

AIR NEW ZEALAND

AN ACCIDENT WAITING TO HAPPEN?



An Air New Zealand jumbo suffers a mid-air flight control failure just past Los Angeles. Why then did the crew fly on to London in a plane that could have crashed? IAN WISHART breaks the story



If you want to get a spectator's perspective on the deaths of nearly 300 men, women and children, it would be hard to go past the official investigation report into the crash of a Korean jumbo jet on the Pacific island of Guam three years ago. It makes chilling reading:

"A hunter and his friend were hunting on Nimitz Hill during the night of August 6, 1997. The hunter said he heard the airplane first before he saw it. It was extremely loud and was so close it caused the ground to vibrate.

"He said the noise was so loud he could not hear himself screaming at his friend. He said the airplane passed over him approximately 8-10 feet above him in a descending right-wing-low attitude. It appeared as if the right wing was almost touching the ground.

"The shock of the airplane passing over caused the hunter to fall over backwards, and the noise from the plane caused him to be deaf for over an hour. He said the airplane looked huge as it approached and he thought it was going to hit him.

"He could see the wingtip lights flashing and could see the lights of the cabin windows as it passed."

The image of a fully-laden Boeing 747 jet coming straight at you in the middle of an otherwise calm night, and missing you by less than three metres, is hard to shake. On

board were nearly 300 people apparently blissfully unaware of their impending doom less than half a second away. Like all air passengers, they had implicit faith in their pilots.

The report continues:

"It appeared as though the plane did not hit the ground until very near where it came to rest. The hunter said he was standing approximately 200 feet from where the airplane came to rest. He said the noise, ground vibration and shock of the closeness of the plane caused him and his friend to 'almost return to caveman days'.

"He said they couldn't talk or hear and were unable to communicate. He said he thought he was going to die when he saw the plane approaching. When the airplane hit the ground it seemed to nose in. There was a big ball of flame and a shock wave that knocked him over again. The flame burned very big and very bright then continued to burn. The ground shook from the impact when it hit.

"The hunter said he and his friend were almost unable to walk. They would run and stumble and crawl on hands and knees. He continued to run and fall, running toward the Nimitz Hill road..."

It wasn't the first major disaster to hit Korean Airlines, and it probably won't be the last. But for five months after

ABOVE: The wreckage of KAL 801 which crashed in Guam in August 1997

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the crash, Air New Zealand continued to code-share seats on Korean Airlines flights out of Auckland, meaning that people buying Air New Zealand tickets to Korea sometimes found themselves travelling on a Korean Airlines plane. Yet Korean Airlines would subsequently be determined as one of the most unsafe airlines in the region. Air New Zealand did later cancel the code-sharing, but that was because it pulled its own flights out of Korea because the Asian economic crisis caused a drop in travel.

Should Air New Zealand have continued booking its passengers onto KAL flights while that airline's safety was under investigation? Hindsight makes for 20/20 vision, but it is worth noting that another KAL jumbo crashed a year later, prompting such widespread concern in the aviation community that Delta Airlines, Air Canada and the US Defense Department all bailed out of relationships with KAL.

Air safety is a subject that creates emotional responses in both passengers and airlines. Airlines all believe they are safe operators, and resent questioning of their standards. And passengers rely on assurances from Civil Aviation authorities around the world to give them comfort that when they buy an air ticket they're not playing Russian Roulette.

But, as you'll discover later in this article, assurances from Civil Aviation agencies are not necessarily worth the paper they're written on. And therein lies the problem.

Air New Zealand's last major crash was Erebus in 1979 when a DC-10 carrying 257 people slammed into the side of the Antarctic volcano. Official investigations confirmed that the airline had entered the wrong co-ordinates in the DC-10's navigational computer.

Since then, the airline has recovered to become one of the 20 largest airlines in the world with a reputation as one of the safest, but there are those with first-hand experience of Air New Zealand's operations culture who believe the airline has begun taking unnecessary risks and has an alleged "profits before people" attitude.

Take the case of Flight NZ2 from Auckland to London

on 23 March 1994. An internal Air New Zealand report, leaked to *Investigate*, tells a frightening story that its passengers were probably unaware of at the time.

One of the airline's new 747-400s, ZK-NBT, had just taken off from its stopover in Los Angeles, to continue

the final leg of its journey to London. Suddenly, only 5000 feet off the ground en route to a cruising altitude of 37,000 feet, the pilots found it difficult to "roll out of a turn", and had to apply extra aileron trim to keep the plane level. Additionally, "The autopilot could not be engaged," notes the internal report.

Searching frantically for answers, a check of onboard computers showed "the right inboard aileron was deflected fully down and the right flight spoilers deployed."

The ailerons, or flaps, are key elements in steering the plane and landing it. An aileron fault is similar to having a loose wheel on a car. In disbelief, the flight crew sent one of their number back to cattle class to see for themselves whether they had a problem with the right wing. Sure enough, says the leaked report, the problem "was confirmed by visual observation".

With up to 380 souls on board – men, women and children – the flight crew had a choice to make. They could either turn back to Los Angeles or divert to the nearest major airport, or they could continue on to London in a fully-laden jumbo jet having steering difficulties. Their destination was eight hours away.

"The aircraft had experienced an ongoing spoiler problem which had not been rectified in LAX," comments the official report somewhat less than reassuringly. "Accordingly the crew initially believed they had a spoiler problem. After some experimentation, it was determined that by using 1.8 units of aileron trim and 1.5 units of right rudder trim, the autopilot could be engaged with the spoilers retracted.

"The crew's initial reaction was to return to LAX, which would have entailed dumping some 80 tonnes of fuel," says the report, without mentioning that the fuel was worth tens of thousands of dollars.

"The problem was discussed with LAX Engineering on VHF. An attempt to contact Maintenance Watch [in New Zealand] on HF was unsuccessful. About an hour later,



contact was established with Maintenance Watch who initially agreed with the decision to turn back.

“Additional technical information was obtained which suggested that a control linkage failure on the input side of the inboard aileron power control package would bias the control surface to the fully down position.

“Forecast conditions for the flight’s arrival in Gatwick were not ideal, with a strong gusty wind.”

So, to recap to this point: an Air New Zealand 747-400 with hundreds of passengers on board develops a serious flight control system failure after taking off from Los Angeles, leaving the pilots with a choice of whether to carry on to a destination where rough weather is forecast that could make a landing disastrous, or to turn back to Los Angeles and disrupt the travellers.

