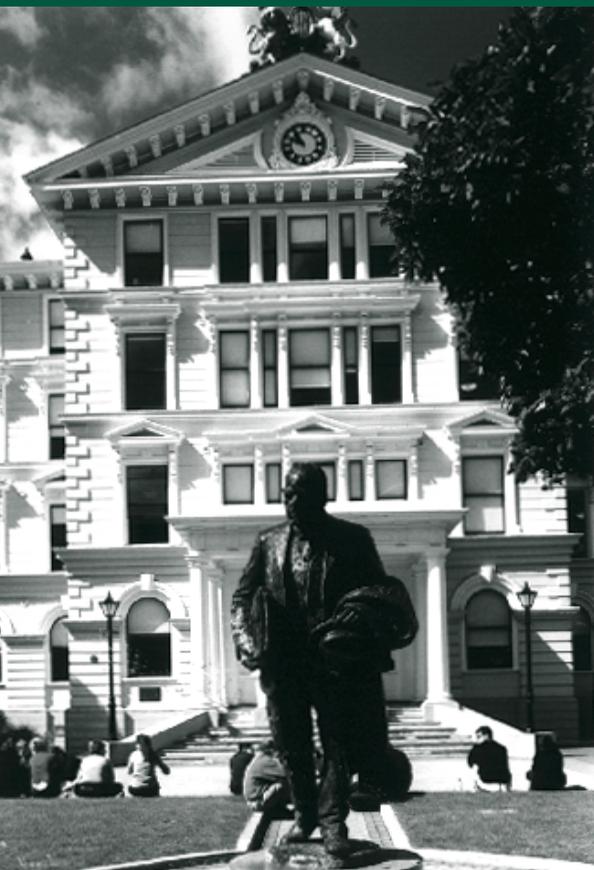


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The Role of the Governor-General

by Dame Silvia Cartwright

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THE ROLE OF THE GOVERNOR-GENERAL

DAME SILVIA CARTWRIGHT*

Professor Palmer, thank you for your welcome and for your invitation to talk today about the role of the Governor-General.

As many of you know, my predecessor Sir Michael Hardie Boys gave a number of significant speeches on the role of the Governor-General in the MMP context, particularly in relation to government formation.¹ So, rather than return to this focus, I propose to take a different approach to the subject.

Today I will traverse some of the historical developments relating to the office of Governor-General, for it is an office in which there have been many significant changes since 1840. Reflecting on these changes will help inform our view of the role of the Governor-General at the beginning of the 21st century.

Such reflection must take account of the patchwork of cultures that now constitutes New Zealand society – and the need for the role of Governor-General to be relevant to all New Zealanders. The Governor-General should be a symbol of unity, as the nation becomes more diverse.

Moreover, such reflection will indicate how the role might change in the future. I will touch not only on some of the key constitutional developments affecting the office, but also on their symbolic value for New Zealand.

* PCNZM, DBE. Governor-General of New Zealand. This address was given to the Faculty of Law and the New Zealand Centre for Public Law, Victoria University of Wellington, 2 October 2001.

¹ Rt Hon Sir Michael Hardie Boys, GNZM, GCMG, “The Role of the Governor-General under MMP,” (address to the Annual Dinner of the Institute of International Affairs, 24 May 1996); Rt Hon Sir Michael Hardie Boys, GNZM, GCMG, “Continuity and Change: the 1996 General Election and the Role of the Governor-General” (1997) 5 Waikato L Rev 1; Rt Hon Sir Michael Hardie Boys, GNZM, GCMG, “The Constitutional Challenges of MMP: A Magical Demystification Tour,” 1999, Institute of Policy Studies, Paper Number 1; Rt Hon Sir Michael Hardie Boys, GNZM, GCMG “Participating in our modern democracy” (address at the 1999 Wallace Awards Presentation Dinner, 14 July 2000).

The history of the patriation of the office is inextricably linked to the history of New Zealand's relationship with Britain and the expression of New Zealand identity. Over time we have seen the diminution of the executive powers of the Governor-General, and the transfer and consolidation of government within New Zealand from Britain. The balance shifted with the march of historical change from imperialism, colonialism, democratisation and independence.

The history is also a fascinating story of individual contribution from all the incumbents of the role. Our Governors were originally Colonial Office officials and soldiers. These were followed by the lords and ladies of the British aristocracy. Sprinkled among both these groups were a number of individuals with New Zealand connections. And today, ordinary New Zealanders now hold the office, symbolising its evolution into a distinctively New Zealand institution.

I HISTORICAL RAMBLE...

So to the history, with which some of you will be familiar; others less so. To any historians in the audience – please bear with me. And at this point I acknowledge my debt to the wonderful resources in the *Dictionary of New Zealand Biography* on which I have drawn.²The selection of which facts to present will always be open to debate, and mine are clearly chosen to illustrate my themes.

First, I would like to make a general comment to keep in mind as I traverse some of the developments. Initially New Zealand Governors had extensive executive powers. The impact of early Governors on the development of the country was significant. Indeed, sometimes this impact was greater than that of the local politicians. As democracy and responsible government grew in New Zealand, the executive powers of the Governors (and later, the Governors-General) have gradually diminished. The reserve powers are what remain today in terms of executive power. The obvious question is of course where do these developments leave the office of Governor-General in 2001?

The somewhat limited view of one of my predecessors was that the Governor-General merely rubber stamped government decisions. Such a view overlooks both the importance of the reserve powers and the wider influence of the Governor-General in the community sphere. The evolution of the role has resulted in an office today that is quite different from that in 1840. But a New Zealand Governor-General today contributes something equally important to the country. I believe that contribution is to the very core of identity and unity of the nation.

