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Reconstituting the Constitution

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Table 12.1 Representation by gender and ethnicity

Year Electoral system (Total no. MPs)	1990 FPP (97 MPs)	1993 FPP (99 MPs)	1996 MMP (120 MPs)	1999 MMP (120 MPs)	2002 MMP (120 MPs)	2005 MMP (121 MPs)	2008 MMP (122 MPs)
No. of women MPs	16	21	35	37	34	39	41
Share of total MPs (%)	17	21	29	31	28	32	34
Share of NZ population (%)	51	51	51	51	51	51	51
No. of MPs of Māori ethnicity	6	7	16	16	19	21	20
Share of total MPs (%)	6	7	13	13	16	17	16
Share of NZ population (%)	12	13	15	15	15	15	18
No. of Pacific MPs	0	1	3	3	3	3	5
Share of total MPs (%)	0	1	3	3	3	2	4
Share of NZ population (%)	5	5	6	7	7	7	7
No. of Asian MPs	0	0	1	1	2	2	6
Share of total MPs (%)	0	0	1	1	2	2	5
Share of NZ population (%)	3	4	5	6	7	9.2	9.3

Parliamentary Library (2008), pp. 8–9

MMP increases diversity of representation in two main ways. The first of these is by having more parties in Parliament, and the second is through the often deliberate use of party lists to bring in under-represented minorities in a way that geographical constituencies cannot.[31] In New Zealand the number of parties represented in Parliament has almost doubled from four after the last FPP election in 1993 to seven after the 2008 election. Over that same period, even the lists of the more conservative political parties demonstrated an increased willingness to ensure that caucuses contain representation from groups that did not previously feature, or were under-represented in Parliament by reference to the general population. As a result, the first MMP election saw a record number of women elected to Parliament, and an increase in the proportion of Māori, Pacific Island and Asian MPs. As Table 12.1 shows, those trends have continued in the subsequent MMP elections.

The House of Representatives now also contains members whose expressed politics cover a broader ideological spectrum of interests than was previously the case, and includes MPs from a very diverse range of backgrounds. The impacts of MMP on the representation of these groups are described in further detail below.

12.4.2 Better Representation: Women

Since MMP was introduced the proportion of women in Parliament has increased substantially. After the final FPP election in 1993, women held 21% of the seats in the New Zealand House of Representatives, but comprised just under 51% of the

[31] James (1999), p. 33.

Table 12.2 Women in national parliaments

Country	Lower or single house			Upper house or senate		
	Seats	Women	% Women	Seats	Women	% Women
Sweden	349	162	46.4	–	–	–
Finland	200	80	40.0	–	–	–
Netherlands	150	61	40.7	75	26	34.7
Denmark	179	68	38.0	–	–	–
Norway	169	67	39.6	–	–	–
Australia	150	41	27.3	76	27	35.5
Canada	308	68	22.1	93	32	34.4
United Kingdom	650	143	22.0	733	147	20.1
United States	435	73	16.8	98	15	15.3

Inter-Parliamentary Union (2010)

general population. Following the first MMP election in 1996, the proportion of female MPs jumped 8% to 29%, and since 2008 the share of women MPs has reached 34%.[32] While there is still some way to go before the proportion of women in Parliament corresponds to their proportion of the population, these statistics compare favourably on an international basis: now in 2010, the Inter-Parliamentary Union ranks New Zealand 16th out of 186 countries for female representation.[33] Although lagging behind the Nordic countries and the Netherlands, which all have systems of proportional representation, it is clear from Table 12.2 that New Zealand has made better progress at improving women's parliamentary representation than many other comparable jurisdictions.[34]

MMP's relationship to increased female representation can be attributed to various factors. Whereas FPP-type districts tended to lead parties to nominate "lowest common denominator" or "traditional" candidates, systems of proportional representation allow the use of party lists to balance national tickets.[35] Labour, for example, requires its moderating committee (the national body that settles its list) to conduct an "equity check" once every five places as the list is settled.[36] Also, proportional systems allow small, generally left-of-centre parties such as the Green Party, which have typically been more explicitly committed to the cause of women's representation, to gain seats in Parliament and bring attention to the issue.[37] Given the increased representation of women in the legislature, it is no surprise that since MMP was introduced, a higher number of women have been elevated to ministerial positions and New Zealand was led for 11 years, from 1997

[32] Jackson (2006), p. 164.

