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NEW ZEALAND CENTRE FOR
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TE WĀNANGA O NGĀ KAUPAPA TURE Ā IWI O AOTEAROA

The New Zealand Centre for Public Law was established in 1996 by the Victoria University of Wellington Council with the funding assistance of the VUW Foundation. Its aims are to stimulate awareness of and interest in public law issues, to provide a forum for discussion of these issues and to foster and promote research in public law. To these ends, the Centre organises a year-round programme of conferences, public seminars and lectures, workshops, distinguished visitors and research projects. It also publishes a series of occasional papers.

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CONSTITUTING THE DEMOCRATIC PUBLIC: NEW ZEALAND'S EXTENSION OF NATIONAL VOTING RIGHTS TO NON-CITIZENS

Fiona Barker and Kate McMillan*

In this article we examine why New Zealand politicians decided to extend the franchise to permanent residents in 1975, and what that decision tells us about New Zealand's constitutional culture. We argue that a detailed examination of the 1975 decision-making processes reveals a much greater degree of pragmatism and incrementalism than existing scholarly accounts of the decision suggest. We further contend that, in this instance at least, incremental decision-making has had radical and far-reaching effects on New Zealand's political culture and practice, even if few of these effects were envisaged in 1975. Granting national voting rights to non-citizens sets New Zealand apart from almost all other democracies and, in so doing, has created a uniquely inclusive political community.

I INTRODUCTION

With its 1975 decision to grant national voting rights to permanent residents after one year's residency, New Zealand added to its international reputation as having highly liberal and inclusive franchise qualifications. Most famously, of course, in 1893 New Zealand was the first country to grant voting rights to women. While universal citizen suffrage is now globally accepted, in respect of non-citizen national voting rights New Zealand remains an outlier. Only Chile, Malawi and Uruguay also give full voting rights to permanent residents irrespective of nationality,[1] but these countries impose residency requirements of five, seven and eight years respectively.

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1 Some other countries allow nationals of selected countries to vote in national legislative elections, usually based on a combination of former colonial relationships (for example Commonwealth citizens in the United Kingdom) and reciprocity rules. See Cristina M Rodríguez "Noncitizen Voting and the Extraconstitutional Construction of the Polity Symposium: The Evolving Concept of Citizenship in Constitutional Law" (2010) 8 ICON 30 and Hervé Andrès "Le droit de vote des residents étrangers est-il une compensation à une fermeture de la nationalité? Le bilan des expériences européennes" (2013) 25 Migrations Société 103.

In one of the few scholarly works to consider the 1975 decision in comparative context, Cristina Rodríguez identifies two strong constitutional traditions as having been influential in the New Zealand case: an egalitarianism and openness derived from a "frontier" mentality, and a strong strain of pragmatism.[2] Her assessment is consistent with (and indeed draws from) domestic legal and political science scholarship that likewise identifies pragmatism as a dominant influence on constitutional rule-making in New Zealand, albeit within a constitutional culture in which egalitarianism – and authoritarianism – also exert influence.[3] Curiously, however, the domestic literature on New Zealand's constitutional traditions and culture has paid scant attention to the decision to extend national voting rights to permanent residents or to that decision's constitutional implications. From a political point of view this is puzzling, given fierce historical and contemporary debates about non-citizen voting in many countries as they grapple with the question of whether, and how, their non-citizen, immigrant-origin populations should be included in the formal political community.[4] From the perspective of New Zealand's constitutional scholarship it is also perplexing, given that constituting the political community is perhaps *the* most fundamental of constitutional acts.

In this article we seek to examine more closely why New Zealand politicians decided to extend the franchise to permanent residents in 1975, and what that decision tells us about New Zealand's constitutional culture. We argue that a detailed examination of the 1975 decision-making processes reveals a much greater degree of pragmatism and incrementalism than existing scholarly accounts

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Australia, for example, allowed British subjects who had been eligible to vote in Australian elections prior to citizenship becoming the qualifying criteria in 1984 to continue voting after that time: see Australian Electoral Commission "British Subjects' Eligibility" <www.aec.gov.au>. A larger number of countries allow at least some portion of non-citizens to vote at the *municipal* level. For instance, in the European Union the Maastricht Treaty provided that nationals of Member States could vote in local elections in their EU country of residence.

2 Rodríguez, above n 1, at 41.

3 Matthew SR Palmer "New Zealand Constitutional Culture" (2007) 22 NZULR 565; and Alan McRobie "The Electoral System" in Philip A Joseph (ed) *Essays on the Constitution* (Brookers, Wellington, 1995) 312.

4 See for example Ludwig Beckham "Citizenship and Voting Rights: Should Resident Aliens Vote?" (2006) 10 Citizenship Studies 153; Sarah Song "Democracy and Noncitizen Voting Rights" (2009) 13 Citizenship Studies 607; Daniel Munroe "Integration Through Participation: Non-Citizen Resident Voting Rights in an Era of Globalisation" (2008) 9 International Migration and Integration 63; André Blais, Louis Massicotte and Antoine Yoshinaka "Deciding Who Has the Right to Vote: A Comparative Analysis of Election Laws" (2001) 20 Electoral Studies 41; Kees Groenendijk *Local Voting Rights for Non-Nationals in Europe: What We Know and What We Need to Learn* (Migration Policy Institute, Washington, 2008); Marco Martiniello "Political Participation, Mobilisation and Representation of Immigrants and their Offspring in Europe" in Rainer Bauböck (ed) *Migration and Citizenship: Legal Status, Rights and Political Participation* (Amsterdam University Press, Amsterdam, 2006) 83; Migrant Integration Policy Index "Political Participation" <www.mipex.eu>; and Han Entzinger and Renske Biezeveld *Benchmarking in Immigrant Integration* (Erasmus University Rotterdam, Rotterdam, 2003).

suggest. Certainly an inclusive egalitarianism also played a role, but in 1975 this inclusiveness was intended less for ethnic minority non-citizens than it was for the "kin" migrants from the United Kingdom who dominated migrant flows at that time.[5]

We suggest that, in this instance at least, incremental decision-making has had radical and far-reaching effects on New Zealand's political culture and practice, even if few of these effects were envisaged in 1975. Granting national voting rights to non-citizens sets New Zealand apart from almost all other democracies and, in so doing, has created a political community with unique political characteristics. In the context of high levels of immigration from diverse sources, for example, enfranchising immigrants not only has the potential to speed up the process of political integration but may also make anti-immigrant politics less politically feasible. Understanding the consequences over time of the non-citizen voting decision can contribute both to reflections on the character of constitutional development in New Zealand and to contemporary international debate about the inclusion of permanent residents within the electorate. We also suggest that ongoing interplay between incremental pragmatism and inclusive egalitarianism in the New Zealand context helps explain why an issue so bitterly contested in other jurisdictions remains uncontroversial 40 years after the enabling legislation passed quietly in 1975.