“After considering all factors, the Captain elected to continue on to LGW; a decision that was acceptable to Maintenance Watch.”

But not acceptable to at least one Air New Zealand executive – the man who leaked the internal report to *Investigate*. Our source is scathing:

“The flight crew, and the maintenance personnel, in my view made a decision that put the lives of up to 380 Air New Zealand passengers at serious risk. They took a gamble they were not entitled to take. Not only would the passengers most certainly have been killed had the aircraft crashed, but so too were they risking the lives of all the Americans whose homes and businesses were underneath NZ2’s flight path.

“That plane went past airport after airport where it could have landed safely. I believe Air New Zealand broke American aviation law by not reporting the incident to US flight controllers.”

A search of US aviation regulations confirmed there is a requirement to notify.

“Federal regulations require operators to notify the National Transportation Safety Board (NTSB) immediately of aviation accidents and certain incidents. An incident is an occurrence other than an accident that affects or could affect the safety of operations.”

And under the heading “Aircraft Accident and Incident Reporting”, the NTSB regulations further state:

“Occurrences Requiring Notification – the operator of an aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board Field Office when...any of the following listed incidents occur: (a) Flight control system malfunction or failure...”

So the question is – did Air New Zealand notify US authorities as required by law? And for that matter did the airline notify the Governments of Canada, Greenland, Iceland, Ireland or Britain that it was flying through their airspace with a malfunctioning flight control system on a jumbo jet?

Air New Zealand claims it was not required to notify anyone other than New Zealand’s CAA, which it did in due course.

“Air New Zealand was not required by Federal law 49 CFR 830 to notify the US National Transportation Safety Board of the incident of 23.3.94,” said the airline’s group communications manager David Beatson in a prepared statement to *Investigate*.

“The incident occurred after the aircraft had departed its last port of call in the United States and while it was en route to London, and did not fall within the criteria for reporting contained in 49 CFR 830.

“The incident was properly reported to the New Zealand Civil Aviation Authority. Internal inquiry by the company’s flight operations management and examination by NZ-CAA found no fault with the procedures followed by the crew.”

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“The flight crew, and the maintenance personnel, made a decision that put the lives of nearly 400 Air New Zealand passengers at serious risk. They took a gamble they were not entitled to take”

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ABOVE: An 11 year old girl is miraculously pulled alive from the carnage of Flight 801

The New Zealand Civil Aviation Authority is required under international rules to notify the FAA of relevant incidents. Surprisingly, although the CAA has admitted it knew of the jumbo jet malfunction, it does not have a copy of Air New Zealand's internal investigation on file. Nor did it advise US authorities.

This is the same CAA that closed down the commuter airline Cityjet for a range of smaller issues that never put 400 people's lives at risk. We'll come back to Civil Aviation's "investigation" of the incident in a moment.

Fortunately, when NZ2 arrived in London, the weather conditions were not as bad as forecast and the plane landed safely, its passengers none the wiser – unaware that their own lives had been on the line.

Once again, our Air New Zealand source:

"Let's look at the possible scenarios. The plane was sufficiently seriously affected that they had to use the rudder and excess aileron trim on the left wing to keep the aircraft stable. They didn't know what had caused the right aileron to lock into the down position, and the possibility was always open that at any moment the malfunction could correct itself.

"Now that would be OK at 37,000 feet. The plane would lurch and bounce, but the pilots should have ample time to release the compensating rudder trim and rebalance the aircraft. But what would have happened if the malfunction corrected itself as the plane was about to touch down at London? At fifty or a hundred feet off the ground, that Boeing 747 could have plummeted into Gatwick's runway long before the Captain compensated for it. Everyone on board would have died.

"And let's allow for the fact also that the plane could have hit serious turbulence or weather conditions requiring every ounce of control and maneuverability. Control that wasn't totally there."

A dramatic example of just such an occurrence can be found in NTSB archives, which reveal how a China Airlines jumbo jet hit clear air turbulence at 37,000 feet that caused an engine speed variation, and as the pilots tried to maintain level flight they lost control.

The 747 with 273 people on board rolled to the right and entered an uncontrolled dive towards the ground. The pilots didn't regain control until the plane was just 11,000 feet above the ground, and the aircraft didn't level off until 9,500 feet.

The NTSB report notes:

"During descent/recovery, aircraft was damaged by ac-

celeration forces and high speed. There was evidence the pilot was preoccupied with engine problem."

If the same kind of problem had struck NZ2, what would have been the outcome?

The airline executive's concerns appear to be mirrored in the internal report, which notes at the end:

"There will no doubt be a divergence of opinion amongst flight crews as to whether this flight should have continued to destination or turned back.

"This was a very unusual failure, for which procedures have not been developed or training given.

"On this occasion the outcome was successful. That is not to say that in slightly different circumstances, the outcome would be the same."

Once engineers had stripped the affected area, they discovered the shank of a broken quarter inch fastener bolt had fouled the aileron mechanism. "Its origin was not determined although it had obviously been lodged in this position for a considerable time."

Ironically, the pilots responsible for the decision to keep flying the crippled airliner were subsequently promoted.

New Zealand Civil Aviation boss Kevin Ward claims the flight control systems malfunction was not serious, because Air New Zealand has assured the CAA it wasn't. And because it wasn't serious, he claims the Americans, Canadians, Icelanders, Irish and British did not have to be informed they had a dodgy jumbo jet passing overhead.

"This occurrence did not meet the agreed international criteria for reporting an incident or accident. It was not assessed by the crew as being a serious incident or a major problem. They were however required to report the event to the CAA which they did through the airline's reporting system.

"Aircrew are required to be able to assess problems which occur in flight as part of their normal duties. They train for this and have written guidance material on board the aircraft," says Ward reassuringly, although you can see from the leaked report above that he is totally wrong – the flight crew had never trained for this and came to a solution by trial and error.

But CAA boss Kevin Ward continues:

"They also have the ability to contact the airline by radio if this is felt necessary. In this case the aircraft was assessed as controllable in accordance with the onboard reference material."

