

# Patriating Our Head of State: A Simpler Path?

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## *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 and the national anthem. The list goes on. It's no wonder therefore that little progress has been made on this front from 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".<sup>1</sup>

Like one of the speakers at the earlier conference, I suggest the republican project is much more simple.<sup>2</sup> At its heart, it involves changing our Head of State from a hereditary monarch based abroad to a local, chosen by us. The only other essential change is the label for the "corporate" entity that represents the state, government and peoples from the Crown to something capture the collective of the peoples of New Zealand. No more. No less. The minimum change necessary in order to patriate our Head of State.

This task is even easier because we are presently, as Professor Brookfield described us, a "de facto" republic.<sup>3</sup> 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).<sup>4</sup> 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. The promotion of Governor-General from the Sovereign's delegate to the people's representative in their own right would do no more than reflect who, in reality, exercises the day-to-day functions of the Head of State. And, we need not invent a new title or style. It is not essential that the new Head of State

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<sup>1</sup> For example, Bolger: "Address-in-Reply Debate" (24 March 1994); Clark: "Clark: republic 'inevitable'" (*The Evening Post*, 4 March 2002), "Valedictory Address to Parliament" (8 April 2009); and Key: "Key knocking on door of government" (*Financial Times*, 1 September 2008).

<sup>2</sup> Andrew Ladley "Who Should be Head of State" in Colin James (ed) *Building the Constitution* (Institute of Policy Studies, Wellington, 2000) 267.

<sup>3</sup> FM Brookfield "Republican New Zealand: Legal Aspects and Consequences" [1995] NZ L Rev 310 at 317.

<sup>4</sup> Canada's most recent Governor-General, Michaëlle Jean, described herself as the "Head of State", and was later rebuked by Canadian Prime Minister Stephen Harper: "A hot debate about head of state" (*Globe and Mail*, Toronto, 10 October 2009).

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".<sup>5</sup> My commitment is to patriating the office of the Head of State: 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 don't 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's merely an excuse for delaying an important step in reclaiming the New Zealand identity. And it's inconsistent with the Kiwi approach to constitutional reform. Our approach to constitutional reform has been described as "ad hoc pragmatism"<sup>6</sup> or "pragmatic evolution".<sup>7</sup> The soft republicanism 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 canvas those issues, but with a strong bias towards the soft republican solution.

### *Why?*

As a proponent of change, some people may be surprised that I did not open with a recital of the arguments about *why* we should become a republic and adopt a local Head of State. In some respects, though, the *why* arguments are the least interesting element of this debate. At their extremes, they are trite and well-rehearsed.<sup>8</sup> Like the recent Battle for Kelburn Park between Alf's

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<sup>5</sup> Ladley, above n 2, at 268.

<sup>6</sup> Matthew Palmer "New Zealand Constitutional Culture" (2007) 22 NZULR 565 at 571.

<sup>7</sup> Constitutional Arrangements Committee *Inquiry to review New Zealand's existing constitutional arrangements* (August 2005) at [26] and Philip A Joseph *Constitutional and Administrative Law in New Zealand* (3rd ed, Brookers, Wellington, 2007) 139.

<sup>8</sup> See Janine Hayward "Who Should Be Head of State?" in James (ed), above n 2, 261; Andrew P Stockley "Becoming A Republic: Matters of Symbolism" in Luke Trainor *Republicanism in New Zealand* (Dunmore Press, Palmerston North, 1996) 61. See also [www.republic.org.nz/reasonsforarepublic](http://www.republic.org.nz/reasonsforarepublic) and [www.monarchy.org.nz/modern.html](http://www.monarchy.org.nz/modern.html).

Imperial Army and New Zealand Republic @ Vic,<sup>9</sup> 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 Head of State issue. For the record, the arguments for a republic centre on 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 represent New Zealand to the world; Royal linkages are outdated), and democratic evolution (our constitutional arrangements should be more democratic). In contrast, the monarchists argue the present status quo is adequate (New Zealand already has its own Head of State as the Queen is the Queen of New Zealand) and there are dangers in changing ("if it ain't broke, don't fix it"; concerns that republics are unstable), and the continuing benefits of royal links (British linkages and protection).

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

But there is an important deficiency. Symbols and identity. These things matter. The monarchy as a symbol sits uncomfortably with our vision of ourselves as a progressive 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, their ability to grow the potential of the office of Head of State as a mirror of the peoples of New Zealand is retarded by their representative and subordinate status.

The role of the de facto Head of State has evolved significantly over time.<sup>10</sup> 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 greeting 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 Kiwis 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

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<sup>9</sup> [www.republic.org.nz/node/1419](http://www.republic.org.nz/node/1419).

<sup>10</sup> See Dame Catherine Tizard: "Crown and Anchor: the Present Role of the Governor-General in New Zealand" (1993) <[www.gg.govt.nz/node/565](http://www.gg.govt.nz/node/565)>; Dame Sylvia Cartwright "The Role of the Governor-General" (Occasional Paper No 6, NZ Centre for Public Law, Wellington, 2001); Sir Anand Satyanand "Opening Address: We the Peoples(s)" (Address to NZ Centre for Public Law conference, 2010) and Gavin McLean *The Governors: New Zealand's Governors and Governors-General* (Otago University Press, Dunedin, 2006).

