria University of Wellington Institute of Policy Studies

Creating a New Zealand republic

“The legal complexities [of a republic] are readily soluble... fears that it must involve substantial and unwelcome change to our political system are unfounded”

– Australian Republic Advisory Committee.⁷⁶

This chapter looks at how New Zealand might move from a monarchy to a New Zealand republic and the associated issues that might arise during the process.

What needs to change?

The changes required to create a New Zealand republic are only as extensive or as complicated as New Zealanders choose to make them. The overall aim of becoming a New Zealand republic is to create a head of state of our own and provide an accountable, effective check on the Government. Achieving this will not require elaborate reforms. There is no need to make complicated changes to the way parliament functions or to substantially change the nature of the state. The main issues that need to be decided on are:

- How should the head of state be elected?
- What powers should the head of state have?
- What process should be put in place to create a New Zealand republic?

The whole process will work best if it occurs in manageable stages. Practical and straight forward changes can be made to rectify the obvious contradictions and problems caused by the monarchy. Subsequent refinements and adjustments can be made later if they become necessary.

What is the simplest approach to change?

The simplest approach would be to become a parliamentary republic and replace the position of Governor-General with an elected head of state.

This would involve removing the sections of the Constitution Act 1986 that make the Queen the head of state, and make it clear that thereafter none of the Queen’s heirs or successors would be head of state.⁷⁷

⁷⁶ Republic Advisory Committee. 1993, *An Australian Republic: The Options, Volume 1, Government Printer, Canberra, pages 150 - 151*

Then, legislation could be enacted that:

- Allows the current Governor-General to continue in office as the head of state for a set term (the electoral method would be up for debate);
- Gives the head of state the same powers in law as the Governor-General relating to the Government;
- Provides a way of removing the head of state from office by an extraordinary resolution of Parliament;

How should the head of state be elected?

There are several ways to elect or appoint the head of state. The two simplest options are direct election by all voters, and election by parliament.

Direct election

Candidates for head of state would stand for election and New Zealand voters would cast their votes according to their preference. The type of electoral system preferred for this type of election varies. Most republics use some form of preferential voting, such as Single Transferable Vote (STV).⁷⁸ This ensures that only a candidate with more than 50% support can become head of state.

A directly elected head of state is probably the most attractive option for the general public as it upholds the fundamental principle of direct democracy. The most common reluctance people have with direct election is the potential for politicisation of the head of state's office. This is particularly true if the candidates come from, or are sponsored by, a political party. This is often where the "President John Key / Helen Clark" argument is heard. Whether this happens or not will depend on the expectations attached to the role. Former Prime Minister Jim Bolger supports direct election of the head of state but has pointed out that, the likelihood of New Zealanders electing a politician is low because of our generally low regard for politicians.⁷⁹

⁷⁷Ladley, Andrew. 2000. 'Who Should be Head of State?', *Building the Constitution*, edited by Colin James, Victoria University of Wellington Institute of Policy Studies

⁷⁸ STV is used in many local body elections in New Zealand, see www.stv.org.nz

⁷⁹ Bolger, Jim, 1998. *A View From the Top - My Seven Years as Prime Minister*, Viking, Chapter 7 - The Republic of New Zealand

The evidence from overseas experience shows that many of the fears of politicisation of the head of state are unfounded. In Germany, any winning candidate who belongs to a political party must give up their membership as a sign of their neutrality. In contrast, the President of Ireland, whilst elected from a political party, manages to maintain a high level of neutrality. It is also very likely that prominent New Zealanders without any party affiliation, will be nominated, and run for the office. The head of state will not have an overtly political role so the elections will probably be very low key, as they are in Ireland and Austria.

Parliamentary election

The second option is the election of the head of state by Members of Parliament. This called an indirect election because the public is one step removed from the election of the head of state. In such a system there is usually a way for the public to nominate candidates.

In most parliamentary republics where this happens, the head of state is elected by a joint sitting of both the upper and lower houses. New Zealand does not have an upper house, so a ‘super-majority’ should be required; either three-quarters or two-thirds of all MPs. The three-quarters threshold is of great importance to this model. The threshold creates the need for consensus and co-operation in Parliament over the election of the head of state. With such a high threshold, it is impossible for any party or voting block will be able to give the job to one of their “own”. Most proposals for parliamentary election include a mechanism of public nomination. This means voters will be able to nominate their preference to parliament before any vote takes place. If no one person is elected by the House in the first round, subsequent votes will be taken eliminating the lowest polling candidate until the winning candidate reaches the threshold requirement.

So which way is better?

That is for New Zealanders to decide. The Australian experience provides a good precedent. The republic referendum held in 1999 proposed a head of state chosen by parliamentary election. The election was defeated and the popular catch cry of the ‘No’ camp, which included many republicans in favour of direct election, was that the proposed republic was a ‘Politician’s republic’, and that only voting No would lead to a republic in line with what Australians wanted. They told the Australian public to “Vote No to *this* republic”. Support for an Australian republic was

recorded as being a majority the day before the referendum,⁸⁰ but the final ‘Yes’ result was only about 45%.

The 2007 Australian Electoral Study found while 60% of the 1,800 respondents to their survey supported a republic, 50.9% supported a directly elected President.⁸¹

What powers would a new head of state have?

Each country arranges its constitution to suit its particular needs and circumstances so the exact powers of the head of state will have to be decided at some point. Under the United States presidential system, the President has wide executive powers. This is a reflection of the historical development of the United States. At the time of the American Revolution the President of the United States was seen as the equivalent to the King of Great Britain. In Germany, a parliamentary republic, the President or Bundespräsident has very few powers and is largely a ceremonial role.

New Zealand *already operates* like a parliamentary republic, so it makes sense to adopt this particular model. It may become necessary to codify (set down in law) what the new head of state’s powers will be. This is not obligatory. Many other parliamentary republics do not codify the powers of the head of state.

One example of how this could be done is found in clause 34 (3) of the Head of State Referenda Bill:

A head of state appointed or elected under this Act may exercise all the powers and functions which were exercised by the Sovereign prior to the coming into force of this Act, in accordance with the constitutional conventions which applied to the exercise of those powers and functions.

The head of state created by the Bill would have had exactly the same powers as the Governor-General. The Bill makes it clear that the head of state will still have to act according to the Prime Minister’s advice. However, in instances when the reserve powers come into play, the head of state would be able to act where the Governor-General could not, as the Prime Minister will not have the power to dismiss them.