[33] Inter-Parliamentary Union(2010).

[34] Peterson (1999), p. 4.

[35] Levine et al. (2007), pp. 458–459.

[36] New Zealand Labour Party (1999), p. 20.

[37] Levine et al. (2007), pp. 458–459.

Table 12.3 Split tickets and wasted votes in the MMP era (1996–2008)

Year	Split ticket votes (%)			Wasted votes (%)	
	All	Major parties	Minor parties	Party	Electorate
1996	37	27.6	50.3	7.6	29.20
1999	35	17.4	70.9	6.0	24.2
2002	39	19.4	70.9	5.0	22.2
2005	29	19.0	71.5	1.3	14.9
2008	29	18.0	72.2	6.5	13.7

Levine et al. (2007), p. 465

until 2008, by two female prime ministers.[38] Although these developments were not expressly prevented by the former electoral system, they have been greatly facilitated by MMP.

12.4.3 Better Representation: Māori

Māori are the indigenous people of New Zealand. In the 14 years since MMP was adopted, the proportion of MPs identifying as Māori has more than doubled, making Māori representation in Parliament roughly in line with the Māori proportion of the general population.[39] After the 1993 election, 7% of MPs identified as being of Māori descent. In 2008, this number had jumped to 16%.[40] Perhaps foreseeing the benefits of MMP for increasing Māori representation, Māori voted two to one in favour of proportional representation.[41] The Royal Commission recommended the abolition of the Māori seats, since it predicted that they would be rendered unnecessary by the move to MMP. This proved too controversial a change, and the adoption of a party list system, together with the preservation of the Māori electorates, means that MMP offers Māori the opportunity to increase representation in Parliament, perhaps even beyond proportionality.

Since the replacement of the former FPP electoral system, the number of Māori electorate seats has increased from four to seven, the number of Māori enrolled on both the general and Māori electoral rolls has increased as the Māori population has grown, more Māori have entered Parliament as list MPs, and Māori political parties have formed, the most successful to date being the Māori Party in 2004.[42]

[38] Levine and Roberts (2007), p. 9.

[39] Jackson (2006), p. 164.

[40] Parliamentary Library (2008), p. 5.

[41] Karp and Banducci (1999), p. 371.

[42] Thanks to a separate decision taken by the 4th Labour government to allow the number of Māori seats to grown in line with the numbers of Māori choosing to enroll on the Māori roll, as opposed to capping the number of seats at 4, as had been the case since 1867. Boston et al. (1996), p. 71; Durie (2003), pp. 121–122; Smith (2006), p. 408.

In addition, by reducing the likelihood of a single-party majority government, MMP has also allowed for a shift in the balance of power that gives more strategic influence to the Māori vote and to Māori MPs, irrespective of the party they belong to. Since the historic alliance between the Ratana movement and Labour in the 1930s, this had been the case to some extent, but was usually a hidden function of internal Labour Party politics rather than a process obvious to public scrutiny, at least until the 1996 election when the New Zealand First Party broke Labour's monopoly on general election success in the Māori seats for the first time since that alliance.[43]

I have not considered how New Zealand rates on an international basis as far as ensuring parliamentary representation of indigenous people in post-colonial societies is concerned. I assume that the position just described would compare favourably.

12.4.4 Better Representation: Asian and Pacific Island New Zealanders

As predicted by the Royal Commission on the Electoral System, other groups have also increased their parliamentary representation. Since the first MMP election in 1996, the number of MPs of Pacific Island descent represented in Parliament has increased to about 4%, and New Zealand has elected its first MPs of Asian origin, together accounting for a 5% share of the Parliament.[44] As with female representation, however, there is still some way to go before the numbers of Pacific and Asian MPs adequately reflect the composition of these groups in the general population.