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

### *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. 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 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 also the more important question. This is where the Australian republican debate and plebiscite got nobbled in 1999 by a polarised debate: *direct election* of the Head of State by the public or *indirect appointment* by the Parliament.

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 Kiwis. It is biased towards males and is antipathetic towards Catholics.<sup>11</sup> We will almost certainly never see a Kiwi fill the role of monarch. That is a shame for Kiwis generally, and must also be a massive disappointment for Māoridom, who will never see one of their own occupy the post.

The appointment process for their delegate, the Governor-General, is also too loose. The Governor-General is formally appointed by the Monarch under the Letters Patent.<sup>12</sup> In reality, the selection of the Governor-General is the responsibility of the government of the day and the Prime Minister.<sup>13</sup> 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 run past 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

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<sup>11</sup> Act of Settlement 1701 and Royal Marriages Act 1772. See David Feldman (ed) *English Public Law* (Oxford University Press, Oxford, 2004) at [3.87].

<sup>12</sup> Letters Patent Constituting the Office of Governor-General 1983, cl 2.

<sup>13</sup> Cabinet Office *Cabinet Manual 2008* at [2.5].

the Leader of the Opposition.<sup>14</sup> However, whether this convention exists and/or has been honoured remains something of a mystery. There have been instances where it has become clear that some parties were not consulted and did not favour the appointment of the candidate.<sup>15</sup>

The present appointment process model for the Governor-General could 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: formalisation of the present best practice around the appointments. Indeed, the Republican Movement has recently proposed similar changes to the Governor-General's appointment as it stands now.<sup>16</sup>

The nature of the functions of the Governor-General as a guardian on the political and parliamentary process suggest they 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 FFP 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. That said, it is also desirable to avoid one party holding Parliament to ransom over any selection. To avoid this, a possible enhanced super-majority could combine the 75% majority of MPs with a 50% majority in the parties (not independents) in the House. Based on a template already found on the statute book, this can be expressed as follows:<sup>17</sup>

## 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.

Of course, more dramatic change to the selection process is also possible, whether it 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

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<sup>14</sup> Geoffrey Palmer and Matthew Palmer *Bridled Power* (4th ed, Oxford University Press, Oxford, 2004) at 53.

<sup>15</sup> For example, the appointments of Sir Keith Holyoake (1977), Sir Paul Reeves (1985) and Sir Michael Hardie-Boys (1996).

<sup>16</sup> Republican Movement of Aotearoa New Zealand "Submission to the Government Administration Select Committee on the Governor-General Bill" (18 August 2010).

<sup>17</sup> Electoral Finance Act, s 146(1)(c) (now repealed).

mechanism for appointment of a Head of State,<sup>18</sup> one wonders if it is a step too far for pragmatic Kiwis 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 the brief of merely entrenching the reality of our Head of State role. The language of President would seem to be awkward and connotes for dramatic reform. Another option might be adopting the generic title "Head of State". While perhaps lacking in grandeur, it seems relatively unobjectionable. Our Samoan cousins of adopted this Head of State style in their constitution, but have also adorned it with the indigenous title "O le Ao o le Malo".<sup>19</sup> 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 Maoridom that may capture the essence of the revitalised role.<sup>20</sup>

### *What?*

The *what* question 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 of transfer of power. The prerogative powers of the monarchical 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 taxonomy of all the monarch's powers and to provide for specific transfer in each and every case.<sup>21</sup> 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 ensure, however, that this power is exercised consistently with the democratic imperative. We might consider codifying

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<sup>18</sup> For an excellent discussion of the Irish President and their direct election, see BV Harris "The Irish President, the New Zealand Governor-General and the Head of State in a Future New Zealand Republic" [2009] NZ Law Review 605.

<sup>19</sup> Samoan Constitution, s 16.

<sup>20</sup> The current Te Reo translation of the Governor-General's position is Te Kāwana Tianara o Aotearoa.

<sup>21</sup> See, for example, the present Law Foundation-funded project being undertaken by Dame Alison Quentin-Baxter and Professor Janet McLean to identify all the powers and functions of the monarch: "Researching Royal Role in NZ" (10 March 2009) <[www.lawfoundation.org.nz/news/read.php?i=63](http://www.lawfoundation.org.nz/news/read.php?i=63)>.

those conventions,<sup>22</sup> but this unnecessarily risks 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.

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.<sup>23</sup> 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 circumspect and not to test the outer boundaries of constitutionality.

The Crown is a metonym for the State or executive government.<sup>24</sup> 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 or Independent State of New Zealand. Again, soft republicans do not see this 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.<sup>25</sup>

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."<sup>26</sup> Even ardent monarchists concede a change to a

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<sup>22</sup> See for example Jamaica (Constitution) Order in Council 1962.

<sup>23</sup> BV Harris "Replacement of the Royal Prerogative in New Zealand" (2009) 23 NZULR 285.