If a clear set of powers is desired or needed then it can be developed at a later date. Questions to answer might be; should the head of state be able to send certain Bills to the Supreme Court as happens in Ireland? Or

⁸⁰ Republic referendum poll, 1999. Question 3 - aggregate support for a republic, Newspoll, 4 November

⁸¹ Australian Electoral Study, 2007. Australian National University, Canberra

should the head of state be able to send certain Bills to a referendum, as happens in Iceland? While these powers would raise other constitutional issues, legal academics have suggested they are questions that could be put off until after the initial move to a republic had been made.⁸²

The process

It has been proposed that a simple Act of Parliament could be passed to abolish the monarchy.⁸³ The Republican Movement does not support such a process, even if the Government passing the Act had a pre-election policy of creating a republic. The decision is important and should only be made after widespread debate and discussion. There is also some contention about the legality of doing this – the late Lord Cooke of Thorndon has argued that a republic could only be created with the consent of the people, through a referendum.⁸⁴

It is the Republican Movement’s policy that all important decisions on becoming a republic should be made by the New Zealand public. The decision to become a republic, the type of republic, how the head of state will be elected and the powers of the head of state should all be decided by a referendum.

Constitutional conventions, reviews and inquiries

In 1999, former Prime Minister Mike Moore put forward a Bill to create a Constitutional Convention; a specially elected convention to resolve constitutional issues. One of these issues would be a republic. This process, however, was intended to be more about the overall process of constitutional change. Moore freely admitted that the purpose of his Bill was to “throw sawdust in the gear box” of constitutional change.⁸⁵

The Republican Movement takes the view that any Constitutional Convention should consider republic options, and not worry about other constitutional issues. Any decisions made by such a convention should be put to the New Zealand people in a referendum.

Ideally a commission of inquiry would be established to consult widely with all New Zealanders on the issues we have outlined above. This body or group, similar to the 1986 Royal Commission on Electoral Reform, would then make recommendations to Parliament.

⁸² Knight, Dean. 2008, interview on National Radio, *Nine to Noon* program with Kathy Ryan, 20 February

⁸³ Cooke, Barrie and Whelan, Allan. 1997, *New Zealand Republic*, Nui Pacific Limited

⁸⁴ Cooke, Robin. 1995, *The Suggested Revolution Against the Crown*, from *Essays on the Constitution*, Brookers, Wellington, pages 28-40

⁸⁵ Moore, Mike. 2008, ‘Banana republic risk, without the bananas’, *The New Zealand Herald*, January 15

Referendum(s) - binding and non-binding

Ideally the New Zealand people would make the overall decision on a republic in stages, with multiple referendums (along the lines of the 1992 and 1993 referendums on electoral reform).

An initial non-binding referendum would decide the two main questions in the debate: whether New Zealand should become a Parliamentary republic, and irrespective of the voter's answer to the first question, what electoral process should be used for selecting the head of state. If the public voted yes to the first question, a second binding referendum was held, perhaps within a year. The second referendum could also decide other issues such as what the head of state will be called (Governor-General, Premier, Chancellor, President, Ariki, Rangatira, or simply Head of State?), and how long their term of office should be.

Once those issues were decided the actual election of the head of state would be held, either by parliament or by the voting public. A ceremonial celebration would then occur during which the Governor-General or reigning Monarch would symbolically hand over their power to the new head of state.

Another proposed way of holding referendums on a New Zealand republic was put forward by the Head of State Referenda Bill, a private members' Bill put forward by Keith Locke, a Green Party MP.⁸⁶ The Bill itself presented a choice between two republican options – a directly elected head of state or an indirectly elected head of state; under either option New Zealand would become a parliamentary republic.

The Bill proposed an initial referendum with three options:

- The status quo (the monarchy);
- A republic with a head of state nominated by the people of New Zealand and elected by a three-quarters (75%) majority of parliament; (the German model) or
- A republic with a head of state nominated by the people of New Zealand and elected by popular vote, using STV (the Irish model).

If either of the last two options were supported by a 50% majority of votes at a referendum, the Bill would have amended section two of the Constitution Act 1986 and create a New Zealand head of state – replacing the monarchy.

⁸⁶See: www.headofstate.org.nz

If no option gains over 50% of the vote, a second run-off referendum would be held between the two strongest options. If the monarchy achieves 50%, there will be no further referendum.

Reforming the office of Governor-General

An interim option on the road to becoming a republic might be to elect the next Governor-General and begin the transition to a republic only when the Queen's reign ends. Electing the Governor-General would make the transition to a republic easier as the public would become familiar with electing a ceremonial head of state. It would also give New Zealanders time to decide on what the head of state might be called or how they would be elected.

This option would require an Act of Parliament to amend the Constitution Act. As it would be a notable change, it would be more acceptable to the public if a three-quarters or two-thirds majority of votes were needed to pass it.⁸⁷

When the current Governor-General was appointed, all of the party leaders in Parliament supported his appointment. Under the Elected Governor-General option, it is expected that future candidates would enjoy similar levels of support. A process for nominating the candidates would have to be created so that voters had a good choice of suitable candidates.

The idea of an elected Governor-General was first proposed by Sir George Grey (twice Governor of New Zealand and once Premier) in the draft of the New Zealand Constitution Act 1856. The Colonial Office did not like the idea, as it would mean they could not control who became the Governor.⁸⁸ Sir George tried again then later in a Members Bill in Parliament, presented and defeated in 1887.⁸⁹ Political commentator Colin James made a similar suggestion again in 2006.⁹⁰

Two other Commonwealth members already elect their Governor-General, Papua New Guinea and the Solomon Islands. The transition of the Irish Free State is an example of how the process was used in the transition to a republic.

⁸⁷ Knight, Dean. *Laws 719 - Elephants and the Law*, see: <http://www.laws719.co.nz>

⁸⁸ Milne, James. 1911, *The Romance of a Pro-Consul, 'XII In the Queen's Name'*, Thomas Nelson and Sons, London

⁸⁹ Sinclair, Keith. 1986, *A Destiny Apart, New Zealand's Search For National Identity*, Allen Unwin, New Zealand, page 25

⁹⁰ James, Colin. 2006, 'Election: the democratic way to select our Governor-General', *The New Zealand Herald*, 17 January

The Irish Free State was established in 1922 and, like New Zealand, it had its own Governor-General. The Irish nationalists did not support this so when King Edward VIII abdicated the throne in 1936, the Irish Government amended the Irish Free State's Constitution, and created the President of Ireland to replace the office of Governor-General.

The Irish Free State retained the British Monarch as the King of Ireland until the end of the Second World War. The country held the first presidential election in 1945, but remained a monarchy until the approval of a new constitution in 1949. Ireland then became known as the Republic of Ireland, and the transition to a republic was complete.

Who supports a republic?

Ever increasing numbers are questioning the place of the monarchy in New Zealand and support for becoming a republic is constantly growing. The latest Republican Movement survey asked whether New Zealand should become a republic with a New Zealander as head of state when the Queen's reign ends or whether we should accept King Charles. 43% of New Zealanders said they preferred to have a New Zealander as head of state, 45% wanted Prince Charles.

The most comprehensive study of New Zealanders support for a republic is the New Zealand Electoral Study.⁹¹ The 2005 study, with 2,792 respondents surveyed, found that 33.9% of respondents favoured a republic with a New Zealand head of state. Supporters of retaining the Queen were 48.7%. 17.1% did not know either way.