² *The Dictionary of New Zealand Biography* (Department of Internal Affairs, Allen & Unwin, Wellington, 1990).

A *The Governors Who Governed*

Starting then, at the beginning, and leaving aside Sir George Gipps, who loosely governed from Sydney in the early days, the first in my long line of predecessors (I am number 34 by the way), was of course William Hobson (1840-1842).³Hobson, a man of Irish heritage, was also the first in an era when the Governors actually governed. His previous experience included service in the Royal Navy and fighting pirates in the Caribbean. He was known for his intelligence and his good intentions towards Maori. In constitutional terms, Hobson's most significant contribution was the negotiation of the Treaty of Waitangi. Its legal and political significance has waxed and waned since 1840. For a long time it had a hazy place in our constitutional and political framework. Today, its importance as a key part of New Zealand's unwritten constitution is virtually undisputed. It has had a profound impact on our society, Maori and Pakeha alike, particularly in recent decades.

But there were many other key events during Hobson's short tenure including his proclamations of sovereignty in May 1840, receipt of the first Letters Patent of November 1840 prescribing the form of Government, the transition from dependency of New South Wales to independent Crown Colony (if that's not a contradiction in terms) in May 1841, and the first meeting of the Legislative Council in the same month.

Hobson and his successors Robert Fitzroy (1843-1845)⁴and George Grey (1845-1853)⁵ governed by autocratic rule – with powers akin to the monarchs of earlier times. There was an Executive Council of permanent appointed officials – the Colonial Secretary, the Attorney-General and the Public Treasurer. The Legislative Council consisted of the Governor, the three permanent members of the Executive Council and the three senior justices of the peace. The Executive and Legislative Councils met infrequently, and had little power. The Governor virtually ran the country. Indeed, Governor Fitzroy is reported to have concerned himself with the minutiae of administration to the extent of indicating the style of printing to be used on a notice board prohibiting bathing on certain beaches!⁶

³ See generally Kenneth A Simpson on William Hobson in *The Dictionary of New Zealand Biography Volume One, 1769-1869* (Department of Internal Affairs, Allen & Unwin, Wellington, 1990) 196.

⁴ See generally Ian Wards on Robert Fitzroy in *The Dictionary of New Zealand Biography Volume One, 1769-1869* (Department of Internal Affairs, Allen & Unwin, Wellington, 1990) 130.

⁵ See generally Keith Sinclair on George Grey in *The Dictionary of New Zealand Biography Volume One, 1769-1869* (Department of Internal Affairs, Allen & Unwin, Wellington, 1990) 160.

⁶ Angus Ross, "The Governor-General's roles have changed" (27 October 1977) *The Press* Wellington 20.

B *Governors and Elected Representatives*

The settlers were opposed to this autocracy. And so, in 1846, following settler agitation, a complex constitution arrived from London, conferring representative parliamentary institutions on the settlers. However, Governor Grey declined to implement the new constitution, in part “on the grounds that it would give to a minority made up of one race, power over a majority made up of another.”⁷ He did not believe the colonists could be trusted with such generous powers over Maori.

Despite the early setback for representative government, it eventually arrived in the form of the New Zealand Constitution Act 1852. Governor Grey was in fact “the chief author” of the new constitution. To Grey, the Governor and the provincial councils were the most important elements of the constitution. The provinces were headed by an elected superintendent assisted by an elected Legislative Council. Provincial legislation could be vetoed by the Governor. The General Assembly comprised the Governor, an appointed Legislative Council and an elected House of Representatives. Although the Governor still had extensive powers, the 1852 Constitution Act marked the beginning of the reduction of the Governor’s executive powers.

Grey certainly left his mark on the country. He was a complex person. He has been described as an autocrat, a manipulator and a liar. Yet, he also appears to have been a person with strong egalitarian and democratic ideals. He was Governor from 1845 to 1853, and then again from 1861-1868. And he went on to become Premier in 1877. As an elected representative, he retained a strong interest in things constitutional. He played a role in the introduction of universal adult male suffrage, the move to abolish plural voting (property owners voting in each electorate in which they have property), and an attempt to have the Governor and members of Legislative Council elected instead of appointed. Clearly, in Grey’s eyes at least, the country had by that stage matured enough to be trusted with election of all of the elements of government.

C *Responsible Government*

But to return to the 1850s, despite the advent of representative government, the settlers were still not happy, perceiving representative government to be mere tokenism as the elected assemblies lacked power to prevail upon the Governor. Members of the Executive Council were still appointed, not elected. The first session of the House of Representatives was dominated by the question of responsible government. Indeed, it entertained no other

⁷ Keith Sinclair on George Grey in *The Dictionary of New Zealand Biography Volume One, 1769-1869* (Department of Internal Affairs, Allen & Unwin, Wellington, 1990) 161.

formal business apart from an Act to authorise Bellamy's to sell liquor to honourable members!⁸

Eventually, after much agitating including a brawl in the chamber, responsible government was granted with Colonial Office approval. In May 1856, the first responsible ministry, with its members having been elected to the House of Representatives, was formed. And so, the fourth Governor, Governor Gore-Brown (1855-1861), accepted that in matters under control of the General Assembly, he would be guided by Ministers responsible to that body.⁹ There was a transfer of real power from the Governor to the Premier, marking a rapid decrease in the executive power of the early Governors.