12.4.5 Better Representation: Sexual Minorities

The New Zealand Parliament has also become more varied in terms of the disclosed sexual orientation of its members since 1996. Privacy issues make these developments difficult both to quantify in absolute terms, and to compare in relation to the total population, as well as on an international basis. However, in 2010 approximately 4% of the House of Representatives have identified as being non-heterosexual.[45]

[43] Boston et al. (1996), p. 70.
[44] Levine et al. (2007), pp. 457–458.
[45] Ibid, p. 458.

New Zealand compares favourably to the other liberal social democracies in the Commonwealth in this regard. In Australia, an estimated 3% of MPs (taking into account both the upper and lower houses and the provincial and state and territory legislatures) have self-identified as being gay, lesbian or bisexual. Taking into account the same aspects of the Canadian Parliament, approximately 2% of MPs identify themselves as non heterosexual. In the United Kingdom (taking into account Members of the House of Lords, Members of the Scottish Parliament and Members of the House of Commons) the percentage is 1.6% of all members.[46]

12.4.6 Better Representation: Ideological Mix

To be sure, a Parliament needs to do more, to be credible, than just look like a sample of the population in whose name it exercises oversight authority. In addition to more closely reflecting the demographic composition of New Zealand society, MMP has allowed for the representation of a broader spectrum of ideological interests. One of the major criticisms of FPP was that it reduced voter choices to those parties converging around the political centre, marginalising citizens whose votes lay outside the political centre.[47] As Fig. 12.1[48] demonstrates, although the first four MMP elections demonstrate that there is still strong support for the two major parties in New Zealand, Labour and National, which occupy the centre-left and centre-right positions on the ideological spectrum, they are unlikely to be the only significant players in parliamentary politics again.[49]

MMP ensures voters' party preferences are proportionally reflected in the party composition of Parliament and that different interests are represented. Such a diversity of opinion fosters more wide-ranging debate in the chamber and may ultimately assist to foster perceptions of legitimacy, as well as to ensure that legislation represents a broader range of points of view. This type of ideological diversity is not so evident in the legislatures of countries where the two-party system remains dominant.[50]

[46] Based on media searches for articles where members have self-identified as non-heterosexual, the relevant membership of the legislatures of these countries appears to be as follows: in Canada, of the 10 'out' GLBT MPs, 1 is a senator, 6 are members of the House of Commons, and 3 are members of legislative assemblies. In Australia, from a total of 9 'out' GLBT parliamentarians, 3 belong to the Senate, five are members of state upper houses, and 1 is a member of a territorial assembly. In the UK, of the 24 'out' MPs, 18 sit in the House of Commons, 2 in the House of Lords, and a further 4 in the Scottish Parliament.

[47] Banducci et al. (1999), p. 534.

[48] Parliamentary Library (2008), p. 4.

[49] Levine et al. (2007), p. 472.

[50] See, for example, McKay (2000), p. 95.