This is a significant change from the 1999 survey of 1,471. Back then, 28.1% of New Zealanders favoured a republic, and 62.2% favoured retaining the Queen, with 9.7% saying they did not know. Support for the monarchy is in decline. However, that does not mean more New Zealanders support a republic.

Former Prime Ministers Sir Geoffrey Palmer and Jenny Shipley are supporters of the monarchy. Mike Moore is undecided and Jim Bolger supports a republic, along with Helen Clark. Current Prime Minister John Key has stated that he sees a republic as "inevitable",⁹² but has recently said he is opposed to a republic. Former Governors-General Sir Paul Reeves and Dame Catherine Tizard have publicly stated that they support a republic. Sir Michael Hardie Boys stated that he is opposed to a

⁹¹2006, *New Zealand Election Study 2005*, see: www.nzes.org

⁹²2008, 'John Key: victory for New Zealand's multimillionaire political novice', *The Times*, November 10

republic.⁹³ Dame Silvia Cartwright said she could hand over to an elected head of state, but when asked directly she had no view, as did the current Governor-General Sir Anand Satyanand who said the decision was up to the New Zealand people.⁹⁴

Other issues in the debate

Opponents of a republic have made a number of disingenuous suggestions that a republic brings about questions on the place of the Treaty of Waitangi, an upper house, Commonwealth membership or a written constitution. All of these arguments are made to scare New Zealanders into supporting the monarchy.

One reason “other” issues get tacked on to the republic debate is because one constitutional issue often raises another. The move to the MMP (Mixed Member Proportional) electoral system in 1993 is one example of this. In 1992, at the height of the debate on New Zealand’s electoral system, the suggestion was made that New Zealand should have an upper house, a senate. But supporting the change to MMP did not mean supporting an upper house. An upper house is a good idea for creating greater checks and balances in New Zealand, but it’s not a prerequisite for a republic.

Another example was when then Prime Minister Jim Bolger began the republic debate in 1994. One of his reasons for supporting a republic was the potential for the use of the Governor-General’s reserve powers following an MMP election. While Bolger saw MMP as a potential catalyst for a republic, the reality is that MMP did not lead to a republic. There may be debate on other constitutional issues arising from the move. A referendum on a republic does not mean New Zealanders are tied to a decision on any of these other issues.

A written constitution

There is popular support for a written constitution in New Zealand: a single, entrenched constitutional document that is supreme law. Such a document is not however a prerequisite of a New Zealand republic. Sir Geoffrey Palmer, a supporter of a written constitution, has stated clearly that a written constitution was not required for a republic.⁹⁵

⁹³ Milne, Johnathan. 2004, ‘Ditch the Queen, say former Governor-Generals’, *The New Zealand Herald*, 14 November

⁹⁴ du Chateau, Carroll. 2006, ‘Dame Silvia’s majestic presence’, *The New Zealand Herald*, 29 July

⁹⁵ Palmer, Sir Geoffrey. 2001, *Constitutional Conversations: Geoffrey Palmer talks to Kim Hill 1994 - 2001*, Victoria University Press.

Contrary to popular perception, New Zealand does have a written constitution. It is a collection of statutes, Royal decrees and court decisions, plus conventions in the Cabinet Manual. A number of provisions are entrenched,⁹⁶ such as the Parliament's term or the voting system. Despite this, Parliament could make substantial changes to New Zealand's constitution with just a simple majority. This is something voters may want to change, but again this is unrelated to a republic.

A written constitution in New Zealand would be aimed at restraining the power of the legislative branch, Parliament, instead of the Executive, the Prime Minister and Cabinet. The move to a republic is more about creating a democratic, accountable check on the Executive. Each issue is a different approach to the issue of checks and balances.

There are examples of republics that do not have a written constitution. The State of Israel is a republic with no written constitution. The Israeli constitution, like ours, is made up of a number of simple acts of parliament, called the "Basic Law".

An upper house

As mentioned above, Sir Douglas Graham proposed an upper house in 1992, which was to be half elected, and half appointed by Māori.⁹⁷ While there was a lot of discussion about it at the time - this was just before the MMP referendums of 1992 and 1993 - an upper house is not required if New Zealand becomes a republic. However, an upper house does relate to the need for more checks and balances.

New Zealand's Commonwealth membership

The Commonwealth of Nations is a 52 member voluntary association of states, the successor to the British Empire. Almost all of its members are former British possessions. Of those 30 are republics, 15 are realms like New Zealand, and seven are local monarchies, including Great Britain. The Queen is the titular Head of the Commonwealth.

As a republic, New Zealand will not lose its membership of the Commonwealth. New Zealand would still recognise the Queen as Head of the Commonwealth. The 2007 Commonwealth Heads of Government Meeting in Uganda confirmed the security of New Zealand's membership. That meeting issued an official communiqué on membership, which stated: "Heads of Government agreed that, where an existing member

⁹⁶*That is, they require a super-majority of votes in parliament or a referendum to change them*

⁹⁷*Catt, Helena, Harris, Paul and Roberts, Nigel, 1992. Voter's Choice - Electoral Change in New Zealand, Dunmore Press Limited, Chapter 8 - Does New Zealand Need A Senate?*

changes its formal constitutional status, it should not have to reapply for Commonwealth membership provided that it continues to meet all the criteria for membership.”⁹⁸ The criteria for being a member of the Commonwealth are that a state must:

- Be a fully sovereign state;
- Recognise the Queen as Head of the Commonwealth;
- Respect the wishes of its people on Commonwealth membership;
- Respect Human Rights, the rule of law, the liberty of the individual and free and fair democratic elections (the Harare Declaration);⁹⁹

This confirms that any change in New Zealand's status as a constitutional monarchy does not affect New Zealand's membership of the Commonwealth.

New Zealand's national anthem

Most New Zealanders are unaware that New Zealand has two national anthems: *God Save the Queen* and *God defend New Zealand*. *God defend New Zealand* is most commonly used but did not become an official anthem until 1977. Permission had to be sought from the Queen for this to happen. *God Save the Queen* is used in ceremonies and any events associated with the Queen or Governor-General. It is sometimes sung on Anzac Day. If New Zealand becomes a republic then it is unlikely *God Save the Queen* will be sung.

New Zealand's flag

The issues of symbolism in the desire for a New Zealand head of state are the same as the desire to change New Zealand's flag. It is often said that a republic will mean New Zealand has to change its flag. This is not the case. NZFlag.com, the proponents of a petition on the issue, clearly stated that a republic was not the same issue as changing the flag:

⁹⁸ Commonwealth Secretariat, 2007. Extract from the 2007 Commonwealth Heads of Government Meeting: Final communiqué, October 7

⁹⁹ te Velde-Ashworth, Victoria. 2005, 'The future of the modern Commonwealth: Widening vs. deepening?', Commonwealth Policy Studies Unit, 10 October

“A new flag is not advocacy for New Zealand to become a republic (many commonwealth countries do not have the Union Jack in their flag).”¹⁰⁰

An example of a Commonwealth country changing its flag but remaining a constitutional monarchy is Canada. The two issues are not linked.