Once again, Ward – the Civil Aviation boss whose task

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Photo: US Department of Defense

is to ensure public safety – appears to be wrong. By Air New Zealand's own admission in its internal investigation, no procedures had ever been developed nor had training ever been given to its pilots to handle what the airline was privately calling "a very unusual failure". So how much confidence can the New Zealand travelling public or the Government have in assurances from the CAA given the evidence you've just read?

It gets worse, however, and we'll return to the CAA investigation shortly.

The extreme risk of Air New Zealand's decision to troubleshoot in midair and keep flying has been thrown into graphic relief as US federal investigators probe last

year's crash of an Alaska Airlines MD-83 jet off the Californian coast. The plane was en route from Mexico to San Francisco. The Feds now know that Alaska Airlines was doing exactly what Air New Zealand did, with a very similar problem. Only this time, they lost the gamble and 88 lives perished in icy Pacific waters.

In a front page news article headlined "Why didn't crew land the plane?", the *Seattle Post-Intelligencer* tells a story that will seem eerily familiar.

"Second guesses started even as investigators began pulling debris and bodies from the Pacific's cool waters to piece together the final moments of Alaska Airlines Flight 261.

ABOVE: The US Navy hauls wreckage from Alaska Airlines 261 to the deck of a recovery ship, using Deep Drone submersible. RIGHT: An Alaska Airlines MD-83 identical to the one that crashed



"The flight crew was aware of mechanical problems in the aircraft's stabiliser. They knew, too, that their airplane was within landing range of several airports. Yet they chose to continue flying toward their next scheduled stop, San Francisco, even as they discussed the stabiliser problem for at least a half hour with Alaska personnel on the ground.

"After the crash, aviation experts, bolstered by hindsight, quietly and reluctantly started questioning the crew's decision to trouble shoot rather than touch down."

Lawyers acting for families killed in the crash immediately began their own investigations, with one of them – aviation litigator Robert Clifford – pointing out that Flight

implications of sloppy maintenance and poor piloting are pervasive."

But the analysis of the Alaska Airlines disaster continued in aviation circles.

"Information now disclosed by the investigation reveals that the autopilot was shut of and the aircraft hand flown during much of the two hour flight," a private pilot posted in an aviation discussion group on the internet. "That likely means that the stabiliser trim was not working properly, since MD-83s are otherwise flown on autopilot most of the time.

"Airline pilots are retrained every six months. That's why they are so good. We look at them in awe and re-



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261 had passed at least nine commercial or military airports where its pilot could have landed and possibly averted disaster.

"I mean, hell, why didn't they land in San Diego?" Clifford told the newspaper. "They were in an emergency situation and instead of landing they were troubleshooting in the air."

Which is exactly what the Air New Zealand flight crew had done for more than an hour.

Another aviation lawyer representing families of the dead in the Flight 261 crash, Paul Hedlund, told the *San Francisco Chronicle* that manufacturers and airlines do not have a "zero tolerance" policy towards air safety.

"As in every airline crash, especially in this one, the

spect them (and pay them pretty well too) because they are, as we see it, all there is between us passengers and our worst nightmare come true – a crash.

"Unfortunately, recurrent training in an MD-83 simulator does not include troubleshooting a stabiliser system failure, except to recognise a runaway trim and deal with it before it gets to aircraft uncontrollability.

"No training is conducted to demonstrate loss of aircraft control or how to regain it if the stabiliser limits are exceeded.

"Thus, troubleshooting in the air a malfunctioning stabiliser trim system is like taking passengers on an experimental test flight! Aircraft maintenance is designed to be performed on the ground, not in the air.

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Air New Zealand's leaked internal report reveals that the airline had no clues about what had caused the fault at the time, whether it would somehow self-correct inflight, or even what the impact would be on the 747's safety

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“Malfunctioning flight controls are an emergency that requires an immediate landing at the closest airport, period!”

Our Air New Zealand source claims he raised concerns with his colleagues after the incident but was met with the response that turning back to Los Angeles would have caused massive disruption to the passengers.

“Think of the disruption if they'd half rolled into the North Atlantic,” retorted the operations executive who raised the concern.

New Zealand Civil Aviation officials say, however, that they are “satisfied” with Air New Zealand's actions. Which is undoubtedly comforting news for the travelling public.

There are those in the aviation industry in New Zealand who reckon the bureaucrats at the CAA would have been the kind of people to make reassuring noises even as the *Titanic* slipped beneath the waves, from sheer force of habit, and not because they actually know what they're talking about. In an industry that relies heavily on public confidence, it is not the done thing to panic the peasants.

And the CAA can make a silk purse from a sow's ear that would calm all but the most hardened journalists.

“Whilst it may seem that there are similarities between this event and the Alaskan Airlines flight 261 of last year, the events are quite different,” continued Kevin Ward reassuringly in his statement to *Investigate*.

“The Air New Zealand aircraft was controllable at all times. The Boeing 747 has sufficient redundancy designed into the system to deal with an inboard aileron failure.”

Well, let's take a closer look at that claim.

The Air New Zealand aircraft was not “controllable at all times”. By Air New Zealand's own admission in its internal report, the autopilot system initially shutdown because of the aileron fault, meaning not



File Picture

only did the pilots have to figure out what was wrong, they had to manually take control of the plane at the same time. It took some considerable time before the fault could be compensated for enough to allow the autopilot to re-engage. Control was only established “after some experimentation”.

And what about the Boeing 747’s design enhancements? While Ward makes it sound as though the crew had it sussed from the first moment and simply flicked through their 747 inflight repair manual, the truth is very different.

Air New Zealand’s leaked internal report reveals that the airline had no clues about what had caused the fault at the time, whether it would somehow self-correct in flight, or even what the impact would be on the 747’s safety.

Nor did the flight crew know if the unresolved spoiler problem they’d been experiencing would kick in again and make the flight even more unsafe.

The report states that after engineers on the ground finally located the cause of the malfunction, only then did they approach Boeing “for future guidance...on the likely effects an engine failure, aileron lockout, hydraulic or other malfunction could have had on an aircraft with reduced manoeuvrability caused by such a defect”.

Which proves that, at the time of the malfunction and all the way from Los Angeles to London, the pilots of a fully-laden Air New Zealand jet had no idea what impact the fault might have on their ability to deal with any other possible emergency, like an engine failure or a hydraulic fault.

And if the flight crew didn’t know what they were dealing with, critics contend, they should have turned back and landed.