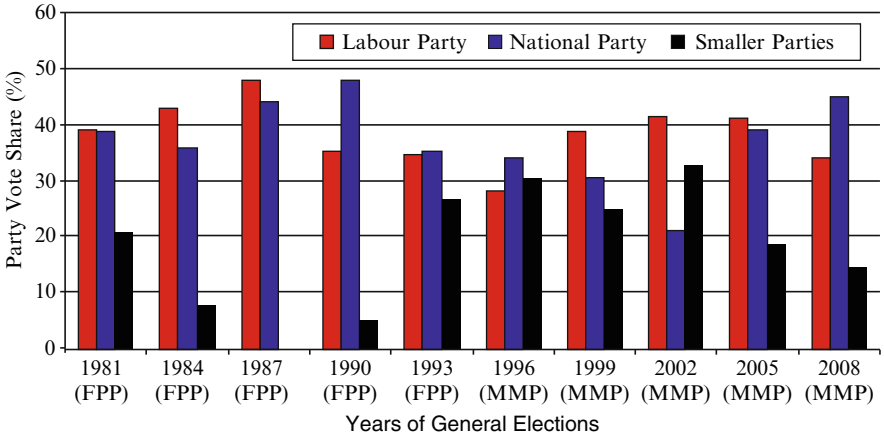

Fig. 12.1 Share of the vote by parliamentary parties, 1981–2008

12.4.7 Better Representation: Less Dissatisfaction

A Parliament that is representative of the various population groups within society seems likely to have greater potential to inspire trust and confidence than one that does not. This has certainly been the true for New Zealand under MMP. Trust in New Zealand's political system was at a low during the period before MMP was introduced, but since electoral reform, voter satisfaction has increased significantly. In a study that considered voter attitudes before and after New Zealand's electoral reform, more people were likely to believe that their vote counted in elections after the implementation of MMP.[51] A separate study found that after the 1996 election, 56% of people either agreed or strongly agreed with the statement that "most MPs are out of touch with the rest of the country", compared to 64% in 1993, and the number of people who agreed that "people like me don't have any say about what government does" also decreased.[52]

Various factors explain the increase in voter satisfaction under MMP. Because there is a distinct party vote and seats are distributed in proportion to the level of nationwide support for the party, voters are able to elect a government as well as choose their favoured constituency representative.[53] By allowing vote-splitting, voters have more flexibility in the choices they make than they would under a majoritarian system.[54] By encouraging the parliamentary integration of minority groups and aiding the formation of minor and protest parties, MMP also increases

[51] Karp and Banducci (1999), p. 367.
[52] Banducci et al. (1999), p. 542.
[53] Levine et al. (2007), pp. 459–460.
[54] Banducci et al. (1999), p. 538.

the likelihood that more voters' interests will be represented, promoting greater citizen identification with Parliament and enhancing mass perceptions of system legitimacy.[55] Ultimately, because fewer votes are wasted and the outcomes of elections are more or less proportionate to the national vote, public confidence in democratic processes has improved under MMP.

12.5 Consequences for Public Policy

12.5.1 Overview

Improved representation from a changed voting system has undoubtedly changed the policy and law making processes in New Zealand. There is a new emphasis on consultation and negotiation, the role of parliamentary committees has been strengthened, and the passage of legislation is generally more orderly than previously. The policy environment in New Zealand is now also considerably more complex than it was under the former system. As has been noted, this is not to everyone's liking, particularly in parts of New Zealand society where the changes wrought by MMP are not seen as beneficial.

The advent of MMP and coalition governments means there is no longer only one government policy agenda in New Zealand. As predicted, the result of this has been a greater need for the governing party to engage and constructively interact with other parties in order to advance legislation through Parliament.[56]

Both majority and minority governments require the support of more than one party in Parliament to pass legislation, making a more cooperative style of politics necessary. Contrast this with the untrammelled power of cabinets in the 1970s, 1980s and early 1990s, where it would appear that little attention was paid to the views of backbench MPs.[57] The public has also benefited from greater access to the policy advice given to governments under freedom of information legislation in force since 1993[58] that enhanced the original 1982 law,[59] and greater contestability in the market for policy options means the potential for stakeholders, non-governmental organisations (NGOs) and lobby groups to contribute to policy development has improved.[60] By opening up the process to a broader range of interests, MMP has made policy-making a much more open process than it used to be. Voters have benefited from an increased quality of law-making, public debate

[55] Banducci et al. (1999), p. 534.
[56] Scott (2003), p. 47.
[57] Boston et al. (2003), p. 12.
[58] Privacy Act 1993.
[59] Official Information Act 1982.
[60] Scott (2003), p. 48.

has become more meaningful, and legislation by definition must now enjoy the backing of a majority of those parties voted for by a majority of the electors at the previous election.[61] In addition, greater policy consensus means that the bills that do get turned into legislation seem likely to be more enduring.[62]