The Crown as a legal concept

The concept of the Crown is shorthand for the New Zealand Government acting as a legal entity. The Crown can be simply replaced by legislation stating all references to the Crown are to now mean the ‘People and Government of New Zealand’. This would be much more honest, and emphasise again that power comes from citizens, not an abstract concept like the Crown.

Currently, in most Acts of Parliament you will see that one of the first sections will be something like “This Act is to bind the Crown”. This means that the Government is to be bound by its own legislation. Replacing “the Crown” with “the Government” is much more accurate and removes ambiguity.

Crown lands and alluvial title

Crown land is any land owned by the New Zealand Government in the name of the Queen.

The Marine and Coastal Areas Act / Takutai Moana Act 2011

What about the Cook Islands and Niue?

The territories where the Queen is “Queen in right of New Zealand” are called the “Realm of New Zealand”, which includes two self-governing states, the Cook Islands and Niue. Both states have agreements with the New Zealand Government, and share our head of state. A New Zealand republic would not end this relationship, because it is at a government-to-government level.¹⁰¹

The “Realm of New Zealand” would continue to exist, but would contain only Niue and the Cook Islands. The Ross Dependency in Antarctica and Tokelau would be a part of the Republic of New Zealand. Niue and the Cook Islands would make their own decisions on whether they shared the new head of state of New Zealand, or declare the Queen as their head of

¹⁰⁰ NZFlag.com, 2004. ‘8 reasons for a new New Zealand flag’, see: www.nzflag.com/whychange.cfm

¹⁰¹ Townend, Andrew. 2003, ‘The strange death of the Realm of New Zealand: The Implications of a New Zealand Republic for the Cook Islands and Niue’, *Victoria University of Wellington Law Review*, Volume 34, see: www.austlii.edu.au/nz/journals/VUWLR/2003/34.html

state. They may decide to become republics in their own right, while retaining their associated state status with the Republic of New Zealand.¹⁰²

¹⁰²*The Cook Islands might amend its constitution to state that the head of state was Her Majesty the Queen of the Cook Islands.*

Afterword

“[A New Zealand republic] may sound anti-British. It isn’t really. There is much about the British element of our origins that gives us strength... but because we have yet to fully understand what the new can do for us, we are fearful of casting off the old, even a century and a half later.”

– Chris Laidlaw, former All Black, Diplomat and MP.¹⁰³

So there you have it – the arguments for a New Zealand republic, what benefits a republic would have to New Zealand, and what is wrong with the monarchy. Now all we have to do is act on it.

This is where the Republican Movement comes in. We exist to promote the debate on whether New Zealand should become a republic, and to promote a New Zealand republic.

You may be surprised that there is little mention of the Royal family or scandals regarding the Royals. That is because the Royals do not really matter to republicans, because constitutionally they do not really matter to New Zealand. We are not anti-British. We want New Zealand to have a mature relationship with Great Britain, and to keep a lot of the great traditions New Zealand has inherited from New Zealand’s past as a British colony. It is always worth repeating that New Zealand is already an independent, democratic and sovereign nation in its own right. The issue is that New Zealand has never recognised this, by having the confidence and courage to have a head of state of our own.

And so republicanism is part of the wider question of what New Zealand’s national identity is. It is about articulating our sense of self, and moving forward as a confident South Pacific nation into the 21st century. It is time New Zealanders found the confidence in themselves to make these simple, yet symbolically important changes.

¹⁰³Laidlaw, Chris. 1999, *Rights of Passage - Beyond the New Zealand Identity Crisis*, Kiwi Ora

Appendix: Patriating Our Head of State: A Simpler Path?

Dean R Knight*

1.1 Introduction

The debate about whether New Zealand should become a republic risks becoming a mare's nest. The idea of cutting ties with the monarchy is engrafted with a myriad of other constitutional reforms from budding constitutional architects: a codified constitution; codification - or removal - of the reserve powers; an entrenched Bill of Rights; resolving the status of the Treaty of Waitangi; sorting out the flag, the national anthem. The list goes on. It is no wonder therefore that little progress has been made on this front since the time of the last conference in 2000, despite the fact that three of our most recent Prime Ministers have all described moving to a republic as being "inevitable".¹⁰⁴

Like one of the speakers at the earlier conference, I suggest the republican project is much more simple.¹⁰⁵ At its heart, it involves changing our Head of State from a hereditary monarch based abroad to a local, chosen by us. The only consequential change also needed is the substitution of a new collective entity representing the state, government and people of New Zealand for the present Crown. Two changes. No more. No less. The minimum change necessary in order to patriate - or, rather, to complete the patriation of our Head of State.

This task is even easier because New Zealand is presently, as Professor Brookfield described us, a "de facto" republic.¹⁰⁶ It might even be appropriate to describe the Governor-General as our "de facto Head of State" (although I nervously note the grief that recently arose in Canada when similar language was deployed).¹⁰⁷ We need look no further than the office of the Governor-General, and people who have and will occupy it, for our new indigenous Head of State.

¹⁰⁴ For example, *Bolger 1994*; *Clark, reported in Anon 2002*; *H Clark 2009*; and *Key, reported in Smith 2008*.

¹⁰⁵ *Ladley 2000*.

¹⁰⁶ *Brookfield 1995*, p. 317.

¹⁰⁷ *Canada's Governor-General, Michaëlle Jean, once described herself as the "Head of State", and was later rebuked by Canadian Prime Minister Stephen Harper: C Clark 2009*.

We can simply promote the Governor-General from the Sovereign's delegate to the people's representative in their own right. This move would do no more than reflect who, in reality, exercises the day-to-day functions of the Head of State. Nor do we need to invent a new title or style. It is not essential that the new Head of State assume the mantle of "President". If we wish, they can continue to describe themselves as Governor-General.

It will be obvious that I am a fan of "soft republicanism".¹⁰⁸ My commitment is to patriating the office of the Head of State, that is, cutting ties with the monarchy. We should pursue that passionately, but in a way that does not upset or alter the other constitutional structures and delicate power balances. I remain agnostic about other constitution reforms, even those touching the powers and functions of the Head of State. I do not detect strong dissatisfaction with the other arrangements and see little need to pursue a broader full republican agenda that would fundamentally change the nature and powers of the Head of State, Parliament or government. While the status and influence of the Treaty in our constitutional dynamic continues to be debated, settling the place of the Treaty is not an essential pre-condition to changing our Head of State. The existing status quo can be preserved in a way that allows the korero about the legal and constitutional place of the Treaty to continue to develop. The significance of the Treaty in our constitutional fabric needs to be recognised in any transition from the Crown to a republic. But its significance is relational, not static. In my view, the novation of Treaty rights and responsibilities (something that has occurred several times already) does not affect the fulfilment of those rights and responsibilities.