D Gradual Relinquishment of Remaining Powers

There was, however, a number of matters still reserved for the Governor's discretion including matters "affecting the Queen's prerogative and imperial interests generally." These included defence and Maori affairs, international trade and foreign affairs, and certain Bills reserved for the Queen's assent. Under this arrangement, the Governor was required to serve two masters – for most matters, he took the advice of New Zealand ministers, but British Secretaries of State were his masters for matters affecting the Queen's prerogative and imperial interests. This split loyalty caused some tension. The period from the advent of responsible government until the turn of the century is characterised by this tension, the gradual dominance of local politicians, and the slow relinquishment of the Governor's powers.

During Governor Bowen's tenure (1868-1873), he presided over a crisis in Anglo-New Zealand relations. Although defence and Maori affairs had formally come under ministerial control in 1864, Britain still had considerable input in these areas, and was accused of deserting New Zealand to save money.¹⁰ There was talk of secession, and of seeking the protection of the United States. Relations were eventually restored with a new Secretary of State for the Colonies. In 1870, the last imperial troops were withdrawn and defence and Maori affairs came under actual local control.

⁸ Philip Joseph *Constitutional and Administrative Law in New Zealand* (The Law Book Company Limited, Sydney, 1993) 85.

⁹ See generally BJ Dalton on Thomas Robert Gore Browne in *The Dictionary of New Zealand Biography Volume One, 1769-1869* (Department of Internal Affairs, Allen & Unwin, Wellington, 1990) 45.

¹⁰ See generally WPN Tyler on George Ferguson Bowen in *The Dictionary of New Zealand Biography Volume One, 1769-1869* (Department of Internal Affairs, Allen & Unwin, Wellington, 1990) 34.

Despite these tensions, and despite a reputation for pomposity, Bowen succeeded in making Government House a centre of social life, and a neutral meeting place for politicians during his tenure. In this, he was assisted by his wife, Diamantine du Roma, the daughter of the President of the Ionian Senate – described by Dame Cath as “quite the bird of paradise amongst the colonial hen sparrows”!¹¹

Sir James Fergusson succeeded Bowen as Governor. Although he was only here for a year or so (1873-1874), he was the first of three Fergussons. His son Charles Fergusson was Governor-General from 1924-1930, as was his grandson from 1962-1967, making the office look something like a hereditary one!

There was also a family connection for the Marquess of Normanby (1875-1879), who followed Fergusson - his father had been the Colonial Secretary in Hobson’s time. Like many Governors of that time, Normanby had experience in other parts of the Empire, having been Governor of Nova Scotia and Queensland before coming to New Zealand.¹²

The first constitutional development in Normanby’s tenure was the abolition of the provinces in 1875. Provincial government had initially suited the scattered isolated settlements of New Zealand, and the limitations of transport and communication. The strong regional pride, which is so much a part of New Zealand today, perhaps finds its seeds in these initial institutional arrangements. Early Governors remarked on this provincial pride. Fifteen years later, Governor Onslow gave it a slightly different name, referring to the “frightful jealousy” between the different towns and provinces of the colony!¹³ Normanby oversaw a series of constitutional disputes – mostly with Grey, who became Premier in 1877. In the first of Normanby’s disputes with Grey, Grey sought a dissolution on the grounds that he did not have a safe majority in the House. Normanby declined, based on his view that an election would not produce any considerable change in the House. Next, there was a standoff in relation to appointments to Legislative Council. Normanby declined to make an appointment to Legislative Council when a vote of no confidence in Grey’s government was pending in the House.

¹¹ Dame Catherine Tizard, GCMG, DBE, “Colonial Chiefs, 1840-1889” (address to the Wellington Historical and Early Settlers’ Association, Wellington, 20 March 1995) 11.

¹² See generally GH Scholefield (ed) *A Dictionary of New Zealand Biography Volume Two, 1870-1900* (Department of Internal Affairs, Wellington, 1940) 127.

¹³ Ross Galbreath on William Hillier Onslow in *The Dictionary of New Zealand Biography Volume Two, 1870-1900* (Department of Internal Affairs, Allen & Unwin, Wellington, 1993) 365.

Grey also advised Normanby to refuse his assent to a Bill which had originated with the previous Government, but which had been passed shortly after Grey took office. Normanby declined Grey's advice on the ground that Grey should have taken the responsibility of defeating the bill in Parliament. Despite these disputes, where Governor Normanby in a sense "trumped" Premier Grey, responsible government was bedding down, and the Governor's executive powers were small. Indeed, the growth in responsible government, and the relinquishment of the Governor's powers were lamented by the tenth Governor, Sir Arthur Hamilton Gordon (1880-1882).¹⁴ Gordon typified the Colonial Office professional. He came to New Zealand in 1880 with previous other governorships under his belt including New Brunswick, Trinidad, Mauritius, and Fiji. He had apparently "enjoyed" considerable executive powers in many of these places, and as such was not looking forward to his mostly non-executive role in New Zealand. Gordon lamented that he would have no real power, and found the prospect of "laying ... stones ... making little speeches ... and entertaining large parties of stupid people" distasteful! During his two-year stint, he wrote that he was being "highly paid, well housed and well fed, for performing the functions of a stamp."¹⁵

Gordon's successor Jervois (1883-1889)¹⁶ had little discretion, but was prepared to use that which he did have. In 1886, he would have nothing to do with suggestions by Stout and Vogel that Parliament be dissolved. He also prevented the government from sending the colonial secretary aboard the government steamer to investigate a plea from Samoa for British annexation. He took the initiative to establish a relief committee following the Tarawera eruption. He also played a prominent role in the social life of New Zealand, serving as patron to various bodies and travelling extensively. By this stage, the vice-regal office was beginning to resemble what it is today – the symbolic embodiment of a concept, that of the Crown. Jervois was highly regarded, and he gave serious consideration to remaining permanently in New Zealand after the expiry of his term.