12.5.2 Slowing the Legislative Process

Due to the number of participants involved in decision-making and the greater need for consultation and negotiation, the legislative process under MMP appears in general to be considerably slower today than it was under FPP.[63] When comparing the legislative process now to the period before New Zealand's electoral reform, there has been a dramatic drop in the number of government measures passed by Parliament. During the FPP period between 1980 and 1996, the average number of government bills passed per year was 173. In stark contrast, the 4-year average under MMP from 1996 to 2000 was only two-thirds of this level.[64] Despite the reduction in the total number of bills passed into law, the House sits for many more days than it used to, and the total number of pages occupied by all forms of legislation has increased dramatically.[65] Much of the increase is accounted for by the very considerable increase in the use of delegated legislation.[66] Since a minority government needs the support of other parties to pass legislation but not to pass regulations, MMP tends to encourage the implementation of policies in this way.[67] Interestingly, in light of this development, New Zealand lacks some of the safeguards as to delegated legislation to be found in other Australasian jurisdictions, such as the automatic expiry of regulations through sunset clauses.

Many commentators argue that the slower passage of legislation resulting from greater consultation and deliberation is a negative feature of MMP. They argue that MMP weakens executive decision-making and results in a more complex environment where it is difficult for governments to develop and implement a consistent set of policies.[68] On the other side of the ledger, however, this can mean that decisions are being taken in a more measured way, with greater input from a wider range of interests.

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[61] Boston et al. (2003), p. 18.

[62] Palmer and Palmer (2004), p. 18.

[63] Boston et al. (2003), p. 12.

[64] Palmer and Palmer (2004), p. 71.

[65] Gillon and Miller (2006), p. 178. The total normal sitting hours of the House in 2004 were 444, well up on the year ended 2000, when the House sat for 299 normal hours. Select committees also increased their workload from 461 sittings in 2000 to 523 in 2004.

[66] Jackson (2006), p. 169.

[67] Palmer and Palmer (2004), p. 16.

[68] Boston et al. (2003), p. 20.

Under the old FPP electoral system, New Zealand governments were frequently described as "elective dictatorships" with the "fastest law in the West" because of the ease at which the largest party in Parliament was able to implement its legislative agenda.[69] By slowing down the legislative process, MMP intended to prevent future governments from designing, implementing and administering wide-ranging changes with minimal consultation.

As noted earlier, there was also a greater subtlety in the implementation of government policy under the Clark premiership than was evident under her predecessors. Between 1999 and 2008, it was made tolerably clear that the lead party in government expected the implementation of the majority of the programme on which it campaigned in the election to lead to the creation of the new Parliament. The minor parties were able to expect policy victories in areas where their "headline" policies align with those of the major party. They could often claim credit for extending the particular policy further than the major party may have been willing to.[70] Detailed coalition or support agreements were entered into and were expected to be honoured for the duration of a parliamentary term, and it was likely that the minor rather than the major party would be punished electorally for a breach. This was in contrast with the initial implementation of MMP under Prime Ministers Bolger and Shipley, when between 1996 and 1999 there was much more of a "wag the dog" flavour to the new system.[71]

12.5.3 Increased Ambiguity

In addition to slowing down the passage of legislation, the more complicated nature of the policy environment under MMP has also had the effect of increasing the level of ambiguity surrounding policy. In the run-up to elections a shift from more prescriptive campaign pledges to promises that focus more on the desired direction of policy has been evident in the last four elections.[72] In addition, legislative wording that results from compromises between parties in Parliament or coalition or support partners in the Ministry is often unclear and ambiguous. A likely

[69] Levine et al. (2007), pp 445 and 462.

[70] Past examples include Rt. Hon Winston Peters (New Zealand First) being credited for the government's Supergold Card scheme, which gives discounts to senior citizens across a range of products and services, and Jeanette Fitzsimons (formerly Green Party co-leader) being credited for the Insulation of State Houses policy as a Green Party initiative. This second example was particularly noteworthy since the Green Party was neither a government coalition partner nor a support party. It merely agreed to abstain on matters of confidence and supply.

[71] Levine et al. (2007), p. 463. After the 1996 election, a small party (New Zealand First) was given influence beyond its parliamentary strength. Despite commanding approximately only 14% of the seats in Parliament, New Zealand First accounted for almost a third of ministerial positions in the National-led government.