We begin the article with a brief examination of the debates concerning the character of constitutional change in New Zealand, looking in particular at the dominant view that evolution not revolution, and pragmatism more often than idealism, have driven constitutional development. We then consider the 1975 decision to change the franchise qualification from British subjecthood to residency in light of this debate, assessing the evidence that it too is an example of "pragmatic evolution". In doing so, we aim to contribute to national and international literature on how New Zealand became a "global leader in the expansion of the franchise".[6]

II CONSTITUTIONAL CHANGE AND CONSTITUTIONAL CULTURE IN NEW ZEALAND

A dominant narrative of the history of, and approach to, constitutional development in New Zealand has been, to use the words of the 2005 Constitutional Arrangements Committee Review, that of "pragmatic evolution".[7] Arguably, this has been facilitated by the uncodified nature of New Zealand's constitution, including the important place of constitutional conventions and the absence

5 Malcolm McKinnon *Immigrants and Citizens: New Zealanders and Asian Immigration in Historical Context* (Institute of Policy Studies, Victoria University of Wellington, Wellington, 1996); and David Pearson "Rethinking Citizenship in Aotearoa/New Zealand" in Paul Spoonley, Cluny Macpherson and David Pearson (eds) *Tangata Tangata: The Changing Ethnic Contours of New Zealand* (Thomson Dunmore Press, Melbourne, 2004) 291.

6 Rodríguez, above n 1.

7 Constitutional Arrangements Committee *Inquiry to Review New Zealand's Existing Constitutional Arrangements* (August 2005) at 12.

of guidance on the process of constitutional change.[8] "Evolution" refers to the fact that changes to the country's constitutional framework have generally been made in an incremental fashion and over a long period of time.[9] "Pragmatic" refers to how political leaders and citizens have tended to approach constitutional development. In his recent delineation of the norms of New Zealand's constitution, Matthew Palmer identified "pragmatism" (alongside egalitarianism and authoritarianism) as one of three key elements of the constitutional culture that underpins the country's constitutional framework.[10] Such descriptions have, as Elizabeth McLeay notes, led to "conceptual assumptions" about the importance of pragmatism in New Zealand's constitution.[11]

The dominant concept of "pragmatism" has in fact been used to express multiple things. Take, for instance, Palmer's articulation of New Zealand's constitutional culture as one of "change by innovative pragmatism, evolving new constitutional meanings and mechanisms to address problems as they arise."[12] By this account, pragmatism could mean innovative, evolutionary, reactive, or all of these things. We therefore believe it is important to distinguish at least three related strands of pragmatism evident in the literature – first, pragmatism may mean incrementalist or even "under the radar". On this view, there is a strong tradition in New Zealand of dealing with constitutional change "piece by piece",[13] rather than engaging in thoroughgoing change at particular moments in time. Palmer and Palmer, for instance, describe a long and slow "whittling away" of the New Zealand Constitution Act 1852, as subsequent laws over the course of the twentieth century slowly but surely altered constitutional rules and practice.[14] Such piecemeal development is associated with change occurring without substantial public debate and thereby "transforming rights and powers relatively imperceptibly",[15] even where the changes themselves may be of constitutional

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8 Elizabeth McLeay "'Building the Constitution': Debates; Assumptions; Developments 2000–2010" in Caroline Morris, Jonathan Boston and Petra Butler (eds) *Reconstituting the Constitution* (Springer, Berlin, 2011) 3; and Andrew Sharp "Constitutionalism" in Raymond Miller (ed) *New Zealand Government and Politics* (4th ed, Oxford University Press, Melbourne, 2006) 103.

9 Bruce Harris "Constitutional Change" in Raymond Miller (ed) *New Zealand Government and Politics* (4th ed, Oxford University Press, Melbourne, 2006) 115.

10 Palmer "New Zealand Constitutional Culture", above n 3.

11 McLeay, above n 8.

12 Matthew SR Palmer *The Treaty of Waitangi in New Zealand's Law and Constitution* (Victoria University Press, Wellington, 2008) at 297. "Constitutional culture" is understood to mean the product of factors both affecting and reflecting national culture, which is articulated in the attitudes of both citizens and leaders towards how public power is, and should be, exercised.

13 Constitutional Arrangements Committee, above n 7, at 12.

14 Geoffrey Palmer and Matthew Palmer *Bridled Power: New Zealand's Constitution and Government* (4th ed, Oxford University Press, Melbourne, 2004) at 7.

15 Constitutional Arrangements Committee, above n 7, at 17.

significance. Thus, former Governor-General, Dame Sylvia Cartwright, spoke of the way in which political and constitutional change in New Zealand is "often unheralded and sometimes even slips in almost by the back door."[16]

A second view is of pragmatism as meaning anti or atheoretical. Attributed sometimes to the lingering effects of early "pioneer" settler mentality and colonial culture, the national culture is described as possessing a "minimum of introspection".[17] New Zealanders themselves are characterised as "not that much interested in their constitution"[18] and as preferring practical approaches to problems, rather than grand, abstract theorising.[19] Sir Geoffrey Palmer suggested that the paltry eight submissions received by the select committee examining the Constitution Act 1986 was evidence of just such a lack of interest in constitutional questions.[20] Clearly, many laws in recent decades (for example, electoral system change, and the Foreshore and Seabed legislation) have in fact aroused considerable public interest, although arguably voters viewed them primarily as political questions, with less regard for the broader constitutional implications.[21]

A third strand evident in the literature is that of pragmatism as ad hoc or reactive decision making. On this view, constitutional change – sometimes quite significant – has often occurred as policy makers responded in real time to political events and circumstances.[22] In negotiating their way through pressing political circumstances that present themselves at particular points in time, New Zealand's political leaders – and therefore constitutional practices – have been "impelled towards ad hoc pragmatism".[23] Indeed, linking back to the notion of an atheoretical current in the national culture, some have wondered if this characteristic is normatively appealing precisely because it avoids grand, but difficult, constitutional conversations; it muddles through to fix constitutional problems as required, but otherwise it allows the status quo to prevail.[24]

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16 Palmer and Palmer, above n 14.

17 Philip A Joseph "Introduction" in *Essays on the Constitution* (Brookers, Wellington, 1995) 1 at 1.

18 Sharp, above n 8, at 108.

19 Charlotte McDonald "What Constitutes Our Nation: How Do We Express Ourselves?" in Colin James (ed) *Building the Constitution* (Institute of Policy Studies, Victoria University of Wellington, Wellington, 2000) 81; and Constitutional Arrangements Committee, above n 7, at 12.