Frighteningly, it shows just how much Civil Aviation doesn’t know about this incident, and throws up new questions about the competence of CAA’s own investigation of the matter. Did CAA merely rubber stamp Air New Zealand’s official report?

“To summarise,” says Kevin Ward, “the CAA is satisfied that there was no requirement under the ICAO (International Civil Aviation Organisation) requirements for the crew to have notified the American authorities.

“The crew made an informed decision to continue the flight having considered the appropriate guidance material as they are trained to do. This was later investigated by the airline and the crew actions were considered to be an appropriate method of dealing with the aileron deflection.

“The CAA monitored this investigation at the time and is satisfied that the airline acted in accordance with the requirements of aviation rules.”

But what do the rules actually say?

New Zealand’s rules say that air traffic controllers should be notified by radio to “ensure that rapid notification is passed to the Authority. It will also allow the ATS [Air Traffic] provider to ensure that all records pertaining to the incident are retained should a consequential investigation be required...this action will also enable the air traffic service unit to initiate a timely corrective action should it be required.”



ABOVE: US aviation lawyer Arthur Wolk - “Air New Zealand risked the lives of everyone on board”

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“I’m a jet pilot with thousands of hours of flight experience. I can tell you now that you would never go five thousand miles with a control surface problem. That’s ludicrous! That’s so unsafe I can’t believe anyone would attempt to justify it”

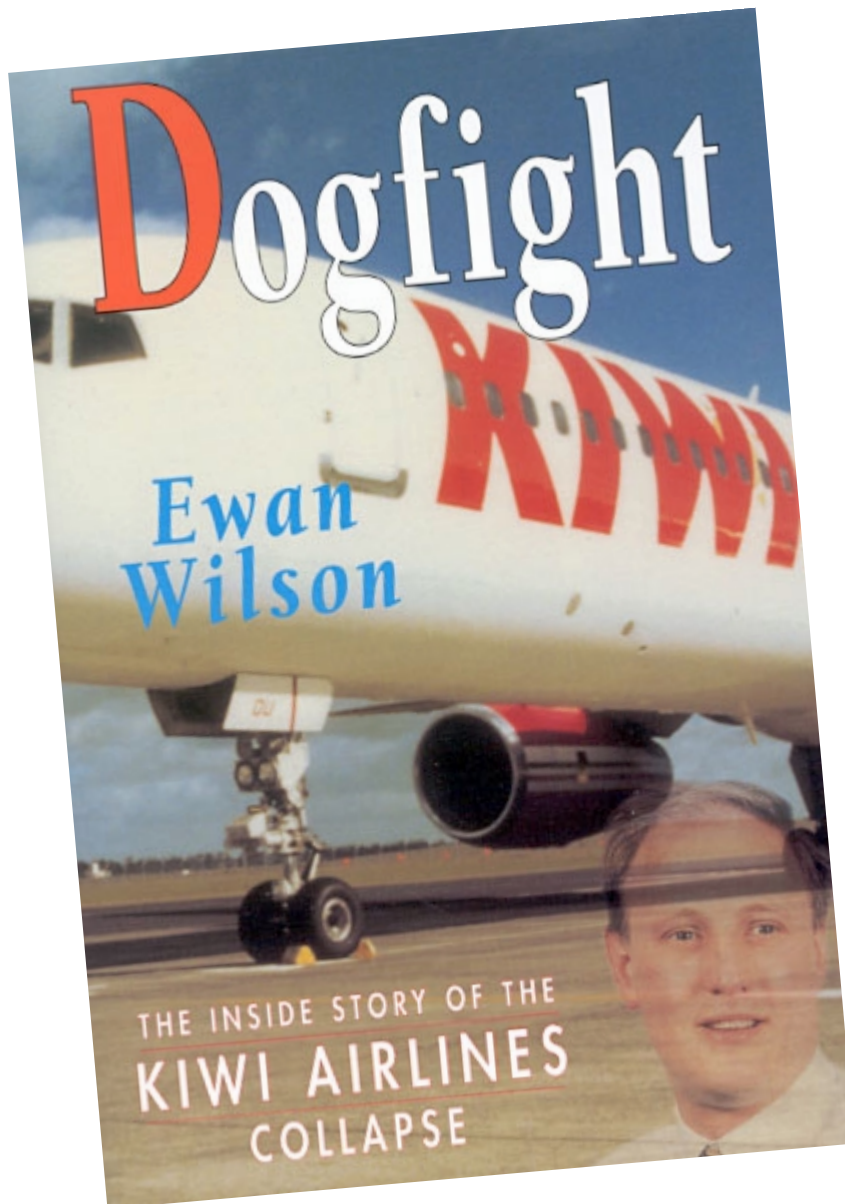
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Examples of serious incidents requiring immediate notification under ICAO rules include:

“Any loss or significant malfunction of one main system, sub system or set of equipment. For example...flight control system...significant asymmetry of flaps, slats, spoilers and the like...reversion to manual control of powered primary controls, other than for training or test purposes.”

New Zealand Civil Aviation says its current guidelines indicate that it is up to the flight crew to decide how serious an incident is, but there are proposals in front of ICAO to modify the rules to make it “a requirement for States to establish mandatory incident reporting systems to facili-

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tate the collection of information on actual or potential safety deficiencies.”

ICAO figures also disclose that while a third of air fatalities are caused by aircraft inadvertently hitting the ground because of pilot error – known as “controlled flight into terrain” like the KAL 801 crash, “loss of control” at 26 percent of fatalities is the next largest cause of death and 21 percent of air fatalities are caused by “technical malfunctions”.

It is also worth noting that ICAO and CAA rules state that: “Substantial damage which occurs between the time any person boards an aircraft...and such time as all persons have disembarked...is to be notified and reported as an accident.”

Is it arguable that a broken bolt fouling the aileron system is damage? Hard to know, but CAA Director Kevin Ward’s assurances are beginning to sound less and less reassuring.

“The CAA is committed to safety in aviation and will continue to investigate occurrences such as this. We will take appropriate action where required and will err on the side of safety where public air transport is involved,” Ward concludes.

Readers will be able to form their own opinions on CAA’s expertise, but it is understood that the Beehive is beginning to have serious doubts about the structure of the CAA, which on the one hand is required to have a “relationship” with the industry, and on the other is then required to be an “independent” enforcement body.