[72] Boston et al. (2003), p. 19.

outcome is increased pressure on the judiciary to interpret the meaning of legislation against the background of a support or coalition agreement between a major and a minor party.[73]

12.5.4 Increased Influence of Parliamentary Committees

The reforms to parliamentary procedure brought about in the 1980s by the Rt Hon Sir Geoffrey Palmer were significant.[74] They included the institution of a scrutiny of delegated legislation committee, and the tradition that all but core budget legislation should be the subject of public hearings of submission by parliamentary committees. Following the move to MMP, further changes to standing orders have seen the membership of parliamentary committees become more proportional. In addition, the opportunity is available to most of the parties to be able to chair at least one select committee.[75] Because they are no longer under the control of a single governing party with a majority of MPs, select committees are now stronger and more willing and able to recommend significant changes to government legislation.[76] Since MMP was introduced in 1996, minority governments have faced increased scrutiny of their proposed legislation, and the potential for committee investigations has also increased.[77] This scrutiny provides an opportunity for detailed reconsideration of both the drafting and policy of bills and has been described as a substitute for the revision that upper houses may perform.[78]

12.5.5 Increased Voter Sophistication

Although it is impossible to predict the future, after five elections and more than a decade since New Zealand's electoral reform, trends clearly indicate a maturation of voter and politician experience of MMP. While there is still some way to go before the composition of the House represents that of the general population, especially as to gender, the New Zealand statistics compare favourably on an international basis, and show a significant improvement since FPP was replaced.

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[73] Ibid, p. 17.

[74] I alluded to these in Chauvel (2007).

[75] Gillon and Miller (2006), p. 176.

[76] Levine et al. (2007), p. 462.

[77] Palmer and Palmer (2004), p. 17.

[78] Ibid, p. 371.

Although MMP ensures that voters' party preferences are proportionally reflected in the party composition of Parliament, ultimately, the demographic characteristics of Parliament are determined more by the political parties themselves through their choice and ranking of candidates.[79] The role of the voter should not be underestimated either. By encouraging the electoral participation of ethnic minorities such as Māori and Pacific Islanders, who have traditionally had lower rates of voter turnout in New Zealand's voluntary voting system, there is considerable potential for these groups to increase their representation in Parliament.

There is other evidence that both voters and politicians are becoming more sophisticated in dealing with MMP as time goes by. Although some degree of instability in voting patterns and party affiliations is to be expected during times of electoral reform, an increased level of stability is likely as New Zealand further adjusts to its new electoral system. So far New Zealand's experience has been consistent with this.[80] Despite a shaky start to MMP, marked by disagreements and stand-offs between National and its New Zealand First coalition partner, there is evidence that politicians are learning from their mistakes and coming to grips with managing the new parliamentary environment.[81] Patterns of coalition management indicate that parties are adapting to more consensual arrangements, and innovations such as the "agree-to-disagree" clause in coalition agreements, pre-election coalition pacts between parties, and explicit arrangements on "confidence and supply" have reduced the likelihood of coalitions collapsing mid-term.[82] An initially high rate of party defections has also dropped off significantly, and if the German experience with MMP is anything to go by, they should continue to drop further in the future.[83]

Trends in vote wastage and vote splitting support indicate that New Zealand voters are progressively learning how to make MMP effectively work for them also. In 2005, "wasted" party votes, or votes cast for parties that receive no seats in Parliament, were less than a quarter of the 1996 level, while the wastage of electorate votes over the same period was halved. There was a big increase in the wasted party vote in 2008, presumably owing much to the failure (just) of the New Zealand First Party to reach the 5% threshold or to win a seat so as to make all of its party votes count. All other trends were consistent, however.

This evidence is consistent with the experiences of other countries with similar electoral systems such as Germany, where it was found that over time voters learnt not to waste their votes, and the level of disproportionality dropped close to zero.[84]

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[79] Goldstone and Wilson (2005), p. 5.

[80] Levine et al. (2007), p. 462.

[81] James (1999), p. 28.

[82] Boston (2006).

[83] Levine et al. (2007), pp 468–472.

[84] Ibid, p. 471.