20 Geoffrey Palmer "The Legal Framework of the Constitution" in Colin James (ed) *Building the Constitution* (Institute of Policy Studies, Victoria University of Wellington, Wellington, 2000) 182.

21 Sharp, above n 8.

22 Constitutional Arrangements Committee, above n 7; and Palmer "New Zealand Constitutional Culture", above n 3.

23 Palmer "New Zealand Constitutional Culture", above n 3, at 571.

24 Palmer "The Legal Framework of the Constitution", above n 20; Andrew Ladley "Who Should be Head of State?" in Colin James (ed) *Building the Constitution* (Institute of Policy Studies, Victoria University of

These three strands are clearly closely related and the overall picture of pragmatism that emerges is consistent with assessments of New Zealand's broader political culture as informal and flexible.[25] Indeed, many political observers and practitioners argue that this description not only characterises political and constitutional practice, but also reflects what New Zealanders want – evolution not revolution,[26] and the practical rather than the abstract or theoretical.[27] Moreover, they "shy away from"[28] constitutional issues and are largely uninterested in a constitutional framework that few view as broken.[29]

Needless to say, too much emphasis on a master narrative of pragmatism risks overstating the evolutionary nature of New Zealand's constitutional development. The incrementalist appearance of the country's constitutional development belies many quite significant changes that have been made, especially in recent decades, which makes of New Zealand's constitution a "constantly moving caravan".[30] Most recently, the changes to the electoral system in the 1990s and the creation of the Supreme Court (and concomitant abolition of the right of appeal to the Privy Council) demonstrate that major constitutional change can and does occur. While electoral system change responded to clearly expressed public opinion, other significant changes have occurred under the radar but not in a reactive sense. Thus, McLeay noted in relation to the creation of the Supreme Court, there was "no immediate reason for change",[31] such as crisis or scandal. Rather, individual political entrepreneurship and ideals were key drivers of the patriation of New Zealand's highest court. Similarly, the abolition of the Legislative Council in 1950 came from an initiative of the

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Wellington, Wellington, 2000) 267; and Lord Cooke of Thorndon "Submission to the Constitutional Arrangements Committee on the Inquiry to Review New Zealand's Existing Constitutional Arrangements".

25 Fiona Barker "Political Culture: Patterns and Issues" in Raymond Miller (ed) *New Zealand Government and Politics* (5th ed, Oxford University Press, Melbourne, 2010) 13. "Political culture" refers to the underlying and long-lasting shared values and attitudes, symbols and meanings, held by political elites and/or mass publics regarding political action and the political system. See generally Gabriel Almond and Sidney Verba *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton University Press, New Jersey, 1963); and Paul Lichterman and Daniel Cefaï "The Idea of Political Culture" in Robert Goodin and Charles Tilly (eds) *The Oxford Handbook of Contextual Analysis* (Oxford University Press, Oxford, 2006) 392.

26 Ladley, above n 24; and Mason Durie "A Framework for Considering Constitutional Change and the Position of Māori in Aotearoa" in Colin James (ed) *Building the Constitution* (Institute of Policy Studies, Victoria University of Wellington, Wellington, 2000) 414.

27 MacDonald, above n 19.

28 Geoffrey Palmer "The Bill of Rights after Twenty-One Years: the New Zealand Constitutional Caravan Moves On?" (2013) 11 NZJPIL 257 at 277.

29 Sharp, above n 8; and Harris, above n 9.

30 Palmer "The Bill of Rights after Twenty-One Years", above n 28, at 258.

31 McLeay, above n 8, at 26.

government of the time, but not in reaction to any particular or urgent crisis. Such changes may be pragmatic in the sense of occurring largely under the radar, but should not be viewed as necessarily atheoretical or devoid of ideals.

Our examination of national voting rights for non-citizens suggests a similar picture of the interplay among the different elements of pragmatism. Our empirical discussion in the next section shows that the historical record supports an interpretation of the 1975 extension of voting rights as a case of ad hoc or reactive decision-making, whereby policy makers perceived a need to update the electoral framework to reflect prior changes in the nationality law framework. At the same time, it occurred largely under the radar, being subject to little sustained or public debate, despite having major consequences for the composition of the body politic. Parliamentarians did not act without reflection; they were attentive to principles of non-discrimination. Yet, they did not necessarily take into account the extent of the change they were making to political membership categories. While they expressed an explicit desire not to discriminate against kin-migrants, the larger and longer-term effect of the law change was to enfranchise all permanent resident aliens, a population which at the time was only just beginning to diversify.

As noted earlier, aside from arguments of pragmatism, ideals and idealism have been cited as occupying an important place in New Zealand's political and constitutional culture. On this interpretation, traditions of idealism, inclusiveness and liberality in the franchise are central to national identity and self-understanding.[32] Egalitarianism may also be a contributing ideal in accounts of democratic expansion in New Zealand.[33] Thus, Neill Atkinson argues that the "piecemeal and pragmatic" appearance of political and constitutional reforms in New Zealand should not be read too simplistically as an "absence of principle or intellectual debate".[34] Both pragmatism and principle, he suggests, have been important.

In the next section we examine the act of polity enlargement that occurred with the Electoral Amendment Act 1975. In laying out the passage of the legislation and the limited political debate surrounding it, we assess the extension of the vote to permanent residents in light of the elements of constitutional culture discussed above.

III REDRAWING THE BOUNDARIES OF THE POLITICAL COMMUNITY: THE ELECTORAL AMENDMENT ACT 1975

A constitution's function – to set out rules about the exercise of "public" power – places "the public" at its heart. It is this public who is assumed to both exercise and be subject to public power.

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32 Rodríguez, above n 1, at 32.

33 Palmer "New Zealand Constitutional Culture", above n 3, at 571.

34 Neill Atkinson *Adventures in Democracy: A History of the Vote in New Zealand* (University of Otago Press, Dunedin, 2003) at 237.

Yet, discussions of constitutions frequently take for granted the composition and identity of the publics they invoke. Most often, unreflexive reference is made to the "citizenry" or the "nation", even though the boundaries around a "citizenry", a "nation", a resident population, and even those able to exercise a degree of "self"-government are seldom fully aligned. This is true not just of societies with imperial and post-colonial histories,[35] but also of societies with large immigrant and expatriated populations where migration experiences serve to "blur" traditional notions of the association between the territorial boundaries of the state, the political boundaries of citizenship and the cultural boundaries of the national community.[36]

Empirically, there is enormous historical and international variation in the way that those exercising public power have delineated membership categories, allocated rights and duties to those in specific membership categories and, in so doing, constituted their "publics". Decisions about whom to count amongst the members of a community can draw from a range of principles. These include, but are not limited to, the view that allocation of membership rights is appropriately based on one or more of the following types of community: descent (those born to member parents), residence (those born or resident in the territory), affected interest (those affected by the decisions made by public law-makers),[37] and contribution (those, such as taxpayers, whose contributions to the public purse might justify their participation in decisions about public spending). National constitutions give different weight to each of these (and other) understandings of who does and does not belong within the constitutional public. Even under the same constitution members of such communities might be treated equally in respect of some rights and obligations and differently in respect of others, thus creating classes or gradations of membership. For example, virtually all residents, whether temporary, permanent, citizen or non-citizen, are subject to the law and expected to pay taxes if they are working in the country, but they may not all be equally entitled to full social, let alone political, rights.