The difficulties are further highlighted by CAA reporting to a Board of Directors that includes owners or representatives of major airlines.

Air New Zealand’s position is that it did nothing wrong and that the story is a magazine beat-up. Airline spokesman Cameron Hill delivered the airline’s prepared statement with the words: “You will want to read this in depth before you decide whether to publish this story, because it completely and utterly documents and rejects every one of your claims.”

When we asked whether that meant Air New Zealand was prepared to release all of its internal reports on the matter so the travelling public could judge for themselves, Hill was unequivocal:

“No. We’re a private company. We don’t have to.”

So what is Air New Zealand’s response?

“This incident was not comparable with the Alaskan Airlines’ MD-83 crash where it is believed the aircraft suffered a total loss of primary pitch control,” continued David Beatson.

“The defect on B747 ZK-NBT was in a secondary lateral control - the right inboard aileron - and B747 control systems are designed so that the crew can retain operational control over the aircraft when this particular component is inoperative.”

Which is all very well, except the crew didn’t know this at the time, you’ll recall. They had to ask Boeing after the plane landed. Nor had they been trained to deal with such a failure.

“After ZK-NBT’s departure from Los Angeles, the crew noticed that the right inner aileron was in the full down position and not responding to commands.”

Again, the PR-speak image of merely looking out the window at some point and noticing the aileron down doesn’t quite convey the same sense of drama as the leaked report, which described how the crew were having difficulty pulling the plane out of a turn. Nor would the autopilot engage. And the plane had suffered a spoiler problem flying into Los Angeles that still had not been fixed.

“As they were able to operate the aircraft safely and legally on other more significant control systems, and had more fuel than would be required for the normal flight to Gatwick airport, they continued their flight. The flight was completed safely.

Wanting to get an international opinion on Air New Zealand’s actions, and the CAA’s endorsement of them, *Investigate* approached US aviation lawyer Arthur Wolk – a jet pilot turned attorney who’s been appointed to the steering committees of major US air crash investigations. Wolk is the aviation expert used by the US television networks CNN, NBC and ABC. His reaction on hearing what Air New Zealand did:

“You’re telling me that an Air New Zealand jumbo that had just taken off from LA only a few minutes earlier, lost control of an aileron and autopilot for unknown reasons and they didn’t turn back?”

Wolk was lost for words for a moment.

“That is the most unwise course of action they could possibly have taken. It is unconscionable. Airplanes do not cure themselves. They tend to get worse, not better. They were dealing with a lateral control issue which has the added danger that it could cause an uncontrolled roll of the aircraft.

“I would say that that was an extremely improvident course for Air New Zealand. The crew should have gone out over the ocean, dumped the fuel, and landed at Los Angeles or Edwards Airforce Base. In fact, I would have bypassed LA and gone straight to Edwards, because the military runway is much longer.

“To have been so close to major airports, and decide to continue to London, risked the lives of the passengers, the crew and everybody on the ground below. Troubleshooting with passengers on board makes everyone on board a test pilot. And the problem with troubleshooting is this – if the thing you are troubleshooting suddenly fails in a more serious way because you are experimenting with it, then you might end up with a problem that as a pilot you can no longer handle.

“If you can hand-fly the airplane you can land it. And they should have. Immediately. To do otherwise is to play roulette with the lives of the passengers and crew. And that’s exactly what happened to Alaska in a similar situation.

"I'm a jet pilot with thousands of hours of flight experience. I can tell you now that you would never go five thousand miles with a control surface problem. That's ludicrous! That's so unsafe I can't believe anyone would attempt to justify it.

"The thing that knocks me out is they fly this thing over long distances, LA to London, a large part of that is over the Arctic circle and the Atlantic ocean with no place to land. Just what, pray tell, did the Air New Zealand pilots propose to do if the situation worsened suddenly? There were no airports out there to save them."

According to Wolk, the flight crew should have notified both NZ authorities and US authorities immediately while they were in the air, and taken emergency action. He was also scathing of New Zealand Civil Aviation's whitewash of the seriousness of the situation.

"Our Federal Aviation Administration is subject to the same criticism, and CAA in England is the same. These agencies work so closely with manufacturers and airlines that it's a case of the tail wagging the dog. The airlines control them. That Air New Zealand situation is unjustifiable. This is the same airline isn't it that put a DC-10 into Erebus? And if I recall the official investigation correctly there were serious concerns about the airline's conduct after the crash – 'an orchestrated litany of lies'."

Wolk's criticisms of the FAA are backed up by former US Department of Transportation Inspector-General Mary Schiavo. Schiavo's role included being chief watchdog of the FAA's integrity, and when the Alaska Airlines investi-

gation revealed that the FAA had "overlooked" many unsafe practices at Alaska, she wasn't surprised.

"It reflects the 'good-old-boy' network in aviation. It's just a comfortable way of doing business, the path of least resistance. Usually, nothing happens. It's only when something happens that they get caught. Here it is very different because there are a lot of dead people."

Intriguingly, Schiavo adds that while she was Inspector-General, she often got complaints from FAA inspectors overseeing many different airlines that when they found safety irregularities and tried to get tough, they suddenly "got transferred".

The cosy relationship between the FAA and Alaska only surfaced because the airline initially boasted of a glowing FAA safety record. The smile soon vanished from Alaska and FAA faces when FBI agents and Department of Transportation officials raided offices and seized documents that may evidence that Alaska "encouraged criminally improper maintenance practices that were either sanctioned by or ignored by the FAA."

The reports of falsified maintenance records contrast sharply with earlier official statements that "Alaska has received high marks from the FAA Aircraft Certification Office for its level of compliance...Alaska, the 10th largest carrier [in the US] had the fewest number of fines for maintenance violations."

Alaska Airlines faced further embarrassment during the US federal investigation when a corporate training video hit the media soon after the Flight 261 crash. The video



tells the story of a pilot in the 1940s who routinely loaded his plane with freight in Anchorage, hopped to a nearby frozen lake, unloaded his cargo onto the ice and returned. After taking on another load of freight in Anchorage, he flew back to the lake. There he replaced the first load with the second and took off to a remote village – having successfully sneaked the excessive cargo by federal safety inspectors.

“The way we figured it,” explains a gravelly-voiced actor who plays the pilot on the training video, “if you can get it off the ground, it ain’t overloaded.”