Jervois was succeeded by the Earl of Onslow (1889-1892).¹⁷ Onslow was the first Governor since Fitzroy in 1843 to have no previous experience in vice-regal office.

¹⁴ See generally WPN Tyler on Arthur Hamilton Gordon in *The Dictionary of New Zealand Biography Volume Two, 1870-1900* (Department of Internal Affairs, Allen & Unwin, Wellington, 1993) 172.

¹⁵ WPN Tyler, above n 14, 173.

¹⁶ See generally Ian McGibbon on William Francis Drummond Jervois in *The Dictionary of New Zealand Biography Volume Two, 1870-1900* (Department of Internal Affairs, Allen & Unwin, Wellington, 1993) at p 243.

¹⁷ See generally Ross Galbreath on William Hillier Onslow in *The Dictionary of New Zealand Biography Volume Two, 1870-1900* (Department of Internal Affairs, Allen & Unwin, Wellington, 1993) 365.

This change from professional administrators and soldiers to aristocrats as representatives also marked a great expansion in the ceremonial and community aspects of the office. Successive Governors have taken on the role of patron to many charitable, service, sporting and cultural organisations. It remains a huge part of the role today. However, the nature of these occasions is a little more low-key than it once was. I am certainly not the “veritable walking Christmas tree of stars and collars, medals and sashes, ermine robes and coronets” that Onslow probably was.¹⁸

During Onslow's tenure, there were some other symbolic firsts. In 1890, the colony's 50th jubilee year, the first vice-regal child was born in New Zealand. He was named Victor Alexander Herbert Huia Onslow – the last after the native bird which symbolised nobility. The first island sanctuary for disappearing native birds was also created at Onslow's instigation.

In terms of constitutional developments, in 1891, Onslow agreed to accept the advice of ministers on the granting of pardons and reprieves – relinquishing one of the Governor's remaining areas of responsibility.

The issue of appointments to Legislative Council vexed both Onslow and his successor the Earl of Glasgow (1892-1897).¹⁹ Onslow, perhaps committing an error of judgement, and trespassing into matters political, gave the incumbent government an assurance that a list of names for the Legislative Council could be agreed upon and held for appointing pending the election outcome. The election produced an unclear result, and despite public opposition to the appointments, Onslow eventually made some of them, justifying his action in terms of the practice in England.

Glasgow seemed to share Onslow's political bias. As well as interfering in military matters,²⁰ he was also reluctant to take the advice of his ministers in the matter of appointment of Legislative Councillors. His reluctance was based on his view that the Governor should ensure the independence of the Legislative Council as a brake upon the lower house, and that the solution for the lower house, if it was consistently thwarted by the upper house, was to ask for a dissolution. Glasgow initially refused to make four appointments to the Legislative Council, and wrote to the Colonial Office in London, asking for advice. Colonial Office advice was to accept advice of Ministers.

¹⁸ David Cannadine *Ornamentalism: How the British Saw Their Empire* (Allen Lane, London, 2001) at p 95.

¹⁹ See generally GH Scholefield (ed) *A Dictionary of New Zealand Biography Volume One, 1789-1869* (Department of Internal Affairs, Wellington, 1940) 301.

²⁰ Ian McGibbon *The Path to Gallipoli: Defending New Zealand 1840-1915* (GP Books, Wellington, 1991) 97-98.

This Glasgow did. And this was in fact the last time that a dispute concerning the Governor's (or Governor-General's) powers was referred to London. The late 1890s saw a peak in imperial sentiment, aided by Ranfurly's (1897-1904) popularity. Ranfurly, described on his arrival as "a rather youthful-looking, medium-sized, silk-hatted, frock-coated, pleasant-faced personage," was a popular figure.²¹

The latter part of the 19th century saw not only a growth in responsible government, and a relinquishment of the Governor's powers, but also a strengthening of democratic institutions. The local representative institutions became even more representative during this period with the establishment of the adult male franchise in 1879, and the vote for women in 1893.

E *Dominion Status*

Moving then to the 20th century. The changes during that century are both substantive and symbolic. After being initially dragged along reluctantly by its coat-tails in the first part of the century, the second half saw New Zealand embrace greater independence.

In 1907, New Zealand became a Dominion. This event passed relatively unheralded. It attracted little comment. This illustrates that what may appear as a constitutional landmark, particularly from this point in time needs to be seen in its context. And so, although new Letters Patent and Royal Instructions were issued in 1907, and the requirement to reserve certain classes of Bill for His Majesty's pleasure was omitted, New Zealand certainly didn't embrace dominion status with the vigour of a young nation intent on independence.

In 1917 new Letters Patent were issued. Apparently, they were issued with a view to giving the Governor "the greater gubernatorial glory" that Dominion status and equality with the other Dominions were thought to require.²² The title of "Governor-General" instead of Governor was used – this seems odd to me, as it tends to suggest a strengthening of Governor control rather than the opposite. Apart from the name change, the 1917 Letters and Instructions were virtually the same as those of 1907. Indeed they were somewhat anomalous in preserving the image of Colonial Office control, despite dominion status.²³

21 "Our New Governor" (10 August 1897) *The Evening Post* Wellington, 6.

22 Brookfield "The reconstituted office of Governor-General" [1985] NZLJ 256, 256.

23 Philip Joseph *Constitutional and Administrative Law in New Zealand* (The Law Book Company Limited, Sydney, 1993) 155.

