VETO DANGER IN CO-GOVERNANCE *by Dr Kearney, a dual NZ and French citizen who was a UN civil servant in senior and director posts for 30 years.*

Have you noticed how rarely any co-governance discussion mentions or analyses the veto element of this issue?

Certainly, recent articles have focused attention on the co-governance model advanced by the Labour Party, the Maori Caucus and their numerous Critical Race Theory-trained supporters. The common agenda of this group is to replace New Zealand's democracy by a system of governance based on equity and ethnicity. Experts such as John Porter, Kerry Burke and Don Brash have written timely and comprehensive pieces on this subject. As a result, people (still far too few) may have acquired a general understanding of the co-governance model proposed which is based on *power-sharing with rights distributed according to ethnicity with appointed representatives and veto power for a specific minority only*.

Moreover, certain citizens may have recognized the clear distinction between co-management of a context-limited situation (such as a committee or a project) and a system of governance for the entire country, including control of its major assets (notably water and land). Nevertheless, knowledge often remains confused and sketchy, prompting both PM Hipkins and Opposition leader Luxon,to seek further clarification on the co-governance concept.

But, due to infrequent references, it is possible that the veto issue could emerge as the least mentioned and the least well understood aspect of co-governance. Given its importance, this should ring alarm bells.

BACKGROUND: Veto (meaning *I forbid* in Latin from the verb vetare) is the final power to unilaterally stop official action, especially in relation to legislation. More broadly, it means *the power to postpone, cancel, prevent, stop, block or influence* official action. So, holding a veto is a serious lever of power. Perhaps the best-known example is the veto held by the five permanent members of the UN Security Council and attributed to recognize their respective action to protect world freedom in World War 2. Ironically, in February 2022, Russia actually used its veto to stop the UN Security Council Resolution demanding that Moscow stop its attack on Ukraine and withdraw its troops. Another example is the veto held by heads of state,and famously by the American President. Monarchs once held this authority but that era has long gone. Going right back to the origins of the veto in ancient Rome, this power – known as *intercessio* – was adopted by the Roman Republic in the 6th century BC to protect the interests of the plebeians (common citizenry) from the encroachments of the patricians, who dominated the Senate. Veto was an essential component of the Roman conception of power being used not only to manage state affairs but also to moderate and restrict the power of the state's high officials and institutions. Importantly, both tribunes and consuls held this power to ensure proper checks and balances in achieving policy objectives and social justice.

Today, other terms such as *prior consent, majority vote, exclusionary action,permanent monitoring or final review* can be used to denote veto power. Regarding the non legally-binding *UNDRIP Declaration on the Rights of Indigenous Peoples,* Article 19 involving *prior consent* was one of the early concerns resulting in New Zealand's initial vote against this legal instrument in 2007. When signature finally took place in 2010, the clear statement in Article 46 on the ultimate status of national sovereignty was considered a sufficient safeguard in case of internal dispute.

VETO POWER WITHIN THE CO-GOVERNANCE MODEL: Noting the veto's origins and variations, considerable differences exist in the New Zealand model now proposed.

First, very few people even know about the veto aspect of co-governance or its significance because this is rarely mentioned by the media and politicians. Whether negligent or deliberate, this helps fan the apathy of New Zealanders overall.with their dangerous ignorance about co-governance (and similar major policy issues)

Secondly, depending on the Act or on a specific administrative decision, different terms for *final control* can range from *outright veto* of a law or decision to *monitoring authority, exclusionary/punitive action* or *pressure exerted* to embed or obtain a certain outcome, to *ex post facto consultation* with the public (which has little purpose when it is unlikely to undo action already taken by a Ministry). In legislation, this diverse terminology is illustrated by the Three Waters Act and its Amendment Bill; the creation of a separate Maori Health Authority; the pressure on local

governments to create separate Maori wards; re-writing the school history curriculum; the obligation on the Canterbury Regional Council to provide extra seats for the local tribe; the attempt to give Maori in Rotorua disproportionate votes on the local council; the Hauraki Gulf governance structure; the new RMA Bills and the installation of the new 'refreshed' secondary education curriculum without prior consultation with the public. The list continues. While the veto has expanded its format, its basic power to control and obtain desired outcomes is unchanged.