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35 In New Zealand, who or what constitutes the "nation" has always been a vexed question in light of both the fraught relationship among the founding peoples of the society since the Treaty of Waitangi and the country's hesitant path out of colonialism. For instance, development of New Zealand's national identity has been characterized by a lack of agreement about whether New Zealand comprises one people or two and by contestation as to how the various groups in society should relate to one another. As Michael King once noted, New Zealand could be seen as "representing at least two cultures and two heritages, very often looking in two different directions": Michael King *The Penguin History of New Zealand* (Penguin Books, Auckland, 2003) at 167.

36 Rainer Bauböck "The Crossing and Blurring of Boundaries in International Migration. Challenges for Social and Political Theory" in Rainer Bauböck and John Rundell (eds) *Blurred Boundaries: Migration, Ethnicity, Citizenship* (Ashgate, Aldershot (UK), 1998) 17.

37 There are varied interpretations of how to define which interests are affected, given that in some cases non-resident non-citizens with extensive financial interests in a country could argue that they fall into the "affected interests" category. Most interpretations, though, accept that non-citizen long-term immigrants would qualify under any definition of affected interests. Rainer Bauböck "Expansive Citizenship: Voting beyond Territory and Membership" (2005) 38 Political Science and Politics 683.

In representative democracies such as New Zealand, the act of choosing political representatives is perhaps the defining characteristic of full membership of the political community. After all, the opportunity to vote is an opportunity to amend the constitution itself. Franchise decisions are, therefore, arguably more inherently "constitutional" than decisions about allocating social rights, for example.[38] With respect to the principles underlying allocation of the franchise there is broad agreement within the international community that citizenship, or formal membership of the state, is the appropriate basis on which to allocate voting rights. Of course, citizenship itself can be distributed on the basis of descent (*jus sanguinis*) or birth in a territory (*jus soli)* or naturalisation through residency or marriage. As traditional ideal-typical models of national citizenship assumed near-perfect overlaps between communities of descent, birth and residence, as well as those of culture and nation, citizenship theorists tended to assume that granting voting rights on the basis of citizenship would accommodate the various claims for participation rights that spring from these different communities.[39] In recent decades, however, scholars have noted a growing disconnect between the political-territorial model of modern nation-state citizenship and the realities of how individuals relate in practice to (often multiple) territorial political entities as a result of regional integration (for example, the European Union), growing numbers of multi-level states, and immigration.[40] Despite this, in the vast majority of countries voting rights remain strongly tied to the territorial political community, via citizenship requirements. Most deviations from it involve municipal-level voting rights or a limited set of reciprocal voting rights.[41] In this context, the New Zealand decision in 1975 not to limit voting rights only to citizens but expand it to permanent residents looks particularly radical.

We now turn to trace the process by which New Zealand politicians deviated from an emerging international norm of tying national voting rights to citizenship. Like other former colonies, New Zealand's constitutional development has been a long process of disentanglement from its colonial past. In relation to decisions about the franchise, this required a reconceptualisation of political community from one based on an imperial understanding of membership and belonging to an explicitly national one. As we argue below, in New Zealand this shift has been incremental and sometimes reluctant. The picture that emerges is one of nuanced interplay between idealism and pragmatism, theoretically informed and ad hoc decision-making, and "quick-fix" measures that,

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38 Indeed, the Electoral Act 1993 is the only piece of New Zealand legislation to contain entrenched clauses – see s 268.

39 TS Marshall *Citizenship and Social Class* (Cambridge University Press, Cambridge, 1950).

40 Rainer Bauböck "Studying Citizenship Constellations" (2010) 36 Journal of Ethnic and Migration Studies 847; and Daniel Archibugi, David Held and Martin Köhler (eds) *Reimagining Political Community: Studies in Cosmopolitan Democracy* (Stanford University Press, Stanford, 1998).

41 Blais, Massicotte and Yoshinaka, above n 4; Beckham, above n 4; Song, above n 4; Munroe, above n 4; Groenendijk, above n 4; and Martiniello, above n 4.

whether by accident or design, became a permanent and extraordinary feature of the New Zealand constitutional landscape.

Representative government was established in New Zealand with the passage of the New Zealand Constitution Act 1852. Voting rights at that time were restricted to male, property-holding British subjects over the age of 21. Property and gender requirements did not last the nineteenth century, but British subjecthood endured as a necessary franchise qualification for almost 100 years, and a quarter of a century after the New Zealand Citizenship Act 1948 created the status of New Zealand citizens. New Zealand was not alone in this: the settler societies of Canada and Australia had likewise maintained British subjecthood as the basis of political rights until developments in the 1970s and 1980s led each to question Britishness as an appropriate qualification for voting rights.[42]

Questioning of the basis of voting rights was prompted in large by the United Kingdom's gradual abandonment of the concept of imperial belonging, previously embedded in both its own nationality laws and those of its former colonies.[43] From 1962, the United Kingdom had begun to restrict immigration and abode rights for those from the Commonwealth and to draw greater legal distinctions between British subjects born in the United Kingdom (and their children), and those without British ancestry.[44] The United Kingdom's movement away from an imperial and Commonwealth-based model of political community forced the hand of the settler societies of New Zealand, Australia and Canada, who began themselves to emphasise the distinctive national basis of their own political communities. From the 1970s all three countries moved to drop legal distinctions between Commonwealth and non-Commonwealth citizens and to halt "free" immigration for British subjects, and in New Zealand the words "British subject" were dropped from New Zealand passports in 1974.[45] The United Kingdom's decision to join the European Community in 1971 has

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42 Gianna Zappalà and Stephen Castles "Citizenship and Immigration in Australia" in T Alexander Aleinikoff and Douglas Klusmeyere (eds) *From Migrants to Citizens: Membership in A Changing World* (Carnegie Endowment for International Peace, Washington DC, 2000) 32; Helen Irving "Citizenship and Subject-hood in 20th Century Australia" in Pierre Boyer, Linda Cardinal and David Headon (eds) *From Subjects to Citizens A Hundred Years of Citizenship in Australia and Canada* (University of Ottawa Press, Ottawa, 2004) 16; and Elections Canada "The Evolution of the Electoral Franchise" <www.elections.ca>.