The 1926 and 1930 Imperial Conferences adopted Commonwealth conventions which defined a relationship of equality between the United Kingdom and the dominions. Equality of status was enshrined in the Balfour Declaration of 1926 and given legislative recognition in the United Kingdom Statute of Westminster 1931. New Zealand's response to these conferences was reluctant. New Zealand-born Prime Minister Gordon Coates, who led the delegation to the 1926 Imperial Conference, thought the Balfour Declaration a "rotten formula" that would weaken the ties of the Empire. He went along with it only to maintain harmony.

For example, although the 1926 Conference also confirmed that dominions could nominate their own Governors-General, New Zealand clung for some time to the old system whereby the British Prime Minister drew up a short list, ran it past the monarch for approval and then asked the New Zealand Prime Minister to choose.

My predecessors at this time were interesting characters. Sir Charles Fergusson (1924-1930)²³ followed his father and father-in-law by accepting the post of Governor-General. Both Sir Charles and his wife Lady Alice had previously lived in New Zealand. Indeed, Lady Alice had learned to speak Maori, an interest she passed to her son Sir Bernard Fergusson, Governor-General in the 1960s. Sir Charles visited every part of New Zealand and all the island territories – something which most of his successors have done too. His tenure was also dominated by the themes of loyalty and public service.

Fergusson was followed by Bledisloe (1930-1935).²⁴ He was I think the first lawyer to be New Zealand Governor-General. Bledisloe fitted in well in New Zealand. He was a strong agriculturalist. He also had a strong social conscience. His demeanour and public utterances during the Depression were thoughtful and sympathetic. At his instigation, his salary was reduced by 30% to match the cuts in public servants' salaries. He made observations of substance – particularly on agricultural matters. And he regularly insisted on full and unedited newspaper coverage of his speeches, something that I doubt I could achieve today.

Bledisloe's first enduring legacy in terms of contribution to New Zealand's evolving national identity is the purchase and gift with Lady Bledisloe to the nation of the site where the Treaty was signed.

²³ See generally ET Williams and Helen M Palmer (eds) *The Dictionary of National Biography: 1951-1960* (Oxford University Press, Oxford, 1971) 353.

²⁴ See generally Russell Marshall on Charles Bathurst Bledisloe *The Dictionary of New Zealand Biography* Volume Four, 1921-1940 (Department of Internal Affairs, Allen & Unwin, Wellington, 1998) 66.

The Bledisloes vested ownership of it not in the Crown, but in a Trust Board, usually chaired by the incumbent Governor-General, with responsibility to enhance it, for a dual purpose. First, as a means of celebrating what was done there on that day in 1840, and the undoubted benefits that flowed from it for both Maori and settlers. And second, and I use Lord Bledisloe's words here, as a means of reminding Pakeha, who had become the dominant culture, of the obligations which had been solemnly undertaken by the Crown on their behalf; and as a means of developing a greater sense of solidarity among our people, a deeper spirit of nationhood.²⁶

Bledisloe's second enduring legacy is the Bledisloe Cup – first presented in 1931. As the Governor-General's executive powers waned, it is not surprising that a somewhat lower profile for the office has resulted. I imagine that a straw poll today would reveal that most New Zealanders do not know after whom the Bledisloe Cup is named.

F *Independent Realm*

One of the difficulties we share with Canada and Australia is in answering the question “When did you obtain independence from Britain?” For there is no one precise date, or one occasion when one flag was lowered and another raised amid grand sentiments of joy and nostalgia.²⁷ As a result, New Zealanders have, as yet, no day on which we celebrate our nationhood although both Waitangi Day and ANZAC Day have the potential to fill this gap. And there is often a disjoint in style and substance in constitutional history.²⁸ Yet, it is probably a series of events in the 1930s and 1940s that best answers the question.

In 1939, the first British High Commissioner to New Zealand was appointed. Up until this time, and despite the Balfour Declaration to the contrary, the Governor-General had worn two hats – that of Governor-General and High Commissioner.

In 1943, section 4 of the External Affairs Act identified the New Zealand Minister of External Affairs as having responsibility for New Zealand's external and foreign affairs.

In 1946, Prime Minister Peter Fraser instructed government departments not to use the term “dominion” as it was obsolete.²⁹ It was officially discarded in 1953, and replaced with “Realm of New Zealand.”

²⁶ See Rt Hon Sir Michael Hardie Boys, GNZM, GCMG, “Waitangi Day Commemoration” (Government House, Wellington, 6 February 2001).

²⁷ Zines *Constitutional Change in the Commonwealth* (Cambridge University Press, Cambridge, 1991) 1.

²⁸ W David McIntyre “The Strange Death of Dominion Status” (1999) 27 *J of Imperial and Commonwealth History* 193, 193.

²⁹ W David McIntyre, above n 28, 196.

And in 1947, New Zealand finally adopted the Statute of Westminster 1931. Thus the New Zealand Parliament gained legislative freedom. This included the ability to give extra-territorial effect to its laws, the need for “request and consent” of New Zealand for United Kingdom legislation to operate in New Zealand, the ability to override United Kingdom law, and the power to amend the 1852 Constitution Act. Again I would be surprised if more than a handful of New Zealanders recognised the significance of this legislation to our nation.

At around this time, we also got our first Governor-General with a New Zealand upbringing. Lord Freyberg (1946-1952) was born in London, but came to New Zealand when he was two. He was schooled here and worked as a dentist before joining the military.³⁰ He served in the British army in WWI and the New Zealand army in World War Two. He was an active and popular Governor-General, visiting all parts of New Zealand and the Pacific dependencies.