<sup>24</sup> *Town Investments Ltd v Department of the Environment* [1977] 1 All ER 813 at 831; and Noel Cox "The Theory of Sovereignty and the Importance of the Crown in the Realms of The Queen" (2002) 2 Oxford University Commonwealth Law Journal 237.

<sup>25</sup> Rahui Katene MP, Speech on Head of State Referenda Bill (21 April 2010).

<sup>26</sup> Andrew P Stockley "Becoming a Republic? Issues of Law" in Luke Trainor (ed) *Republicanism in New Zealand* (Dunmore Press, Palmerston North, 1996) 81 at 101. See also Brookfield, above n 3.

republic would not alter the status of the Treaty.<sup>27</sup> The reality is that New Zealand's executive government is nowadays responsible for discharging Queen Victoria's original compact with iwi and hapū.<sup>28</sup> That will continue under a republic, with the State assuming those responsibilities.

Beyond the legal status, there remains the question of the more intangible "honour of the Crown" in relation to the Treaty and the symbolism of the Crown in relation to the Treaty. Soft republicans are anxious not to undermine these important elements in any transition. As was said earlier, symbolism matters. Some trust is needed, but it seems extremely unlikely a modern-day state would attempt to repudiate the treasured "honour" of the former Crown. But it is probably Māoridom who have to be satisfied, for it is they as one of the Treaty partners who place some value on this important value. It is hoped, though, that the desire for continuity and minimal change associated with soft republicans is given due weight in their deliberations.

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).

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.<sup>29</sup> 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.<sup>30</sup>

### ***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 earlier this year should not be taken as meaning there is no parliamentary appetite for the commencement of a move to a republic.<sup>31</sup> 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

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<sup>27</sup> Noel Cox, Chairperson for Monarchy New Zealand, quoted in "The People vs The Crown" (*Sunday Star Times*, 30 May 2004).

<sup>28</sup> For a discussion of the meaning of the Crown in the context of the Treaty, see Janet Mclean "'Crown Him with Many Crowns': The Crown and the Treaty of Waitangi" in Claudia Geiringer and Dean R Knight (eds) *Seeing the World Whole: Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington 2008) 48.

<sup>29</sup> Letters Patent Constituting the Office of Governor-General of New Zealand (SR 1983/225), cl 1.

<sup>30</sup> Andrew Townend "The Strange Death of the Realm of New Zealand: The Implications of a New Zealand Republic for the Cook Islands and Niue" (2003) 34 VUWLR 571.

<sup>31</sup> Head of State Referendum Bill 2009 (defeated on 21 April 2010 by 68 votes to 53).



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); recession (a government wanting to be seen to engaged in fixing bigger, more immediate problems). There still remains 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 ownership of the issue by parliamentarians.

The pragmatic approach to constitutional reform associated with soft republicanism looks to the end of the reign of Queen Elisabeth II as an important opportunity. While support for the republic continues to increase (and is strongest amongst the younger generations), there still remains some particular 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 be 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 Elisabeth the Second; or
  - (b) if Queen Elisabeth 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 Elisabeth. 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 time.

## *How?*

It has previously been suggested that it might be technically possible to become a republic with simple amendment to the Constitution Act through ordinary legislation.<sup>32</sup> 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. And putting the issue to a referendum also circumvents the theoretical arguments about Parliament's capacity to effect such a revolutionary change.<sup>33</sup> A referendum ensure a "technical revolution" takes place.<sup>34</sup> The question of whether there is a need for majorities in referenda of both general and Māori rolls, as has been suggested,<sup>35</sup> seems to be drive out of concern for the future status of the Treaty. Such arguments carry less weight for a change which seeks to replicate the structures and relationships of the monarchy and an unchanged and continuing Treaty relationship.

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 proposed.<sup>36</sup> The constitutional arrangements select committee process petered out somewhat.<sup>37</sup> 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.<sup>38</sup> 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 that being presented by a Royal Commission charged with examining that single issue.<sup>39</sup> There is some weight in constitutional reform of this sort being deliberated on by wise people, so that the public can be given comfort about any move.

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<sup>32</sup> Stockley, above n 26, at 98.

<sup>33</sup> See Brookfield, above n 3; and Robin Cooke "The Suggested Revolution against the Crown" in Philip A Joseph (ed) *Essays on the Constitution* (Brookers, Wellington, 1996) 28. Compare Stockley, above n 26, at 99 and Professor Joseph's discussion of "autochthony", above n 7, at 478-485.

<sup>34</sup> Brookfield, *ibid.*

<sup>35</sup> Brookfield, *ibid.*, at 317.

<sup>36</sup> Mike Moore "Banana republic risk, without the bananas" (New Zealand Herald, 14 January 2008).

<sup>37</sup> Constitutional Arrangements Committee *Inquiry to review New Zealand's existing constitutional arrangements* (August 2005).

<sup>38</sup> 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."

<sup>39</sup> Compare with the Royal Commissions on the Electoral System and on Auckland Governance.

## *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. The "Toyota Corolla" model of soft republicanism does no more and no less than is necessary to effect the changes. 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.

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