At the end of the day, trying to do too much and attempting to fix every potential constitutional gremlin or pursuing a "Rolls Royce" constitution is an impossible and unnecessary task. It is merely an excuse for delaying an important step in the evolution of the New Zealand identity and nationhood. It is inconsistent with the Kiwi approach to constitutional reform.¹⁰⁹ Our approach to constitutional reform has been described as "ad hoc pragmatism"¹¹⁰ or "pragmatic evolution".¹¹¹ The soft republicanism

¹⁰⁸ *Ladley 2000, p. 268.*

¹⁰⁹ *The more colloquial term "Kiwi" sometimes better conveys the sentiment in this context.*

¹¹⁰ *Palmer 2007, p. 571.*

¹¹¹ *Constitutional Arrangements Committee 2005, para 26 and Joseph 2007, p. 139.*

approach to reform of the office of Head of State is therefore consistent with how we have made and moulded our customary constitution to date.

Armed with a minimalist vision of the republican question, the usual questions - why? who? what? when? how? - become less intimidating and less contentious. In this paper, I explore in more detail the approach outlined above, looking at these questions through the eyes of a soft republican.

1.2 Why?

In some respects, the *why* arguments are the least interesting element of this debate. At their extremes, they are trite and well-rehearsed.¹¹² Like the recent Battle for Kelburn Park between Alf's Imperial Army and New Zealand Republic@Vic,¹¹³ recital of the arguments may create an amusing dogfight with many sparks and much barracking but it is unlikely to lead to a concession, consensus or constructive advancement of the issue.

For the record, the arguments for a republic are usually centred on the following:

- independence (New Zealand is an independent country and should have a Head of State of its own);
- nationhood (our Head of State should reflect our unique sense of nationhood and royal linkages are out-dated); and
- democratic evolution (our constitutional arrangements should be more democratic).

In contrast, the monarchists defend the status quo by pointing to the following:

- the Head of State has already been patriated (the Queen is the Queen of New Zealand);
- there are dangers in changing (concerns that republics are unstable; viz, "if it aint' broke, don't fix it"); and
- the continuing benefits of royal links (British linkages and protection).

Proponents of full republicanism will also proclaim that our constitution is broken and needs to be fixed. More democracy, more certainty, more codification. That is why we should reform our constitution and become a

¹¹²Hayward 2000, p. 261; Stockley 1996a, p. 61. See also www.republic.org.nz/reasonsforarepublic and www.monarchy.org.nz/modern.html.

¹¹³www.republic.org.nz/node/1419.

republic. But the *why* question is harder for proponents of soft republicanism, who are perhaps less visible in the royalists-modernists debate. Soft republicans are not willing to concede that the existing legal structures and processes are defective. The model of the de facto republic *is* generally working well, save for the incongruous symbolism that cloaks it.

But symbols and identity matter. As a symbol, the monarchy sits uncomfortably with our vision of ourselves as a progressive, egalitarian South Pacific nation. The monarchy operates as a significant constraint on our ability to develop further our sense of nationhood. The British anchor has served us well in the past, but we are now communities with different demographics, different cultural mixes, and different aspirations. While the Governor-General is charged with cultivating some of this symbolism,¹¹⁴ their ability to present the office of Head of State as a mirror of the values and aspirations of peoples of New Zealand is dampened by their subordinate status as a representative of the Royals.

It is significant that the role of the de facto Head of State has evolved significantly over time.¹¹⁵ Every Governor-General since 1967 has been a New Zealander. Women have occupied the post. Greater ethnic diversity has been evident of late, with Māori and Pacific appointees. Governors-General now regularly represent New Zealand internationally. The current Governor-General regularly expresses greetings in Te Reo Māori and New Zealand Sign Language. Sir Anand Satyanand also now issues a "New Year's Day" message, with content which seems much more relevant to New Zealanders than the Queen's Christmas message. In many ways, the evolution of the office tracks our own evolution as a nation. But there are limits to the extent to which the office can continue to develop when it is anchored by a foreign pedigree. Radical change is not needed, but continual evolution will allow the office-holders to ensure that the role continues to represent and reflect the values and expectations of a modern-day New Zealand.

I should also record that the evolution of the symbols of the office and nationhood do not require us to expunge the symbols of our British heritage. Here, I may cause some angst for some more militant republicans. In my view, the path to the republic and beyond is one of blending our heritage with our modernity. Over time the now will

¹¹⁴ Satyanand 2010.

¹¹⁵ Tizard 1993; Cartwright 2001; McLean 2006; and Satyanand 2010.

probably become more dominant than the past as we reinvent and recast our symbols.

1.3 Who?

The question of who should be the Head of State under a republic also seems to attract a lot of interest. Again, soft republicans say there is little need to deviate from the recent pattern of Governors-General. They have served us well when discharging the ceremonial, community and constitutional functions of the office.¹¹⁶

Former judicial appointment is less important than it was in the formative days of MMP, given the sophisticated and readily understood conventions around government formation and the role of the de facto Head of State. While the constitutional functions remain significant, a senior civil servant or leader of an NGO who is familiar with the constitutional landscape and capable of receiving and acting on advice is well-placed to discharge these functions. I wonder if we may see a departure from the judicial background in the upcoming appointment round.

While the identity of potential office-holders makes headlines, the means of appointment is the more important question: *direct election* of the Head of State by the public or *indirect appointment* by the Parliament. It is this issue, and the polarised debate about it, that probably killed the Australian republican debate and plebiscite in 1999.¹¹⁷

What is clear is that the present status quo for selection of the Sovereign is obviously unsatisfactory. As noted earlier, the hereditary and discriminatory appointment process for the monarch is an anathema to New Zealanders. It is biased towards males and is antipathetic towards Catholics.¹¹⁸ We will almost certainly never see a Kiwi fill the role of monarch. That is a shame for New Zealanders generally. But it must be a major disappointment for Māoridom; under the present arrangements, there is no real prospect of the New Zealand Head of State being someone Māori.

The appointment process for their delegate, the Governor-General, is also too loose. The Governor-General is formally appointed by the

¹¹⁶ Palmer and Palmer 2005, pp. 54-55.

¹¹⁷ Higley and Evans Case 2000; Stockley 1998.

¹¹⁸ Act of Settlement 1701 and Royal Marriages Act 1772. See Feldman 2004, para 3.87.

Monarch under the Letters Patent.¹¹⁹ In reality, the selection of the Governor-General is the responsibility of the government of the day and the Prime Minister.¹²⁰ Under our cardinal constitutional convention, the Monarch is expected to act on the advice of her responsible advisors - although, as a courtesy, the proposed appointee is canvassed with Her Majesty first. There remains some uncertainty about cross-party involvement in the selection process. Some observers suggest there is a constitutional convention of consultation, at least with the Leader of the Opposition.¹²¹ However, whether this convention exists and/or has been honoured remains something of a mystery. There have been instances where it appears some parties were not consulted and did not favour the appointment of the candidate.¹²²

The present appointment process model for the Governor-General could simply be rolled over. But the looseness of the appointment process and possibility for contentious appointments risks undermining the essential apolitical and unifying elements of the office. I favour minor tweaks to the appointment process to avoid this, specifically, through the formalisation of the present best practice around appointments. Indeed, the Republican Movement has recently proposed similar changes to the Governor-General's appointment as it stands now,¹²³ and the ideas were raised in recent debates on the Governor-General Bill.¹²⁴ The nature of the functions of the Governor-General as a guardian of the political and parliamentary process suggest there should be broad acceptance amongst the political players. That is, practical consensus amongst the parliamentarians about their appointment. I favour a model based on a resolution supported by a super majority within the House.