Another popular Governor-General from this era was Viscount Cobham (1957-1962).³¹ His family had historical ties to New Zealand. Lyttleton had been named after his great-grandfather. He was another lawyer and a cricketer – he had spent three months touring NZ as vice captain of the English cricket team. Despite his aristocratic background, he mixed easily with New Zealanders. Partly this was because he was an outdoors fanatic. He was the driving force behind the establishment of the Outward Bound Trust, with the Outward Bound School at Anakiwa now named after him.

In 1967, Sir Arthur Porritt (1967-1972) was appointed.³² He was the first New Zealand-born Governor-General. Porritt had won a bronze medal for New Zealand at the 1924 Paris Olympics. Indeed, he had a profound influence on the country’s role at Olympic and Commonwealth games. He was the New Zealand member of the International Olympic Committee for over 30 years.

Porritt’s appointment was followed by the 1972 appointment of Sir Denis Blundell (1972-1977) as the first resident New Zealander. In fact, Sir Denis had been serving as New Zealand High Commissioner in London, so he did have the classic imperial trip out from the United Kingdom by liner and introductory visits to individual towns.

³⁰ See generally Ian McGibbon on Bernard Cyril Freyberg in *The Dictionary of New Zealand Biography Volume Five, 1941-1960* (Department of Internal Affairs, Allen & Unwin, Wellington, 2000) 177.

³¹ See generally Ian McGibbon on Charles John Lyttleton Cobham in *The Dictionary of New Zealand Biography Volume Five, 1941-1960* (Department of Internal Affairs, Allen & Unwin, Wellington, 2000) 108.

³² See generally Diana Beaglehole on Arthur Espie Porritt in *The Dictionary of New Zealand Biography Volume Five, 1941-1960* (Department of Internal Affairs, Allen & Unwin, Wellington, 2000) 417.

In a symbolic gesture, Blundell discarded the traditional plumed headgear, and a statutory amendment was required to permit him to receive a retirement pension while resident in New Zealand. Previously, on completion of his term, the Governor-General returned to Britain or headed to some other part of the Commonwealth.

The Prime Minister, the Hon Norm Kirk noted that:³³

We have had some (Governors-General) born in New Zealand and with an association with New Zealand, but it was the first time we have had a Governor-General who has spent a substantial part of his life in New Zealand as a New Zealander, and this itself is a symbol of nationhood...

While it now seems unthinkable for a New Zealand Governor-General not to be a New Zealander, this shift is a comparatively recent one. Now the incumbent speaks not as a visitor or a stranger but as Sir Paul Reeves has said, as one who, like any other New Zealander, is committed to the quest for nationhood.³⁴

The New Zealand Constitution Amendment Act 1973 repealed five obsolete provisions of the 1852 Constitution Act which had fallen into disuse. Almost all of these related to the Governor-General. They included the provision empowering the Governor-General to reserve certain bills for Her Majesty's assent, and the provision enjoining the Governor-General to act according to Her Majesty's instructions. The provision preventing Parliament from imposing or exempting duties on goods contrary to United Kingdom trade treaties was also repealed. And, the 1973 Act dispelled any doubts about the ability of the New Zealand Parliament to legislate extraterritorially.

The 1970s also saw symbolic changes contributing to New Zealand's identity. The Royal Titles Act 1974 changed the Queen's New Zealand style and title so that she would henceforward be known as Queen of New Zealand rather than Queen of the United Kingdom. The 1977 Seal of New Zealand Act authorised the establishment of the Seal of New Zealand. All instruments to be issued by the Governor-General or the Monarch on ministerial advice were now to be sealed with the Seal of New Zealand.

³³ Address in Reply debate (21 February 1973) 382 NZPD 116.

³⁴ Sir Paul Reeves "Address to Te Ara Tika Symposium" (25 May 1990)

The appointment of Sir Keith Holyoake (1977-1980) was perhaps the most controversial of appointments to date. While still a Cabinet Minister, he was appointed Governor-General for a three-year term. Nevertheless, despite the controversy, he carried out his role without hint of political controversy. Sir David Beattie (1980-1985) followed Sir Keith, and was initially not sure whether to accept the offer because he was “just an ordinary New Zealander.”³⁵ Sir David was followed by Sir Paul Reeves (1985-1990) – the first Governor-General with Maori heritage, Dame Cath Tizard (1990-1996) – the first woman, and Sir Michael Hardie-Boys (1996-2001) who presided over the first MMP election. There have been many “firsts” for the Office in recent years.

G *Letters Patent 1983*

The most significant recent development affecting the office of Governor-General was the 1983 revision of the Letters Patent. And, in this, I acknowledge Alison Quentin-Baxter who conducted the very thorough review in 1980.³⁶ The 1983 Letters Patent had two objects – to update the office and to “patriate” it.³⁷

Updating involved some major changes. The Governor-General now presided over the “Realm of New Zealand” instead of the “Dominion of New Zealand.” Reference to the Governor-General dissenting from Executive Council was omitted. There was an acknowledgement of responsible government. The relationship between the Queen and the New Zealand Executive Council was formalised, so that the Queen now has a relationship to Executive Council similar to the one she has to her own Privy Council. And the incomplete delegation of the external affairs power was rectified.

Patriation was more symbolic. In accordance with the 1974 Royal Titles Act, the royal title in the Letters Patent is “Queen of New Zealand” instead of “Queen of the United Kingdom.” The Letters Patent were adopted on the advice of the Executive Council of New Zealand not the Privy Council in London. They were countersigned by the New Zealand Prime Minister. The Seal of New Zealand was used to authenticate them.

³⁵ Donna Fleming “Just an ordinary New Zealander” (19 February 2001) *New Zealand Woman’s Weekly* New Zealand, 15.

³⁶ Alison Quentin-Baxter “The Review of the Letters Patent 1917 Constituting the Office of Governor-General of New Zealand” April 1980.

