

# NZCPR Weekly

23 June 2008

NEW ZEALAND CENTRE FOR POLITICAL RESEARCH

## THE FUTURE OF MAORI SEATS

Dr Muriel Newman

According to the Christchurch Press, a 35kg greenstone pounamu travelled first class to China, accompanied by two members of Ngai Tahu, as part of a sister city exchange with the Christchurch City Council. In their editorial the Press describes the whole event as a farce, "Its journey from Fiordland to Wuhan provides the basis for a novel of the absurd, in which the voyage is preposterous, the characters pretentious and the implications portentous".

They explain that the stone had to fly first class because Ngai Tahu claimed it was "culturally insensitive to put it in the hold". Ngai Tahu further insisted that because the stone was "imbued with the spiritual force of the tribe" it had to be accompanied on the journey by two members of the iwi.

The point made by the Press was that, "however serious the claims by Ngai Tahu about the boulder's spirituality they are not supported by the large majority of Christchurch citizens, in whose name the gift was being made. A mayor in tune with his citizens would not have associated them with such hocus-pocus, let Ngai Tahu pay for the exercise of its religious beliefs and had the rock presented with typical Kiwi restraint". (Rocky Ride, Christchurch Press.<sup>1</sup>)

This is not the first time that Maori spiritual beliefs have been imposed on the wider community. We saw it in the case of a taniwha that held up the construction of State highway One near Mercer a few years ago. What we learnt from that - and similar occurrences from around the country - is that taniwhas can be appeased ... if the price is right.

These matters are symptomatic of the wider problem New Zealand faces as a consequence of race-based features, such as special consultation rights for Maori and the ill-defined principles of the Treaty of Waitangi, having been inserted into legislation. And even though the Maori elite may argue for their fanciful claims under a Treaty of Waitangi catch-all, the Monty Python absurdity of a stone flying first class around the world demonstrates the folly of this course of action.

The fact is that the Treaty of Waitangi has commendable brevity, and to minds that are not inclined to imagining mythical monsters and spiritual stones, a very clear intent. Sir Apirana Ngata, in his classic 1922 book *The Treaty of Waitangi*, explained that while Article One transferred the authority of the Maori Chiefs to the Queen of England, and Article Two created private property rights, Article Three extended to all citizens the Crown's protection, stating that "Maori and Pakeha are equal before the Law, that is, they are to share the rights and privileges of British subjects". In other words, under Article Three of the Treaty, Maori enjoy the same rights as all other citizens - not greater rights, nor lesser rights.

In an important new report, "The Maori Seats in Parliament", Professor Philip A Joseph examines whether the argument that has been pushed by the Maori elite, that separate Maori representation, is a Treaty right, holds weight. He concludes that "No one - Maori or non-Maori - may claim preferential electoral rights under the Treaty. Both Maori and Pakeha are signatory parties to the Treaty but neither may assert superior political rights under it. Liberal democracies espouse the elemental principle of 'one person, one vote, one value' and rail against electoral privilege based on racial or ethnic distinction".

In his report, Professor Joseph outlines the history of the Maori seats from 1867 to the present day. He explains how four Maori seats were first created for a five year period to give Maori men who didn't meet the standard individual property-ownership qualification the right to vote. He traces their path from being a temporary measure to becoming a permanent fixture in our electoral system.

In particular, he reminds us that the Royal Commission on the Electoral System recommended strongly against separate Maori representation under MMP: "There would be no separate Maori constituency or list seats, no Maori roll, and no Maori option". The Commission believed that the party-list system would promote ethnic diversity within parliament with more Maori gaining seats in the House.

That, of course has come to pass. With four MMP elections now under our belts, Maori representation has continued to grow to the point where 22 Members of Maori descent were elected to the present Parliament in 2005, up from 19 Maori MPs elected in 2002. This means that although Maori make up only 14 percent of the population, they now hold 19 percent of the total membership of parliament. This has risen from 15.8 percent in 2002.

This over-representation of Maori MPs looks set to be further increased by the parliamentary 'overhang', which occurs when a party wins more electorate seats than their party vote entitles them to. That situation occurred at the last election when the Maori Party gained 2.1 percent of the party vote, which entitled them to 3 Members of Parliament, but won four Maori seats. That meant that the Maori Party created an overhang of one additional seat, giving us 121 MPs in the present Parliament, instead of 120.