The 75% majority found in s 268 of the Electoral Act 1993 is an obvious template for appointment. But I worry it is a remnant of the two-party FPP days. If we are serious about the appointment having a widespread parliamentary support, then the super majority needs to recognise the role of minor third parties too. One option is to adopt the 75% MPs / 50%

¹¹⁹ *Letters Patent Constituting the Office of Governor-General 1983, cl 2.*

¹²⁰ *Cabinet Office 2008, para 2.5.*

¹²¹ *Palmer and Palmer 2004, p. 53.*

¹²² *For example, the appointments of Sir Keith Holyoake (1977), Sir Paul Reeves (1985) and Sir Michael Hardie-Boys (1996).*

¹²³ *Republican Movement of Aotearoa New Zealand 2010.*

¹²⁴ *Governor-General Bill. Ultimately, questions of appointment were ruled to be out of scope of the Bill: Government Administration Committee 2010.*

parties super-super-majority approach already found on the statute book.¹²⁵ That is, a provision such as this:

Appointment of the Governor-General

(1) The Governor-General is appointed by resolution of the House of Representatives.

(2) No resolution may be made by the House of Representative under subsection (1) unless:

(a) the resolution is agreed by at least half of the parliamentary leaders of all political parties represented in Parliament; and

(b) the members of Parliament of the political parties whose parliamentary leaders agree with the resolution comprise at least 75% of all members of Parliament.

Concerns about minor parties holding the process to ransom are, I think, misplaced. But I would not quibble too much about the nature of the super majority provision. The principle of widespread parliamentary support is more important.

Of course, more dramatic change to the selection process is also possible, whether it be formalised voting systems in the House or some form of public involvement in the nomination process. But, for a soft republican, these are an unnecessary complication. Direct election, through a popular poll, is another possibility - and one of the options posed in Keith Locke's recently defeated Head of State Referenda Bill. While experience abroad shows that this is a workable mechanism for appointment of a Head of State,¹²⁶ one wonders if it is a step too far for pragmatic New Zealanders and risks providing false hope for the electorate of some massively revamped - and politicised - Head of State role. Again, soft republicans see this as unnecessary complication and risk.

The final element of the who question is the brand: what should be the name or style for new Head of State? As mentioned earlier, many assume the mantle of President is inevitable. But the constitution reformer's brush is not so limited. We can call them whatever we want. A truly soft republican might therefore suggest that they retain the title they now possess: Governor-General. It minimises any change and is consistent with

¹²⁵ *Electoral Finance Act, s 146(1)(c) (now repealed).*

¹²⁶ *For an excellent discussion of the Irish President and their direct election, see Harris 2009.*

the brief of merely entrenching the reality of our Head of State role. The language of President would seem to be awkward and connotes more dramatic reform. Another option might be adopting the generic title "Head of State". While perhaps lacking in grandeur, such a label would not be objectionable. Our Samoan cousins adopted this Head of State style in their constitution, but have also adorned it with the indigenous title "O le Ao o le Malo".¹²⁷ That approach seems sensible. One might expect over time the office of Head of State or Governor-General might be gifted a Te Reo title by Māoridom that may capture the essence of the revitalised role.¹²⁸

1.4 What?

The *what* question - the question of the powers, functions and duties of the Head of State - is easy for the soft republicans. The new Head of State will be imbued with exactly the same functions, powers and duties as the monarch. Reforming legislation can make this clear with a generic statement detailing the transfer of power on these terms. The prerogative powers of the monarchal Head of State will continue with the new indigenous Head of State. This is the most modest and efficient approach. A more complex and time-consuming task is to create a catalogue of all the monarch's powers and to provide for specific transfer in each and every case.¹²⁹ At least in the first instance, I think this is an unnecessary and time-consuming task. Generic transfer is sufficient in my view, but the legislation might consider setting up a process for legislative references to be amended in due course following the ultimate transition of power.

More radical reformers will want to consider stripping the new Head of State of some of their powers or codifying the constraints on their exercise. Concerned about the (largely theoretical) power vested in the monarch and de facto Head of State today, they are worried that it will be exercised in a counter-democratic fashion. Our constitutional conventions, values and culture ensure, however, that this power is exercised consistently with the democratic imperative. We might consider codifying those conventions,¹³⁰ but this unnecessarily risks

¹²⁷ *Samoan Constitution*, s 16.

¹²⁸ *The current Te Reo translation of the Governor-General's position is Te Kāwana Tianara o Aotearoa.*

¹²⁹ *See, for example, the present Law Foundation-funded project being undertaken by Dame Alison Quentin-Baxter and Professor Janet McLean (Law Foundation (2009)) to identify all the powers and functions of the monarch.*

¹³⁰ *See for example Jamaica (Constitution) Order in Council 1962.*

misstating them or making them overly rigid. For example, the conventions around government formation have evolved consistently with the evolution of our democratic systems under MMP and are generally thought to be working well.

We might also consider removing the reserve powers of the Head of State, as well as vesting the prerogative powers in those constitutional actors who in reality exercise them as responsible advisors. Professor Bruce Harris has provided a blue-print for such change.¹³¹ Again, though, the soft republican remains agnostic. Such amendment has the potential to change the present political and constitution balance within our system. The Governor-General's powers to act contrary to advice - the power to sack a Prime Minister, the power to refuse Royal Assent, and so forth - are dramatic but theoretical. We expect it is unlikely that they will ever be needed, but this theoretical possibility gives the political players some reason to be circumspect and not to test the outer boundaries of constitutionality.

The Crown is a metonym for the State or executive government.¹³² The *what* question therefore also captures the reformation of the concepts of the Crown in right of New Zealand and the Realm of New Zealand. A move to a republic requires the transfer of power and responsibility from the Crown and to a similar entity, such as the "Republic of New Zealand", "Independent State of New Zealand" or "Republic of Aotearoa New Zealand, known as New Zealand". Again, soft republicans do not see this reformation as a significant hurdle. Reforming legislation need only create the State or entity and imbue it with the same rights and responsibilities as the Crown in right of New Zealand formerly possessed.

At this point, we must confront the effect of republicanism on the Te Tiriti o Waitangi and the on-going Treaty relationship. There has been much speculation about the impact of a change of the Head of State on the legal and political status of the Treaty. Many doomsayers think the Treaty cannot survive any change. Others think a change to a republic is an ideal window of opportunity to improve and enhance the status of the Treaty. Some, including the Māori Party, think that *any* constitutional change must be Treaty-centred.¹³³

¹³¹ Harris 2009, p. 285.