43 Ann Dummett and Andrew Nichol *Subjects, Aliens, Citizens and Others: Nationality and Immigration Law* (Northwestern University Press, Evanston (Ill), 1990); and Reiko Karatani *Defining British Citizenship: Empire Commonwealth and Modern Britain* (Frank Cass Publishers, London, 2003).

44 Laurie Fransman *Fransman's British Nationality Law* (Fourmat Publishing, London, 1989).

45 Kate McMillan "Developing Citizens, Subjects, Aliens and Citizens in New Zealand Since 1840" in Paul Spoonley, Cluny MacPherson and David Pearson (eds) *Tangata Tangata The Changing Ethnic Contours of New Zealand* (Thomson, Southbank (VIC), 2004) 267.

been well documented as emphasising to New Zealand the declining role imperial relations were likely to play in its economic and social future.[46]

New Zealand, Australia and Canada thus faced a common challenge with the United Kingdom's post-imperialist re-definition of its national identity, and did so at a time of growing international focus on both decolonisation and universal human rights. Pushed to redraw the boundaries around the "self" entitled to be self-governing, all three came to the conclusion that British subjecthood was no longer the appropriate basis on which to allocate voting rights. Faced with the task of deciding what should replace subjecthood, Australia and Canada chose what seemed the logical choice in a post-colonial world – national citizenship.[47] New Zealand politicians, however, rejected this option. Section 39 of the New Zealand Electoral Act 1956 had required electors to be a "British subject ordinarily resident in New Zealand [who] had resided in New Zealand continuously for at least 1 year." The amending legislation in 1975 simply dropped the British subject requirement, while retaining the residency requirement.

Archival records give few clues as to why the third Labour Government bucked the emerging post-colonial norm of tying voting rights to citizenship. Certainly, the Electoral Act Committee established in 1973 to consider changes to the Electoral Act 1956 was aware that Canada had already replaced British subjecthood with Canadian citizenship as the basis for franchise, and that Australia intended to follow suit. They were also provided extracts from Michel Ameller's 1966 comparative study of parliaments which stated: "the primary condition for the exercise of the franchise embodied in all codes of electoral law is that of nationality."[48] Initial advice from both the Chief Electoral Officer to the Electoral Act Committee and the Secretary of Justice to the Minister of Justice was that New Zealand citizenship was now the appropriate qualification to be an elector.[49]

An examination of the wider content and context of the Electoral Amendment Bill 1973 suggests this could be seen as a liberalising moment in New Zealand, and one in which ideals,

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46 James Belich *Paradise Reforged: A History of the New Zealanders from the 1880s to the Year 2000* (Penguin, Auckland, 2001); Malcolm McKinnon *Independence and Foreign Policy: New Zealand in the World since 1935* (Auckland University Press, Auckland, 1993); and David Capie "New Zealand and the World: Imperial, International and Global Relations" in Giselle Byrnes (ed) *The New Oxford History of New Zealand* (Oxford University Press, South Melbourne, 2009).

47 Irene Bloemraad *Becoming a Citizen: Incorporating Immigrants and Refugees in the United States and Canada* (University of California Press, Berkeley, 2006).

48 Inter-parliamentary Union *Parliaments: A Comparative Study of the Structure and Functioning of Representative Institutions in Fifty-Five Countries* (2nd ed, Cassell, London, 1966).

49 Kate McMillan "National Voting Rights for Permanent Residents: New Zealand's Experience" in Anja Weisbrock and Diego Acosta (eds) *Global Migration: Problems and Solutions* (Praeger International, Santa Barbara, 2014).

particularly those of non-discrimination and inclusive egalitarianism were important. The early 1970s were a period of heightened interest by the former settler society governments in non-discrimination as a principle guiding legislation and policy.[50] New Zealand's ratification of the International Convention on the Elimination of All Forms of Racial Discrimination in 1972 had motivated the passage of domestic anti-discrimination law in the form of the Race Relations Act 1971.[51] Similar anti-discrimination trends existed in Canada and Australia, as both countries abolished explicit racial preferences in immigration policy and adopted official multiculturalism policies in the 1970s.[52] The new Labour Government elected in New Zealand in 1972 increasingly emphasised the bicultural nature of New Zealand society.[53]

Other changes proposed by the Electoral Amendment Bill also favoured a more rather than less inclusive definition of eligibility for voting rights: the lowering of the voting age from 21 to 18;[54] the enfranchisement of convicted prison inmates; a reduction of the residential qualification for electoral enrolment from three months to one month in an electorate; and rules to allow those incorrectly enrolled on election day to vote.[55] Perhaps the most important, and certainly the most debated, element of the Bill was the proposal for "cultural self-identification" to replace a race-based definition of "Māori" for those wishing to enrol on the Māori electoral roll.[56] Further, the Bill proposed that the Representation Commission use the same population ratio calculations for Māori

50 David Dutton *One of Us?: A Century of Australian Citizenship* (UNSW Press, Sydney, 2002); James Walter and Margaret MacLeod *The Citizens' Bargain: A Documentary History of Australian Views Since 1890* (UNSW Press, Sydney, 2002); King, above n 35; and Boyer, Cardinal and Headon, above n 42.

51 International Convention on the Elimination of All Forms of Racial Discrimination 660 UNTS 195 (opened for signature 21 December 1965, entered into force 4 January 1969). Human Rights Commission *Human Rights In New Zealand Ngā Tika Tangata o Aotearoa* (Wellington, 2010) at 56–73.

52 François Houle "Canadian Citizenship and Multiculturalism" in Pierre Boyer, Linda Cardinal and David Headon (eds) *From Subjects to Citizens: A Hundred Years of Citizenship in Australia and Canada* (University of Ottawa Press, Ottawa (ONT), 2004) 217. In Canada, it was not only a move towards ideals of anti-discrimination that motivated a turn to multiculturalism. The context of competitive federal and provincial nation-building projects and the desire of Prime Minister Trudeau to confront rising Quebec nationalism also drove the implementation of federal multiculturalism. See Fiona Barker "Learning to be a Majority: Negotiating Immigration, Integration and National Membership in Quebec" (2010) 62 Political Science 1.

53 Brian Easton *The Nationbuilders* (Auckland University Press, Auckland, 2001); and Augie Fleras and Paul Spoonley *Recalling Aotearoa: Indigenous Politics and Ethnic Relations in New Zealand* (Oxford University Press, Auckland, 1999).