A more spectacular overhang is certainly on the cards for the 2008 election, as Professor Joseph explains:

"Commentators speculate that the Maori Party might win all of the seven Maori seats without increasing its share of the party vote. An 'overhang' of four members would reconfigure the mathematical computations that bear on the processes of government formation

during post-election party negotiations. The number of confidence votes needed to form a government would increase from 61 to 63. A party that garnered 50 percent or more of the popular vote but could not govern would represent an undemocratic outcome and would indubitably arouse deep resentment. Even without that scenario, the inflated representation of the Maori Party through 'overhang' would give the party disproportionate leverage in coalition talks. The influence of the minor parties on the configuration of government has been a recurring criticism of the MMP system. Questions are asked why a minor party, which many see as representing 'cause' or 'fringe' elements of the polity, should be allowed to determine the make-up of government. The distortion that 'overhang' would produce through Maori Party representation would sorely reinforce that criticism".

In fact, Professor Joseph warns that when the percentage of Maori members holding list or constituency seats in parliament exceed the relative national proportion of Maori – a situation likely to happen in the 2008 election – then "the Maori seats will represent a form of reverse discrimination based on ethnicity". (The Maori Seats in Parliament, Prof Philip A. Joseph<sup>2</sup>)

I asked David Round, the author of the book "Truth or Treaty - commonsense questions about the Treaty of Waitangi", a lecturer in law at the University of Canterbury, to provide this week's NZCPR commentary on the Maori seat report. David describes the report's four central propositions as follows:

*"Separate seats are now unnecessary to secure effective Maori representation. The seats entrench a form of historical paternalism which removes Maori issues from the mainstream political agenda. They are a form of racial discrimination, no less so for being 'reverse discrimination'. Under the MMP system they invite the phenomenon of 'overhang', which has already appeared and seems likely to become more pronounced after this year's election; they thus give a Maori party holding those seats an utterly disproportionate over-representation in Parliament".* He goes on to comment:

*"Ample evidence supports these arguments. As noted above, most political parties now have Maori MPs, and Maori thereby already enjoy satisfactory representation in Parliament without the assistance of specially allocated seats. The long captivity of those seats in the Labour Party meant that other parties felt little obligation to consider Maori issues, and the*

*Labour Party itself took the Maori vote for granted. In the absence of any compelling justification, both common justice and common law (Professor Joseph refers to opinions of the Privy Council, United States Supreme Court and High Court of Australia) consider any racial discrimination unacceptable, and the defenders of Maori seats have been unable - or, at the very least, so far unwilling - to provide justifications for what is prima facie discrimination".* To read David's paper, see [www.nzcp.com](http://www.nzcp.com).

While the abolition of the Maori seats has always been a fraught issue, the new evidence that is emerging shows that this is a decision that should not be delayed. With each new MMP election, Maori representation looks likely to continue to rise. That means that not only will the overhang in Parliament continue to be a major problem, but the over-representation of Maori in Parliament, causing reverse discrimination, is set to become a major political issue in New Zealand.

The National Party have stated that they want to tie the abolition of the Maori seats to the end of the Treaty settlement process which they expect to be in 2014. That's too late. Parliament has no mandate to inflate Parliamentary numbers when public opinion is for fewer MPs not more. That is why this is not an issue that can be shelved, but one that requires real leadership now.

If you are concerned about these issues, I urge you to not only read both Professor Joseph's report and David Round's excellent article, but to forward this newsletter on to others who share your concerns. I will leave the last word to David:

*"Already certain new ethnic groups are beginning to resent the 'privileged' position of Maori, and use it to argue, not that special Maori positions should be done away with, but that these new cultural and racial enclaves should also be somehow recognised as distinct communities. The Maori seats are being used as part of the model for a Balkanised future. For that reason, too, it is high time, then, they were done away with".*

**This week's poll asks:** Are you concerned that the Maori seats are now causing an over-representation of Maori in the New Zealand Parliament?

## Supporting the NZ Centre for Political Research

The New Zealand Centre for Political Research is an independent public policy think tank run by former Member of Parliament Dr Muriel Newman. The NZCPR's mission is to educate and inform the public about the benefits of freedom, liberty and limited government through research, publications and open public debate.

The NZCPR Weekly electronic newsletter is the biggest in the country and the [www.NZCPR.com](http://www.NZCPR.com) website is one of the busiest political sites. Material produced by the NZCPR helps to shape public opinion by being widely circulated through local and international media, websites, blogs and by individuals.

The NZCPR received no government funding. It is supported by individual readers who value a free and open society and want to assist in changing the direction of New Zealand. Subscribers receive a range of benefits including an exclusive copy of the NZCPR's electronic book "The Treaty of Waitangi" by Hon Sir Apirana Ngata. Further information can be found on the website at [www.nzcp.com/support.htm](http://www.nzcp.com/support.htm).

Thank you for your interest.