¹³² *Town Investments Ltd v Department of the Environment* [1977] 1 All ER 813 at 831; and *Cox 2002a*, p. 237.

¹³³ *Katene 2010*.

Again, soft republicans warn against trying to do too much constitutional reform and overcomplicating the reform of the Head of State. It is legally and constitutionally possible to ensure that the Treaty retains the same legal and constitutional status within the new republic as it did within the monarchy. As Professor Stockley noted: "The Treaty obligations have *already* passed from the Queen in right of Britain to the Queen in right of New Zealand. If they have been transferred once they can be transferred again."¹³⁴ Even ardent monarchists concede a change to a republic would not alter the status of the Treaty.¹³⁵ The reality is that New Zealand's executive government is nowadays responsible for discharging Queen Victoria's original compact with *iwi* and *hapū*.¹³⁶ That will continue under a republic, with the State assuming those responsibilities.

Beyond the legal status, there remains the question of the more intangible symbolism and associated "honour of the Crown" in relation to the Treaty. Soft republicans are anxious not to undermine these important elements in any transition. As was acknowledged earlier, symbolism matters. And it is often said this is especially important to Māoridom. We must not only ensure the smooth transfer of the legal duties, but also the spirit of the Treaty. Some trust is needed, but it seems extremely unlikely a modern-day state would attempt to repudiate the treasured "honour" of the former Crown. The lodestar of minimalism and continuity that lies at the heart of soft republicanism must surely ensure that the extra-legal status of the Treaty is also preserved.

This can be fortified in republican legislation. Treaty obligations will be expressly transferred to the new republic, without promoting or diminishing its present legal status or preventing its continual evolution. Reforming legislation - styled in soft republican form - need not specifically refer to the Treaty because it would be captured within the generic transfer of powers and responsibilities. However, given its special importance in modern-day society, it would be desirable for the Treaty to be specifically mentioned, both in terms of its present legal transition (in the clause transferring the Crown's powers and responsibilities) and its historic importance in our constitutional heritage (in a preamble noting our previous constitutional milestones).

¹³⁴ Stockley 1996b, p. 101. See also Brookfield 1995.

¹³⁵ Cox, then Chairperson for Monarchy New Zealand, quoted in Milne 2004. See also Cox 2002b, p. 29.

¹³⁶ For a discussion of the meaning of the Crown in the context of the Treaty, see McLean 2008 and Cox 2002b.

Finally, the *what* question requires us to address whether the change to our Head of State needs to change the constitutional position of the Niue and the Cook Islands. These self-governing states form part of the Realm of New Zealand, along with Tokelau and the Ross Dependency.¹³⁷ Possible solutions have been proposed which might see these self-governing states follow New Zealand in becoming a republic or their translation into their own realms.¹³⁸ This aspect need not halt our moves to patriate our Head of State.

1.5 When?

The move to the republic has been cursed by many as being "inevitable", as was noted at the outset. Rather than fortifying the likelihood of the republic, this has nullified momentum. Inevitable seems to be code for "yes - but not on my watch".

The defeat of Keith Locke's Head of State Referenda Bill at its first reading in early 2010 should not be taken as meaning there is no parliamentary appetite for the commencement of a move to a republic.¹³⁹ A number of factors probably factored into its demise:

- timing (the referenda proposal would have interfered with the staged referenda on MMP);
- sponsor (some MPs appeared uncomfortable supporting constitutional change sponsored by an Opposition member);
- text (the Bill that languished in the ballot for nearly nine years was intended to catalyse the debate only and might have benefited from some fresh re-drafting); and
- recession (a government wanting to be seen to engaged in fixing bigger, more immediate problems).

There still appears to be some staunch royalist support within Parliament, particularly amongst the National Party. However, the debate of Locke's Bill had some positive benefits for the republican movement, with the creation of a cross-party parliamentary caucus on the issue and increasing engagement with the issue by parliamentarians.

¹³⁷ *Letters Patent Constituting the Office of Governor-General of New Zealand (SR 1983/225)*, cl 1.

¹³⁸ *Townend 2003*.

¹³⁹ *Head of State Referenda Bill 2009 (defeated on 21 April 2010 by 68 votes to 53)*.

The pragmatic approach to constitutional reform associated with soft republicanism looks to the end of the reign of Queen Elizabeth II as an important opportunity. While support for the republic continues to increase, particularly amongst younger generations), there still remains some fondness towards our present Sovereign. A pragmatic compromise might be completing necessary processes in order to become a republic, but deferring its commencement until the passing of our present monarch. A possible formula, based on the outcome of a referendum, might look as follows:

Commencement

(1) Subject to subsections (2) and (3), this Act comes into force 2 days after the date on which it receives the Royal assent.

(2) If the Chief Electoral Officer makes a positive referendum declaration, Part 2 (Transformation to Republic) of this Act will come into force:

(a) on the death of Queen Elizabeth the Second; or

(b) if Queen Elizabeth the Second dies before a positive referendum declaration is made, 6 months after the date of the declaration.

(3) If the Chief Electoral Officer makes a negative referendum declaration:

(a) Part 2 (Transformation to Republic) does not come into force; and

(b) this Act is deemed to be repealed.

Interpretation

(1) In this Act, unless the context otherwise requires,—

positive referendum declaration means a declaration under Part 3 (Referendum on Republic) of this Act that the proposal favouring the introduction of the republic as provided in this Act is carried;

negative referendum declaration means a declaration under Part 3 (Referendum on Republic) of this Act that the proposal favouring

the introduction of the republic as provided in this Act is not carried;

Of course, that does not mean we can rest on our laurels. It would be preferable for us to have all the necessary arrangements in place so that the republic can take effect immediately, without more. The risk of not acting now is that we might be caught on the hop by the passing of Queen Elizabeth. While the soft republican approach does not require extensive legislative and structural preparations, it goes without saying that any change required popular support, at least through a plebiscite - which takes some time.

1.6 How?

It has been suggested that it might be technically possible to become a republic with a simple amendment to the Constitution Act promulgated through ordinary legislation.¹⁴⁰ But nowadays there does seem to be any serious disagreement about the fact that a referendum is needed for any change. The change needs to have popular support to have moral legitimacy. Putting the issue to a referendum also circumvents the theoretical arguments about Parliament's capacity to effect such a revolutionary change.¹⁴¹ A referendum ensures a "technical revolution" takes place.¹⁴² The question of whether there is a need for majorities in referenda of both general and Māori rolls, as has been suggested,¹⁴³ seems to be driven out of concern for the future status of the Treaty. Such arguments carry less weight for a change grounded in minimalism and continuity - where the Treaty relationship continues unaffected.