Thirdly and unlike the Roman model, veto power is *not shared* in any way between the two basic groups involved in co-governance. It is held by one group only - the Maori 17% minority - over the other multicultural 83% of the population. Obviously, this crucial factor affects the distribution of power and its impact.

Lastly, and as historian John Robinson has explained, the He Puapua Report presents the end goal of this action by proposing a 2-chamber parliamentary model for New Zealand by 2040 guided by *tikanga* (customary Maori law). A general institution for all New Zealanders, the *kawanatanga* sphere would have strong Maori presence, so the nation can know and appreciate *Iwi* tribal boundaries. In addition, Maori would have their own, separate and powerful institution, the *rangatiratanga* sphere. Here *Iwi* and *hapu* would agree and establish their governance structures with their authority recognized so that *Tikanga Maori* would apply and function across the country under Maori (national, *iwi*, *hapu*, *whanau*) control.

It is proposed that Maori would have the right of *final approval* (i.e. a type of veto) over legislation passed by both chambers. While aspirational at the moment, He Puapua could acquire more formal status very quickly as precedent grows.

Surely this goes beyond the boundaries of co-governance? In effect, this becomes full governance. In this case, co-governance would become a transitory period towards this new arrangement. This final objective is often evoked by eminent Maori such as Liz Brown, Deputy Assistant VC Maori, Canterbury University, in her submission to the Select Committee for the Canterbury Regional Council Bill, and Minister Jackson who has remarked that control of water assets is actual control of the country.

NEXT STEPS: It would seem PM Hipkins is now keen to start a conversation on this issue when possible. This might involve selected persons and groups - ***but how will he involve the NZ public who are most directly concerned?*** Moreover, Luxon has remarked that he does not see the need for a referendum which seems to further complicate the issue. So, would this discussion be led by the Wellington power elite? What could be the outcomes (apart from further spurious definitions of co-governance)? In a democracy (currently New Zealand's case), how can citizens (tax payers) best have their due say on this critical matter? This is their right.

It is truly astounding that no broad public debate has occurred on this subject since relevant action started including its glaring omission from the 2020 Labour manifesto. National's 2021 *Demand the Debate* campaign was short lived. As Chris Trotter rightly observed, the *"consent of the governed "* is no longer considered an essential factor. Politicians are guilty in this regard – but so is the apathetic public. With regret,one must conclude that this debate is definitely not wanted by our lawmakers. Otherwise, it would have happened already. Citizens i.e. the governed - should be very alarmed indeed by this and similar current trends.

The best option would be ***blanket repeal of all legislation since 2020 involving co-governance and its veto element.*** That is to say: to admit that all Labour's action since 2020 was an ill-judged error and now best forgotten to preserve democracy and national unity. New Zealand must start over with a clean slate and common commitment to the principle that ***no veto power can ever be held by any specific group of citizens over their peers***. The very idea is abhorrent to New Zealand values.

To those who would object, the justification would be clear. All elected or list Labour MPs in the 2020 election failed to fully consult with citizens (who pay all parliamentary salaries) on this issue. This was gross overreach of power by the Labour Cabinet and its government. And, many of these same MPs intend to present themselves once again for high office. This egregious step should be prevented. It is now urgent - and a matter of integrity - for all New Zealand lawmakers to demonstrate respect for their constituents. Second -class (often dictatorial) performances and a lack of transparency to your paymasters are not acceptable. Who has this courage to issue this challenge? Maybe only NZ citizens themselves.

Finally, do remember to check out the actual design of the veto element in each law involving the process of co-governance. Whatever its form, this element indicates a clear pathway from local to national contexts towards a new governance system for New Zealand by 2040 . This check will be a very instructive exercise regarding the current and future exercise of power in New Zealand, notably where the real political power is intended to lie.