54 Electoral Amendment Bill 1974 (124-1), cl 2.

55 Electoral Amendment Bill 1975 (33-2), cls 17, 19 and 38.

56 Atkinson, above n 34, at 187.

seats as for general seats, which meant the number of Māori seats would no longer be fixed at four, but instead could increase if more Māori opted on to the Māori electoral roll.[57]

The Electoral Act Committee received 34 submissions on the Bill – only three concerned the proposed changes to the franchise requirements in s 39. That so few people saw the change as warranting a submission itself says something about the equanimity with which the proposal was viewed, although it also seems clear that the issue was overshadowed by the other aspects of the Bill, particularly the question of Māori electoral representation. All three submissions supported the removal of British subjecthood as an appropriate qualification for voting, but only one (from the Republican Movement) suggested that New Zealand citizenship should replace it.[58] The other two, from the School of Political Science and Public Administration at Victoria University, and the Auckland University Labour Club, both argued that the principle of non-discrimination was the appropriate one on which to base a decision about voting rights.[59] A version of the "affected interest" principle was also important for the Auckland University Labour Club, who argued that permanent residency was the appropriate qualification because those who are resident in New Zealand have "as much concern about this country as citizens".[60]

In their final report on the Bill, the Electoral Select Committee agreed that British subject status was out-dated as a franchise qualification, but were concerned that the restriction of voting rights to citizens would exclude many residents who could previously vote:[61]

> [101] The Committee feels that British nationality is no longer the characteristic which distinguishes a New Zealander: it is New Zealand citizenship. Unfortunately, many who have taken up residence in New Zealand and are British subjects or Irish citizens have not become New Zealand citizens. Canada has already restricted the right to vote by and large to Canadian citizens and Australia is considering similar changes.

Curiously, in expressing its desire to maintain the the status quo in relation to previously-enfranchised British subjects and Irish citizens, almost all of whom would have been white, English

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57 At 187.

58 Republican Movement "Submission to the Electoral Select Committee on the Electoral Amendment Bill 1973". Held in Archives New Zealand, National Archives reference number ABCL W4035 Box 8, Record Number E 1 / 2, Part 2, 1974–1975.

59 RM Alley, JA Halligan, PR Harris, JL Roberts and AD Robinson "Submission from the Victoria University of Wellington School of Political Science and Public Administration to the Electoral Select Committee on the Electoral Amendment Bill 1973". Auckland University Labour Club, "Submission to the Electoral Select Committee on the Electoral Amendment Bill 1973". Both submissions are held at Archives New Zealand: National Archives reference number ABCL W4035 Box 8, Record Number E 1 / 2, Part 2, 1974–1975.

60 Auckland University Labour Club, above n 59.

61 Electoral Select Committee "Final Report" [1975] IV AJHR I15.

speaking migrants, the Select Committee neglected to mention the most radical change the Bill would bring about – the enfranchisement of "aliens", or those who had never held British subject status. Historically aliens had been barred from voting in national elections, most recently by the Aliens Act 1948.[62] However, they had been able to vote in local elections since 1926.[63]

The absence of discussion about the implications of extending the vote to ethnically, linguistically and religiously diverse migrants suggests either that the Select Committee members were unconcerned about the prospect, or had not yet considered the possibility of such a migrant flow. The latter conclusion seems at least plausible. At the time of the Select Committee's considerations in 1974 New Zealand was yet to experience significant immigration from non-"kin" countries. Only 2.6 per cent of New Zealand's population came from ethnic groups other than the official categories of "European" (89.5 per cent) or "Māori" (7.9 per cent).[64] Although a 1974 immigration policy review prompted both the end of assisted passages for immigrants from some European countries and the requirement for British nationals to obtain immigration permits just like immigrants from any other country, in practice the existing ethnic composition continued to be pursued into the 1970s through selection of migrants from "preferred source countries".[65] This belies the view, noted earlier, of the third Labour Government as fully supportive of either ethnic diversity or the non-discrimination principle that guided its thinking in other policy areas. Further, the treatment of some non-white non-citizen residents confirms an attitude towards non-British migration flows that was less than relaxed. From 1974, the Kirk Government (and the National Government after it) conducted the infamous "Dawn Raids" – early morning visits to the residences of those suspected of having overstayed their visas, focused on Pacific peoples from Samoa, Tonga and Fiji.[66] Pacific immigrants, of whom there were around 50,000 at the time, constituted the largest non-Māori, non-European segment of the population.[67] After being invited to fill labour shortages in the booming manufacturing industry during the 1950s, and having their visa status overlooked as long as the manufacturing jobs remained, Pacific migrants became targets of the "Dawn Raids" and of forcible deportation during the economic recession of the 1970s. Evidence that Pacific

62 Aliens Act 1948, s 3(2).

63 Local Elections and Polls Amendment Act 1926, s 17(4).

64 New Zealand Department of Statistics *The Population of New Zealand 1974, United Nations Committee for International Coordination of National Research in Demography Series* (Wellington, 1974).

65 Note, though, that the New Zealand government did agree in 1977 to a sustained programme of resettlement of refugees from Cambodia, Laos and Vietnam. See Man Hau Liev "Refugees from Cambodia, Laos and Vietnam" in Stuart Greif (ed) *Immigration and National Identity in New Zealand: One People, Two Peoples, Many Peoples?* (Dunmore Press, Palmerston North, 1995) 99.

66 Andrew D Trlin "New Zealand's Admission of Asians and Pacific Islanders" (1987) 5 Centre for Migration Studies Special Issue 199 at 205.

67 Statistics New Zealand "The New Zealand Official Year-book, 1975" (October 1975) <www.stats.govt.nz>.

"overstayers" were selectively targeted, while the visa status of those from the United Kingdom was frequently overlooked,[68] supports a view of the 1970s as a period during which a nascent value of non-discrimination, although growing in significance, was not yet applied equally to all members of society. Thus, the non-discrimination and egalitarian principles identified earlier co-existed uncomfortably with legacies of racially discriminatory policy and practice.

The picture that emerges from the Select Committee's considerations is thus a complicated one evincing nuanced interplay between ideals of non-discrimination, a conservative reluctance to break from historical membership practices, and a disinclination to theorise the concept of national citizenship as a basis for voting rights. Perhaps even more significantly, a large dose of reactive ad hoc decision-making may be detected here: the Select Committee's recommendation that residency become the new basis for allocating voting rights was accompanied by a further recommendation that a new Bill be introduced in the next Parliamentary term that consider seriously the issue of restricting national voting rights to New Zealand citizens:[69]

> [102] The Committee does not feel the present moment is the opportune time to change the basic requirements in section 39 to New Zealand citizenship but believes that this should be considered when the Act is consolidated next year.