Assuming the constitutional *how* is answered by a referendum, the practical *how* remains at large. Undoubtedly, support for the republic both amongst parliamentarians and the polity continues to grow. But more rapid progress is stymied by misinformation and misapprehension about the nature and magnitude of any change. Occasions such as this provide some opportunity for the path to the republic to be canvassed. But broader public education and involvement is required, if we are serious about attaining republic status. Options such as a formal constitutional convention or an eminent leaders group have been

¹⁴⁰ Stockley 1995, p. 98.

¹⁴¹ See Brookfield 1995; and Cooke 1996. Compare Stockley 1996b and Joseph's discussion of "autochthony", Joseph 2007, p. 478-485.

¹⁴² Brookfield 1995.

¹⁴³ Brookfield 1995, p. 317.

proposed.¹⁴⁴ The constitutional arrangements select committee process petered out somewhat.¹⁴⁵ The much anticipated constitutional review is yet to be constituted, and seems likely to be more focused around the status of the Treaty and Māori representation.¹⁴⁶ Processes which seek to solve every possible constitutional issue are doomed to failure and only serve to delay further any progress towards a local Head of State. If a blue print is needed for the public to better understand the implications of a republic, then there might be a delicious irony in a Royal Commission being charged with examining that single issue.¹⁴⁷ There is some weight in constitutional reform of this sort being deliberated on by wise people, so that the public can be given comfort that any move is sound and appropriate.

1.7 Conclusion

We are presented with two different models for the republic. An excessive "Rolls Royce" model - a complicated approach that lets the constitutional architects loose to try and fix each and every constitutional soft-point within the reformer's window of opportunity. Or we can take seriously the pressing need to patriate our Head of State in order that our identity and nationhood can continue to evolve. We need only promote the Governor-General from being a de facto Head of State to a real Head of State - same powers, same functions, same responsibilities, same house, same Treaty responsibilities. A Toyota Corolla, a minimalist's republic will be fine.

¹⁴⁴ Moore 2008.

¹⁴⁵ Constitutional Arrangements Committee 2005.

¹⁴⁶ *Relationship and Confidence and Supply Agreement between the National Party and the Māori Party (16 November 2008): "Both parties agree to the establishment (including its composition and terms of reference) by no later than early 2010 of a group to consider constitutional issues including Māori representation."*

¹⁴⁷ Compare with the Royal Commissions on the Electoral System and on Auckland Governance.

Reference List

- Anon (2002) *Republic inevitable: PM. The Dominion* (25 February) 2002
- Bolger J (1994) *Address-in-Reply Debate* (24 March 1994)
- Brookfield FM (1995) *Republican New Zealand: Legal Aspects and Consequences. New Zealand Law Review* p. 310
- Cabinet Office (2008) *Cabinet Manual*
- Cartwright, Dame Sylvia (2001) *The Role of the Governor-General. New Zealand Centre for Public Law Occasional Paper*
- Clark, Campbell (2009) *A hot debate about head of state. Globe and Mail Toronto* (10 October 2009)
- Clark H (2009) *Valedictory Address to Parliament* (8 April 2009)
- Constitutional Arrangements Committee (2009) *Inquiry to Review New Zealand's Existing Constitutional Arrangements*
- Cooke R (1996) *The Suggested Revolution against the Crown in Joseph, P J (ed) Essays on the Constitution. Brookers, Wellington, p. 28.*
- Cox, N (2002a) *The Theory of Sovereignty and the Importance of the Crown in the Realms of The Queen. Oxford University Commonwealth Law Journal* p. 237
- Cox, N (2002b) *The Treaty Of Waitangi and the Relationship Between Crown and Maori in New Zealand. Brooklyn Journal of International Law, vol 28, p. 123*
- Feldman D (ed) (2004) *English Public Law. Oxford University Press, Oxford*
- Government Administration Committee (2010) *Report on Governor-General Bill*
- Harris B (2009) *Replacement of the Royal Prerogative in New Zealand. NZULR vol 23, p. 285*
- Harris BV (2009) *The Irish President, the New Zealand Governor-General and the Head of State in a Future New Zealand Republic. NZ Law Review* p. 605
- Hayward J (2000) *Who Should Be Head of State? in James, C (ed), Building the Constitution. Institute of Policy Studies, Wellington.*
- Higley, John and Evans Case, Rhonda (2001). *Australia: The Politics of Becoming a Republic. Journal of Democracy, vol 11, p. 136.*
- Katene, R (2010) *Speech on Head of State Referenda Bill* (21 April 2010).
- Smith, Peter (2008) *Key knocking on door of government. Financial Times* (1 September 2008).
- Ladley A (2000) *Who Should be Head of State in James C (ed) Building the Constitution Institute of Policy Studies, Wellington.*
- McLean G (2006) *The Governors: New Zealand's Governors and Governors-General. Otago University Press, Dunedin*
- Mclean J (2008) *'Crown Him with Many Crowns': The Crown and the Treaty of Waitangi in Geiringer C and Knight DR (eds) Seeing the World Whole: Essays in Honour of Sir Kenneth Keith. Victoria University Press, Wellington*
- Moore, M (2008) *Banana Republic Risk, Without the Bananas. New Zealand Herald* (14 January 2008)
- Noel C (2004) *Chairperson for Monarchy New Zealand, quoted in Milne, Jonathan (2004) The People vs the Crown. Sunday Star Times, 30 May 2004*
- Palmer G and Palmer M (2004) *Bridled Power 4th ed. Oxford University Press, Oxford.*
- Palmer M (2007) *New Zealand Constitutional Culture. 22 NZULR 565 p. 57*
- Joseph PA (2007) *Constitutional and Administrative Law in New Zealand. 3rd ed, Brookers, Wellington. Law Foundation (2009) Researching Royal Role in NZ. www.lawfoundation.org.nz/news/read.php?i=63 accessed 10 March 2009*
- Relationship and Confidence and Supply Agreement between the National Party and the Māori Party* (16 November 2008)
- Republican Movement of Aotearoa New Zealand (2010) Submission to the Government Administration Select Committee on the Governor-General Bill*
- Satyanand A (2010) *Opening Address: We the Peoples(s). Address to NZ Centre for Public Law Conference*
- Satyanand A (2010) *The Governor General's role. www.gg.govt.nz/node/3076*

The New Zealand Republic Handbook

Stockley AP (1996a) Becoming A Republic: Matters of Symbolism in Trainor L (ed) Republicanism in New Zealand. Dunmore Press, Palmerston North, p 61

Stockley AP (1996b) Becoming a Republic? Issues of Law" in Trainor L (ed) Republicanism in New Zealand. Dunmore Press, Palmerston North, p 81

Stockley, AP (1998) Of Conventions and Constitutional Change: Lessons for New Zealand. University of New South Wales Law Journal, vol 21, p 936

Tizard C (1993) Crown and Anchor: the Present Role of the Governor-General in New Zealand. www.gg.govt.nz/node/565

Townend A (2003) The Strange Death of the Realm of New Zealand: The Implications of a New Zealand Republic for the Cook Islands and Niue. VUWLR vol 34, p. 571

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