³⁷ Philip Joseph, above n 8, 154-158.

Let me pause in our history for a moment, and make an observation – the unheralded arrival of the new Letters Patent illustrates a feature of constitutional change in New Zealand. It has been noted by a number of commentators that constitutional change in New Zealand is often the result of a pragmatic and practical response to events. It is often unheralded and sometimes even slips in almost by the back door. Change is incremental and gradual, and frequently the result of emerging consensus on an issue. Future changes are likely to occur in a similar way – New Zealand’s constitutional development has always been based on consensus, never revolution.

The final chapter in my ramble through history is the 1986 Constitution Act, which consolidated the primary elements of New Zealand’s statutory constitutional law. The New Zealand Constitution Act 1852, which came early on in our story with Governor Grey, ceased to have effect. In terms of the Governor-General, the obsolete reference to the Governor-General power to refuse assent to a Bill was removed.

And so we have come in a series of incremental steps from the time when the Governor ran the colony in 1840 to the point today where the significant powers remaining to the Governor-General are the reserve powers, to which I shall refer again shortly.

H *Within a Wider History*

My remarks so far have skimmed across a section of New Zealand history over the last 161 years from the viewpoint of the role of the Governor-General. And within the role of Governor-General, my remarks have been primarily focused on the constitutional aspects of the role rather than the ceremonial and community aspects. Nevertheless, we see three trends over time:

- the diminution of the executive powers of the Governor-General.
- the transfer and consolidation of all the powers of government within New Zealand – the pace and enthusiasm of this assumption of powers varying over time.
- the office of Governor-General being seen as a distinctively New Zealand institution.

Setting this cross-section of Governors-General within the rich and complex history of New Zealand is beyond the scope of this address. And it is a history of many stories, involving both Maori and Pakeha, the contributions of other immigrants, the hard work of women and men, and the emergence of the New Zealand we know today.

As I said at the beginning, the story of the Governors-General is inextricably linked to the history of New Zealand's relationship with Britain and the expression of New Zealand identity. It was not just history and constitutional connection that bound us to Britain – with refrigeration in 1882 we were economically and culturally linked by what Professor Belich has called the “protein bridge” of the great meat ships between Britain and New Zealand. “Protein out and books, technology, news, ideas, immigrants and visitors back.”³⁸

In the 1960s innovations such as television and jet travel shrank the distances between us and the rest of the world. The oil shocks and Britain's membership of the European Economic Community in 1973 changed the way we saw ourselves and the rest of the world. And change we have had to. Our adjustments and adoption of new paradigms have brought both pain and stimulus, which continues with ongoing and accelerated global change.

There is of course, public debate and questioning about the New Zealand identity and its values. For my part I regard this not as a sign of insecurity, but rather a meaningful indicator of maturity. There is no model that tells us what we are and what we will become – we and our identity have been shaped by our unique geography and the history of all our people, as well as by global forces. But it is also we, as New Zealanders, who continue to shape that identity through our questions about the way forward for New Zealand and the probing of the values that matter to us in the 21st century.

II TODAY: GUIDING PRINCIPLES

This brings me to the role of the Governor-General today and some reflections from the vantage point of just six months into the job. I am deeply honoured to serve in the role and am very aware of the contribution of my predecessors to the office.

Over the past six months, with the support of the staff at Government House, I have travelled all over the country. I have met thousands of New Zealanders. I have welcomed many others to Government House both formally via credentials ceremonies, and informally on social occasions. I have been privileged to meet all the remarkable New Zealanders honoured at the investitures. I have chaired meetings of the Waitangi National Trust Board mentioned earlier. I have given a number of speeches. I attend Executive Council meetings most Mondays. I have signed many regulations and assented to new legislation.

³⁸ Professor James Belich (address to Public Service Senior Management Conference, September 1999).

This has been my practical experience so far. I am also mindful of the potential in the form of the reserve powers. While I do not intend to discuss these in depth today, I will refer to them briefly. Constitutionalists differ as to what these powers might be. Sir Michael referred to five:³⁹

- to appoint a Prime Minister;
- to dismiss a Prime Minister;
- to refuse to dissolve a Parliament;
- to force a dissolution of Parliament;
- to refuse assent to legislation.

Sir Michael also said that listing the reserve powers is only half the story. For overlaying them is a complex web of convention and intersecting responsibilities. I have of course not exercised any of these powers in my six months in the job. However, to me, the utility of a reserve power is not measured by counting the occasions of its exercise. It is the presence of these powers and their potential which operate to stabilise and rationalise the actions of our elected representatives.

Indeed, the existence of the reserve powers and the role of the Governor-General have influenced the development of democracy in New Zealand in a positive way. Most recently, Sir Michael made a significant and positive contribution to the orderly transfer to MMP with his speeches on his role in the MMP environment, and in particular on his role in exercising the most-often exercised reserve power – that of appointing a Prime Minister. For me, all this is yet to come.

Over the past six months I have outlined in my speeches the themes of importance to me such as peace and non-violence, human rights, the celebration of the achievements and creativity of New Zealanders, and the New Zealand identity and our place in the world. These are themes that I will continue to reflect throughout my term.

In addition I would like to contribute to New Zealanders' understanding of the role of the Governor-General as an important feature of their constitution. And, it is worth bearing in mind that I am Governor-General at a time when, due in part to New Zealand's slowly evolving view of its identity, and in part to the impact of world events, we may well be in a transitional era, constitutionally speaking.

³⁹ Rt Hon Sir Michael Hardie Boys "The Role of the Governor-General under MMP" above n 1.