In other words, the Electoral Act Committee in 1975 did not explicitly commit itself to either inclusivity or non-discrimination as principles in its deliberations. Rather, they saw the s 39 changes as a temporary solution designed to avoid the sudden disenfranchisement of British subjects who had not taken out New Zealand citizenship, and who had hitherto been able to vote in both national and local elections.[70] As the new National Government that took office in 1975 did not take up the recommendation to introduce and debate a new Bill more thoroughly, the permanent residency franchise remained. In this light, the granting of voting rights to non-citizens looks less like an example of New Zealand politicians exercising a national trait of franchise inclusivity, and more like another example of a "quick fix" measure that endured past its intended "use by" date,[71] but one that went on to mark New Zealand as a global leader in the franchise.

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68 Paul Spoonley and Richard Bedford *Welcome to our World?: Immigration and the Reshaping of New Zealand* (Dunmore Publishing, Auckland, 2012) at 134.

69 Electoral Select Committee, above n 61.

70 See Electoral Select Committee, above n 61, at [100]–[104].

71 Ideals and political compromise often go together. While ideals were undoubtedly crucial to the power of the grass-roots suffrage movement in the late nineteenth century, the final passage of the Electoral Act 1893 that extended the suffrage to women was, on close reading, as much accident as conviction. See Atkinson, above n 34, at 81–85. The provision of guaranteed Maori seats in the House of Representatives through the Maori Representation Act 1867 illustrates a similarly complex relationship between accident, political compromise and ideals, and many electoral regulations and administrative practices have existed over time that rendered the Maori franchise, and thus Maori political participation more broadly, more restrictive than

In his speech supporting the s 39 changes during the Second Reading in 1975, the Hon Michael Bassett, Member for Waitemata, said little to support a view that the s 39 changes were driven by deep theoretical consideration of, or commitment to, their constitutional implications. Certainly, the appeal to liberal egalitarianism is there, but without reference to the scope of those embraced by his vision of an inclusionary electorate:[72]

> This Bill suggests that at least there shall be equal rights. One does not have to be a British subject any longer; one has only to be over the age of 18, be intending to reside permanently in NZ, and have been here 3 months or more. That will constitute entitlement to vote. Some people born in other countries have liked to go through the naturalisation ceremony and become New Zealand citizens, but some have not wanted to do that. It has often been a matter of like or dislike of the ceremony, and I do not see why the right to vote should be attached to those people who are prepared to go through the ceremony and denied to the others.

Bassett's extraordinary disinclination to see naturalisation as a significant marker of belonging is in keeping with a national history in which immigration policies, not citizenship policy, did the hard work of policing membership categories. As McMillan has argued elsewhere, in the virtual absence of migration from non-European countries,[73] Bassett's comment could have reflected:[74]

> … ethnic and imperial conceptions of political community in which migrants – still overwhelmingly British, Australian or Dutch – might be assumed to be sufficiently similar to native-born New Zealanders to make any formal transition from "migrant" to "citizen" unnecessary.

In this, Bassett's comments, and those in the Select Committee's final report, exhibit what Parliament's Constitutional Arrangements Committee in 2005 articulated as New Zealanders' "instinct to fix things when they need fixing, when they can fix them, without necessarily relating them to any grand philosophical scheme."[75]

Further complicating this story, however, is that in respect of the decision as to who should be eligible to *stand* for Parliament, it was decided that citizenship, not permanent residency, would henceforth be the necessary qualification, although a grandfathering provision allowed those

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the narrative of guaranteed and inclusionary representation suggests. See Andrew Geddis "A Dual Track Democracy? The Symbolic Role of the Māori Seats in New Zealand's Electoral System" (2006) 5 Election Law Journal 347.

72 (12 June 1975) 398 NZPD 2095.

73 The largest source of non-European migrants was from the Pacific Islands, constituting 7.3 per cent of those born overseas at the time of the 1971 census. Statistics New Zealand, above n 64.

74 McMillan, above n 49.

75 Constitutional Arrangements Committee, above n 7.

registered as a voter on 22 August 1975 to retain their eligibility to stand as a candidate.[76] This suggests that the Electoral Act Committee and the Labour Government were indeed open to the view that citizenship was the appropriate membership category for at least some political roles. It also raises the question of why the grandfathering provision proposed in relation to the right to stand for political office was not similarly employed to govern the right to vote. Canada and Australia had used just such a provision to ensure previously eligible British subjects were not disenfranchised. Legislators clearly were of the view that the boundaries around eligibility for being a legislator needed to be drawn more tightly than those around the voting public. This is in keeping with the notion of New Zealand having a tradition of liberality in relation to the franchise, and a tendency to rely more than other democracies on "affected interest" arguments in drawing the line around who is eligible to vote.

The Electoral Amendment Act 1975 passed without fanfare, significantly liberalising the franchise in a number of ways beyond the introduction of permanent resident voting rights. In its totality, the 1975 Act should be seen as heavily influenced by ideals of inclusivity, although, as detailed above, these do not seem to have been well theorised in relation to non-citizen voting. In most of its aspects, the liberalising window of the mid-1970s was brief. After the National party regained the government benches at the end of 1975, it returned the number of Māori seats to the fixed number of four seats.[77] Then, in 1977 it put the residential qualification back up to three months, disallowed the election-day registration that had been allowed in 1975,[78] and re-imposed the blanket ban on convicted prisoners registering on the electoral roll that had been in place since 1975.[79] Yet, through this restrictionist period and beyond, the right of permanent residents to vote in national elections endured.

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76 Electoral Amendment Act 1975, s 9.

77 Electoral Amendment Act 1976, s 2.

78 Electoral Amendment Act 1977, ss 4 and 7.

79 Electoral Amendment Act 1977, s 5. Andrew Geddis "Prisoner Voting and Rights Deliberation: How New Zealand's Parliament Failed" [2011] NZ L Rev 443. Indeed, the case of prisoner voting further casts doubt on the ideals-driven, inclusionary model of suffrage that Rodríguez describes. In 1905, just over a decade after the expansion of suffrage to include women, prisoners convicted of offences attracting one year or more of imprisonment (or death) were disenfranchised. This was extended to disenfranchisement of all convicted prisoners from 1955 until 1975 and then again from 1977 until 1993. Although the Electoral Act 1993 again extended prisoners' voting rights, disenfranchisement still applied to any prisoner serving a sentence of three years or more, preventive detention or life imprisonment. The Royal Commission on Electoral Reform recommended three years as the threshold for disenfranchising prisoners because this would match the restriction that New Zealanders absent from the country for three years may no longer vote until they have visited the country again. See Greg Robins "The Rights of Prisoners to Vote: A Review of Prisoner Disenfranchisement in New Zealand" (2006) 4 NZJPIL 165. As Geddis explains, in 2010 a Member's Bill, the Electoral (Disqualification of Sentenced Prisoners) Amendment Act, returned the situation to the pre-1993 blanket ban for all convicted and sentenced prisoners during imprisonment, going against international trends of greater prisoner enfranchisement.