The video highlights how Alaska Airlines’ bush pilots, scornful of rules drafted by distant bureaucrats, provided a lifeline to isolated residents of the state.

The *Seattle Times* newspaper claims the pioneer swagger is still there – Alaska Airlines’ pilots wear leather bomber jackets rather than uniforms, and an inhouse newsletter recently boasted of an airline executive who authorised the purchase of 35 bottles of vodka in Siberia to de-ice a plane’s wings – something that the Federal Aviation Authority would have kittens over.

From Philadelphia, Arthur Wolk’s recommendation to Air New Zealand is simple: “Air New Zealand should have come out publicly and said ‘This was very poor judgement by our pilots. We’ve retrained our flight crew and this will never happen again’.”

When *Investigate* pointed out that Air New Zealand had in fact promoted the pilots involved, Wolk was stunned.

“Look, this incident had the potential to bring Air New Zealand tremendous negative publicity if there’d been an accident, and tremendous economic damage to the airline. Instead of defending itself, the airline should be saying ‘We’re sorry, our crew made a big mistake’.”

But Wolk makes another very important point about the incident that the CAA failed to pick up. Air New Zealand’s internal report notes that the failure was caused by the remains of a bolt fastener that had snapped off from somewhere else and fouled the mechanism. “Its origin was not determined although it had obviously been lodged in this position *for a considerable time* [our emphasis].”

The question is, why hadn’t Air New Zealand’s maintenance checks discovered this earlier? How many flights over vast distances had this flight control timebomb been waiting to happen?

Wolk’s lawfirm has been involved in many major air crash investigations, and he says one thing comes through loud and clear.

“In my experience, the majority of air crashes occur because of defects or servicing negligence about which the manufacturers or the airlines are well aware.”

It is a point to ponder as you consider that the leaked report reveals the Air New Zealand jet had not one but three faults. The report says categorically that “The aircraft had experienced an ongoing spoiler problem which

compare the airlines:

american airlines, october 1 2000

A Boeing 727 dumped fuel and had to make a forced landing because of an uncommanded left turn while on climbout from Miami. The fault was found to be aileron related.

northwest airlines, march 18 1996

An Airbus A320 with 110 people on board declared an emergency after a fault in its elevator-aileron computer caused an error of plus or minus 100 feet in pitch control. The plane landed at Detroit.

northwest airlines, june 14 1996

The pilot of an Airbus A320 noted a two or three degree uncommanded pitch decrease, coinciding with a pitch warning indicator alarm. He declared an emergency and landed safely at Boston.

united airlines, october 24 1991

During a non-stop flight from San Francisco to London, shortly after takeoff a Boeing 747 pilot reported a malfunction in his elevator pitch control, and the autopilot disconnected. The airliner with 280 onboard diverted to the nearest runway exceeding 10,000 feet in length - Denver Colorado - and made an uneventful emergency landing.

american international, september 15 1993

A DC 8 freighter approaching to land developed a fault in its left aileron, forcing the pilot to use full right aileron to keep the aircraft level. An emergency was declared and the plane landed safely after one missed approach. Subsequent investigation found maintenance crews had failed to replace a broken aileron cable.

american airlines, october 13 1994

An MD-11 on a company transfer flight from Dallas to Washington DC experienced a right roll and yaw shortly after takeoff. Although they could compensate for the uncontrolled turn using other ailerons, they opted to declare an emergency and return to Dallas. Investigation revealed maintenance crews had accidentally jammed a spoiler during work on the left aileron.

united airlines, june 7 2000

A Boeing 767 en route from New York to San Francisco declared an emergency and diverted to Chicago after experiencing aileron control difficulties. None of the 165 people on board was hurt.

air new zealand, march 23 1994

An Air New Zealand 747-400, just 5000 feet above Los Angeles and climbing, experienced aileron control difficulties of unknown origin causing difficulty breaking out of a turn and could not engage autopilot. It already had an unresolved spoiler problem. Its crew, supported by the airline, opted to continue flying a further 5000 miles to London believing that the benefits outweighed the risks.

data (except for Air NZ) courtesy www.nts.gov

“

The plane was on the runway, fully loaded with passengers when the crew decided to delay departure and off-load freight to ensure that a fault in the braking system did not endanger the safety of the flight. The company responded in a remarkably heavy-handed manner. Upon his return, Captain Kivi was stood down from duty

”

had not been rectified in LAX. Accordingly the crew initially believed they had a spoiler problem.”

This is extremely important. It means that the aircraft's spoilers were already malfunctioning and had not been fixed, *and then* the right inner aileron failed as well, causing the autopilot to disengage.

How do you reconcile that potentially lethal flight control cocktail with the smooth assurances given by both Air New Zealand and Civil Aviation?

And does Air New Zealand have a “can-do” culture? Does it put profit before safety - ever? Group communications manager David Beatson says emphatically: “No”.

“Air New Zealand utterly rejects this allegation. Your “airline source” has no factual basis for making this claim. The company is proud of its record of safe operation and keenly aware of public concern about airline safety issues.

“Air New Zealand invests very substantial sums each year in crew training and retraining, on aircraft and aviation infrastructure maintenance, and on safety monitoring and auditing activities to ensure it meets both national and international legal and regulatory requirements.

“The company is judged by the international insurance industry - which is in a position to assess such matters objectively - to be one of the lowest risk airline operators in the world today.”

Beatson's last point is certainly true. Air New Zealand's safety record - as evidenced by the number of major crashes - is certainly a lot better than many other airlines, but it doesn't tell potential flyers whether the airline is excellent or just the best of an overall average bunch.

Air New Zealand came within a whisker of losing a 747 in a midair collision off Los Angeles before Christmas, and while it was the US Navy's fault, that wouldn't have made the resulting tragedy any easier on the families of people killed.

How, then, does Air New Zealand treat those pilots who do raise safety issues? Surely, if Air New Zealand is as committed to safety as it claims, it would bend over backwards to err on the side of caution.

So let's return for a moment to November's *Investigate*. In it, we ran an article on aviation safety by Barbara Sumner that another monthly “current affairs” magazine that benefits from Air New Zealand advertising had decided at the

last minute not to run. She recounted an incident that took place on an Air New Zealand jet in Japan:

On February 15 1997 Air New Zealand Captain Bruce Kivi, along with his two first officers delayed a scheduled flight from Kansai in Japan to Christchurch. The plane was on the runway, fully loaded with passengers when the crew decided to delay departure and off-load freight to ensure that a fault in the braking system did not endanger the safety of the flight.