So it is more important than ever that our constitutional provisions and the Governor-General's role are well understood by all New Zealanders before we begin any further process of change. The way the functions of the office are conducted and the values informing it, however, are as important as the personal themes I have mentioned. While each office-holder has left the mark of his or her personality on the office, officeholders have also been guided by certain principles.

As my predecessor and friend Dame Cath said, there is a need to protect the mana of the office, if one is to serve the office well.⁴⁰ In doing this, it seems to me, a set of guiding principles have evolved that can inform each incumbent's personal approach to the role. Or as Sir David Beattie might have said (or sung), there are certain principles to be followed if one is to be "The Model Of A Modern Governor-General!"⁴¹

First and foremost, at least to those of us with a lawyerly bent, is the importance of precedent. The precedents to which I refer here are not just the precedents that have developed in New Zealand since 1840. I refer also to those that have informed the development of the Westminster system generally. These precedents are particularly important in discharging my constitutional functions and they point to the way in which future changes may occur.

The non-political nature of the office is critical and must not be compromised. This means refraining from doing certain things such as commenting on policies of the government of the day. The positive aspect of this is that the office is one that transcends politics. Hopefully it can represent all New Zealanders, no matter their political persuasions.

The corollary to the non-political nature of the office is the importance of democracy itself. The importance of democracy to the job of Governor-General is something which has changed considerably, and tracks the development of New Zealand as an independent nation – from the early autocratic Governors, through representative and then responsible government, and the strengthening of our democratic institutions, to today. What democracy means in a practical sense is a kind of self-denying component to my actions. I am appointed, not elected, and it is my duty to uphold our democratic traditions.

⁴⁰ (Speech to University Club Dunedin, 20 October 1992).

⁴¹ The night he dissolved Parliament for the 1984 snap election, Sir David Beattie reportedly ended up at the piano at Government House singing "I Am The Model Of A Modern Governor-General." See "Distinguished, witty Beattie brought mana to his office" in *The Southland Times* 9 February 2001 at p 4.

Finally, another important principle is the focus of the office to act in a unifying way. By being above party politics, the Governor-General can provide a point of unity for the nation and represent New Zealand both here and overseas. Non-partisan leadership must actively work to be inclusive of all the groups who make up our society.

III THE FUTURE

So where does that bring me in considering the future of the role? The profile of the office within New Zealand is necessarily a very different one to the time when Governors and Governors-General held considerable executive powers. As the formal powers receded, the symbolism of the role has grown.

The office of Governor-General has many constraints, but it also has much potential. For example, the Governor-General has the potential to be a powerful symbol of unity within New Zealand. As Sir Paul Reeves said at his official farewell in 1990: "By definition, a symbol brings people together. The opposite of symbolic is diabolic, the force which makes things fly apart. We live at a time when the possibilities of coming together or flying apart are both present." Recent horrifying events in the United States make these comments even more apposite.

As Sir Paul also said: "unity is a process of healthy questioning, supporting, challenging and accepting each other."

So although the transition from High Court Judge to Governor-General has meant that I have, from time to time pondered the fact that the majority of my time is spent on the ceremonial and community segments of my role, I accept the importance of promoting unity and, where needed, demonstrating leadership. And there is potential for the

Governor-General to promote our identity and interests as a nation which differs greatly from that when the first Governor stepped ashore.

The questioning and debate about national identity I referred to earlier have of course extended to the office of Governor-General itself. At some point in the future New Zealanders may decide on constitutional change and that will be their decision. There are some who seek to place the issue of republicanism on New Zealand's agenda right now; others see it as a future inevitability, but not the priority issue of the moment. Either way it is a complex issue. How should we choose our Head of State? Should we continue to appoint Governors-General, or should we elect Presidents? What powers should a Head of State have? What are the implications of and for the Treaty of Waitangi? Is a written constitution required for all of this?

Although the Queen and Prince Phillip have postponed their visit to New Zealand we will welcome them when they ultimately arrive and acknowledge the pivotal role that the Queen and her predecessors have discharged for all New Zealanders, both Maori and Pakeha. Our Treaty of Waitangi is but one example of the impact that the Crown has had in the history of our nation.

The Queen's role as our head of state is now largely symbolic, as my review of history has demonstrated. Whether we will as a nation retain that structure or, one day, pass the baton to a New Zealand head of state remains to be seen. But whatever occurs, she has played an important part in our history and the affection in which she is held will be marked by us as she celebrates her Golden Jubilee in 2002.

IV CONCLUSION

In conclusion, we begin the 21st century with the office of Governor-General as a part of our constitution and a part of our nation.

Our quick excursion through history has shown a number of changes. New Zealand itself has changed - from an offshoot of the mother country to an independent Pacific nation. The personnel holding the office of Governor-General have changed – from the lords and ladies of the British aristocracy to ordinary New Zealanders. The procedures have changed. No more bowing and curtseying; the introduction of the Maori wero for credentials ceremonies.

And the role of Governor-General has changed too. The executive powers that were once a focus are no longer so. But the constitutional functions of the role today are of course its prime reason for being.

I have already referred to Governor Gordon who regarded the role of the Governor as that of a mere “stamp”. Such a view overlooks the constitutional significance of the “mere stamp” functions. It also overlooks the importance of the reserve powers and the wider

influence of the Governor-General in the community sphere. The evolution of the role has resulted in an office today that is quite different from that in 1840. But a New Zealand Governor-General today contributes something quite different but equally important to the country.

For the future, I believe that the value of the office of Governor-General will be measured by the extent to which it is seen by New Zealanders to reflect their national values and identity, and to work as a unifying mechanism to that end.