An opportunity for a more definitive and self-conscious public and political debate about the boundaries of the enfranchised public arose with the establishment of the 1986 Royal Commission on the Electoral System. Tasked with giving comprehensive consideration to issues of electoral representation, rules and institutions, the question of non-citizen voting formed only a minor part of its brief. In respect of this, however, the Royal Commission was informed by the same principles of inclusiveness and egalitarianism that they applied more broadly to other aspects of the New Zealand electoral system. These included that:[80]

> … the process of choice [of elected representatives] should to the fullest extent possible give each member of the community an equal part in the choice of Government and a fair opportunity to participate in the process.

Recognising that the New Zealand policy was unusual internationally, the Committee said:[81]

> It may be questioned whether voting rights should be extended to those who have not become full citizens. It could be argued that their commitment to New Zealand is less than wholehearted and that they should be denied a right which is elsewhere restricted to full citizens. On the other hand, permanent residents have been granted permission to live and work in New Zealand and usually make a full contribution to the community and its future. In this sense, they can be said to have earned full membership of the community and to be entitled to vote. Although the extension of voting rights to permanent residents is unusual, we are disinclined to suggest the removal of rights which have long been enjoyed and which may help integrate new members into our community.

As with the Electoral Act Committee before them, the Royal Commission's deliberations combine principled reasoning with a large dose of pragmatism. Two views were advanced to support retention of permanent residents' voting rights – that full membership comes with contribution to a community, and that integration into a community is facilitated by access to voting rights. Their emphasis on the interests and political rights of those present in society and affected on a daily basis by parliament's decisions was consistent not only with an inclusive franchise in respect of residents, but also its converse: the Electoral Act 1956 excluded non-resident citizens from voting after a period of three years' absence from New Zealand.[82] Reflecting on the distinction drawn

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80 Royal Commission on the Electoral System "Report of the Royal Commission on the Electoral System 1986" (11 December 1986) Electoral Commission <www.elections.org.nz>.

81 At [9.5].

82 Note, though, that New Zealand citizens regain their right to vote once they visit the country again. The exclusion on non-resident voters takes effect earlier for permanent residents – after just one year's absence, compared to the three year rule for citizens – which suggests that, notwithstanding the attention to residence as generating affected interests, electoral law does treat *citizens* as having a more fundamental tie to the society that takes longer to weaken. See Electoral Commission "Enrol and Vote from Overseas" <www.elections.org.nz>.

between the qualification to vote and to stand for Parliament, the Royal Commission was of the view that the qualification should in fact be the same:[83]

> … we incline to the view that the same considerations which led us to accept the right of permanent residents to vote also support their right to stand for Parliament. This has the advantages of placing all those eligible to vote in the same position.

The suggestion did not, however, make its way into the Commission's formal recommendations.

Alongside liberal inclusivity the Royal Commission also exhibited pragmatism – namely, the idea that "if it ain't broke don't fix it".[84] In the absence of any political controversy in the 10 years after the extension of voting rights to non-citizens, the Electoral Commission's "disinclination" to change the Act seems as pragmatic as it was principled. Moreover, although subsequent referendums on the electoral system provided more recent opportunities to provoke political reflection about the composition of the political community underpinning the country's democracy, such reflection has never been evident. Indeed, and perhaps surprisingly in light of contemporary struggles elsewhere on the question of national voting rights, the extension of the franchise to non-citizens has until now remained uncontroversial among the public and largely unexamined in New Zealand's domestic scholarly literature.

IV CONCLUSION

In his 2007 paper on New Zealand's constitutional culture, Matthew Palmer argued that a country's constitutional norms, and the culture that underlies them, affect the extent to which a constitutional reform will gain widespread acceptance.[85] He quoted legal realist Karl Llewellyn as saying of constitutional culture:[86]

> … in the main it is action which comes first, to be followed by delayed perception of that action, then by rationalization of the action delayed still longer, and finally by conscious normatization of what has been perceived or rationalized. Before these latter processes have been worked out, the lines of the action commonly have shifted.

In this study we have discussed the way in which the norms of egalitarianism and pragmatism, identified by a number of legal and political scholars as characteristic of New Zealand's constitutional culture, interacted to create what was, in international terms, a radical reform of the franchise. New Zealand's outlier status in relation to the granting of national voting rights to non-

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83 Royal Commission on the Electoral System, above n 80, at [9.6].

84 Palmer "New Zealand Constitutional Culture", above n 3, at 574.

85 At 567.

86 Karl N Llewellyn "The Constitution as an Institution" (1934) 34 Columbia Law Review 1 at 17, n 30 as cited in Palmer, above n 3, at 566.

citizens has made it an object of both political and scholarly attention internationally. In New Zealand, however, the issue remains both uncontroversial and under-studied. Llewellyn's observation about constitutional development resonates with our explanation of the 1975 franchise extension and its acceptance within the country's broader political landscape. Contemporary interest about New Zealand's extension of the franchise to non-citizens focuses on its potential to integrate a rapidly growing and highly diverse immigrant population,[87] and its potential to stall the growth of far-right anti-immigrant parties.[88] Yet the historical evidence presented above indicates these specific outcomes were neither sought nor foreseen by those who passed the legislation; instead, they have become relevant with changing societal realities. Those changing realities include a non-native born population that now stands at 25 per cent of the total population and that is highly diverse in terms of ethnic and national origin, linguistic, religious and cultural background.[89] If, as Palmer argues, New Zealand's constitutional culture remains informed by norms of egalitarianism and pragmatism, the ongoing influence of these norms can help explain why a law passed in the context of a highly monocultural immigration flow continues to be widely accepted 40 years later, in a quite different social and political context.

As Paul Pierson has argued, timing and sequencing matter for which policy outcomes are possible and what their likely consequences are.[90] Looking back today, it is not possible to tell whether New Zealand's parliamentarians would have made the same decision on non-citizen voting if the considerable diversification of the country's immigrant population in subsequent decades had already been in evidence in 1975. The fact that at other critical junctures, such as electoral system reform in the early 1990s, non-citizen franchise was only briefly considered and certainly not challenged, supports the idea that persistence of the non-citizen vote over time in New Zealand is due at least in part to an underlying norm of the inclusive franchise. In turn, the franchise rules themselves have contributed to shaping constitutional culture over time.

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87 The Migrant Integration Policy Index (MIPEX), the largest international study to compare migrant integration policies, for example, considers the extension of voting rights of any kind to migrants a positive indication of integration. New Zealand was included in the 2013 MIPEX rankings and results will be published in October 2014. See < www.mipex.eu>

88 McMillan, above n 49.

89 Statistics New Zealand "2013 Census QuickStats about National Highlights" <www.stats.govt.nz>.

90 Paul Pierson *Politics in Time: History, Institutions, and Social Analysis* (Princeton University Press, Princeton, 2004).