The company responded in a remarkably heavy-handed manner. Upon his return, Captain Kivi was stood down from duty under the guise of retraining. Initially in what NZ ALPA described as ‘the absence of a fair and proper inquiry’ he was found to have reached the wrong conclusion in Kansai, although nobody in the company could explain to him what he'd got wrong. Or why he was being retrained. Captain Kivi was also advised that future demonstrations of ‘inadequacy’ might result in disciplinary action being taken against him. When he continued to object to the company's attitude he found himself under instruction to attend appointments with the company's psychologist. He was found to be totally fit in all aspects to hold his position of Captain but once the psychologist realized Kivi had allegedly been sent for appraisal as part of a company sanctioned smear tactic he declined to involved and withdrew immediately.

But the story does not stop there. Captain Kivi bought a personal grievance case against the company, which in turn lead to the company setting up a joint committee with NZ ALPA to investigate. The committee discovered 53 separate issues relating to current operational procedures, corporate culture, individual behaviors, safety implications and human resource performance and outcomes. Two hours before the final meeting to resolve these issues the company withdrew from the proceedings, dumping the recommendations of the committee it had personally approved. The personal grievance claim is still unresolved and Captain Kivi, still employed with Air New Zealand, albeit under special provisions, was unable to comment to Investigate on any of the issues raised because of his employment contract.

While reluctant to comment about the Kivi situation

Nicholson says that pilots saw how personally damaging it was to Kivi, the pilots who stood alongside him and their families. "It was a clear communication about how the company treats messengers. He was like a poster boy for how powerful they are."

Captain Stuart Julian is the Air Safety Investigator for NZ ALPA. He says the two pivotal areas to look at when discussing any of these issues is the culture inside the companies that run the aviation industry and the role of the regulatory body. "In every industry," says Captain Julian, "company culture is paramount." He refers to a paper given on Culture and Aviation Safety for the 21st Century in 1997 by Brent Haywood of the Australian Aviation Psychology Association, that describes the three main company cultures operating today. The generative company, where information is seen as a vital resource and messengers are trained and welcomed, the bureaucratic model where messengers are listened to but where no action is taken or thirdly the pathological type where messengers are shot. When asked which category New Zealand's main aviation players fall into Captain Julian is slow to respond but finally agrees that after a decade of restructuring and margin shaving no one has yet made it into the first category. "How a company deals with messengers is a key indicator to its culture and in this instance a key indicator to its level of safety."

Three more senior Air New Zealand pilots who spoke "on the record" to the New Zealand *Listener* in 1989 about safety concerns found themselves on the thick end of million dollar lawsuits and were crushed by the airline.

Which is probably the reason our anonymous source inside the airline doesn't want Air New Zealand to find out his name, and in the best journalistic traditions of source protection we have agreed to comply with that request.

The public will be able to judge for themselves whether Air New Zealand's past policy of trying to silence critics re-emerges as a result of this article, or whether the air-

line has indeed turned over a new leaf and become more willing to accept open and public debate on issues of air safety that affect every person who shells out money for an air ticket in this country.

But we have some direct knowledge of our own about the airline's willingness to take calculated safety risks. In December 1993, an Air New Zealand jumbo jet with a known brake fault on its wheels took off from Auckland to Rarotonga – a destination with a short runway and surrounded by mountains. The Captain advised passengers not to worry because the plane would increase its engine braking to compensate for the problem.

Our source within Air New Zealand raised some further anecdotal incidents that he believed had taken place. Some of those have been confirmed, some have been incorrect, and some are still under investigation by this magazine.

In New Zealand, it is hard for the news media or the public to find out about unsafe incidents on major airlines. Air New Zealand refuses to release its internal reports, and Civil Aviation's Safety Investigation Manager, Richard White, also refuses to release reports on specific instances.

"There is a real concern that should it become known in the aviation sector that the CAA will release such information upon request then individuals will be less likely to provide such information to the CAA."

Contrast that position with America's NTSB, which publishes on a website available to anyone reports on more than 45,000 aviation safety incidents, naming airlines, aircraft, dates, what happened and who was to blame.

Is New Zealand's culture of secrecy really necessary, when compared to the open and free exchange of information found in the US? Or is it just another sign that New Zealand is still an immature democracy that doesn't trust its citizens to make informed decisions?



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A IN THE DARK

are health officials flying
blind on vaccines?



simon jones

Assurances from New Zealand health officials that infant immunisation does not cause cot death have been thrown into doubt amid revelations that pathologists don't test for vaccine complications during autopsies. For years the Ministry of Health has rubbished claims that a rise in cot deaths shortly after vaccinations is linked to the immunisations, saying "there is no evidence" to suggest a link.

But when concerned parents asked pathologists whether they tested for vaccine complications during infant autopsies, they were told "no". That could mean that some children whose deaths were put down to Sudden Infant Death Syndrome (SIDS), were in fact killed by immunisation reactions.

The problem was discovered by researcher Julena Meroiti, who works with the National Advisory Group on Autopsy Inc, Kirihaehae.

"This question kept on nagging me – what is really causing our babies to die? And I couldn't understand why, in this age of science and technology, we could not identify what our babies die of."

Meroiti says it was a chance discovery that led her to look at whether vaccines may play a part in SIDS, and she was stunned to find out how poorly vaccines are monitored in New Zealand.

"No one has put a vial under the microscope and quantified what is actually in the vaccines. Not the Ministry of Health, not ESR, not the health officials who advocate mass immunisation. I know this because I asked them.

"None of these agencies or people has done any re-

search to verify what bacteria, viruses or other impurities are present in the vaccines imported for use on New Zealand children. No due diligence, no homework, no facts, no checking it out. Yet all of these agencies will strongly advocate your baby is vaccinated," explains Meroiti.

"The vaccine is manufactured in the USA, put on a plane, flown all around the world and then distributed to GPs and given to a baby, without there being one mechanism in place to verify that it is even the correct vaccine."

Meroiti says that shock led her to question pathologists over whether they looked for vaccine poisoning in SIDS autopsies, and the discovery that they didn't.

"There is factual evidence that some vaccines, like Pertussis (whooping cough), lower baby's breathing rates, to the point where they can actually just stop breathing. No trauma, no visible signs of struggle, just stop breathing.

"Dr Viera Schreiber and her late husband, who designed and developed what we now know as the Apnoea Breathing Monitor for infants at risk of SIDS, have documented this. The monitor is currently placed on at-risk babies to sound an alarm if they stop breathing. But quite accidentally, they stumbled on a fact that startled them: babies who had been vaccinated tripped the alarm every time. Their breathing lowered beyond normal. Three years of research later, they surrendered to the fact that vaccines lower breathing rates in babies – dangerously so, sometimes ending in death. Respiratory arrest. Death by vaccine. Marked down as SIDS."

The autopsy advisory group has now raised its concerns with the Royal College of Pathologists of Australasia, asking to have two specific blood tests introduced into autopsies on SIDS babies: Endotoxins and Circulating Immune Complexes. These tests, says Meroiti, are already being used by some pathology labs overseas to identify toxic reactions to immunisation.

So why, if they have no actual hard evidence that proves vaccines don't kill some children, do the health authorities in New Zealand spin the line to the media and the public that there is "no evidence" to link vaccines with SIDS?

Auckland Medical School, which is heavily involved in the promotion of mass immunisation, says it draws the conclusion from comparison studies between vaccinated and unvaccinated communities, but acknowledges that other social factors could distort the figures.

A leading health insurance company is also concerned at what appear to be major complications caused by infant vaccines, but says privately "the health authorities

are very good at not collecting statistics that could be embarrassing."

But Meroiti's concerns have been gravely underlined, in the wake of a new report in a British medical journal last month that alleges the MMR vaccine given to toddlers should never have been released on the market, and may cause autism and bowel disease in children.

Autism rates have increased markedly since the introduction of the triple-vaccine for measles, mumps and rubella, and the new scientific report says MMR should not have been introduced because there was "insufficient evidence of its safety".

Fears about MMR have been widespread for more almost two years, yet the latest criticism from health experts in the UK, just published in *the Journal of Adverse Drug Reactions*, adds increased weight to the argument that the use of MMR around the world is putting children at risk.

Dr Peter Fletcher, who was a senior professional medical officer for Britain's Department of Health in the early 1980s, criticizes the decision taken by his successors. In his review, Dr Fletcher says: "Being extremely generous, evidence on safety was very thin, being realistic there were too few patients followed-up for sufficient time. Three weeks is not enough, neither is four weeks."

He adds in his report: "On the basis that effective monovalent vaccines were available, the Committee on the Safety of Medicines could be confident that delay in granting a licence would not result in a catastrophic epidemic of measles, mumps and rubella. Caution should have ruled the day, answers to some important questions should have been demanded and encouragement should have been given to conduct a 12-month observational study on 10-15,000 patients and a prospective monitoring programme set up with a computerised primary care database. The granting of a product licence was definitely premature."

The report's conclusions that MMR was not properly tested are even more significant in New Zealand where no tests have been done at all.

In Britain scare stories about the MMR injection have caused a serious drop-off in the number of children being vaccinated. Between October and December of 1999, MMR coverage had dropped to 88.2 per cent.

As well as autism, MMR has, in a series of widely-publicised scientific studies, been linked to Crohn's disease – a particularly nasty form of inflammatory bowel disorder.

The British government insists there is no evidence for

“Can you imagine the economic and political import of discovering that immunisations are killing thousands of babies?”

the claims and recently launched a \$9m advertising campaign to highlight the point.

The controversy first emanated from a group of scientists at the Royal Free Hospital in London who have been doggedly pursuing a theory for many years. Dr Andrew Wakefield and his colleagues have been investigating the possibility that inflammatory bowel disease is caused not by bacteria, but by something else that breaks down the blood vessels in the gut wall. In 1989, he and Professor Roy Pounder published in *The Lancet* the first of their controversial papers, suggesting that the measles virus was the cause of Crohn's disease.

In the *Lancet* in 1995, the team claimed they had found measles virus in tissue taken from the bowel of people with Crohn's disease. The disease, they said, was three times more common in those who had been vaccinated against measles.

So what about autism? Because of his work on bowel disorders, a number of parents took their children to the Royal Free. A number of these suffered both from bowel disease and from autism. They also had, Dr Wakefield established, developed their autism around the time they

The problem with Wakefield's conclusion, said Dr Ramsay, was that the autism element was not a study in the proper sense at all. This was a group of children whose parents were worried. They had developed autism at around 18 months to two years – the time of the MMR vaccine, but also the time when autism usually shows itself. There was no control group of children who had been vaccinated but did not have autism.

In the correspondence columns of the *Lancet* for months afterwards there were criticisms, more or less scathing in tone, of the research. The then Chief Medical Officer commissioned a review of the Royal Free data from 37 experts called together by the Medical Research Council, who concluded there was no evidence that the MMR vaccination caused either bowel disease or autism.

But Dr Wakefield remains unrepentant.

He told the *Telegraph* recently: "Tests have revealed time and time again that we are dealing with a new phenomenon. The Department of Health's contention that MMR has been proven to be safe by study after study just doesn't hold up. Frankly, it is not an honest appraisal of the science and it relegates the scientific issues to the bottom of the

"Will eradication of feared diseases, such as AIDS, through mass vaccination, be one of man's greatest triumphs or will we live in fear of deadly mutations of microbes that have outsmarted man's attempt to eradicate them?"

were given the MMR vaccine.

Recently Dr Wakefield disclosed that he had identified 170 cases of new syndrome of autism and bowel disease in children who had the triple-dose injection.

"Last week in our clinic we saw nine or ten new children with exactly the same story," said Dr Wakefield. In his first public comments since the row erupted in 1998, Dr Wakefield repeated his 'serious concerns'.

He adds: "The department says that the safety of MMR has been proven. The argument is untenable. It cannot be substantiated by the science. This is not only my opinion but increasingly the view of healthcare professionals and the public."

At the time Dr Wakefield's research was lambasted by the government and his peers alike.

"The research has dubious relevance to the safety of the MMR vaccine. Like many other articles by Dr Wakefield, it is vulnerable to scientific scrutiny," said Britain's Department of Health.

Even Dr Wakefield's colleague, the dean of the school of medicine at the Royal Free, joined the criticism. He warned journalists eager to sensationalise the story not to overstate the links.

barrel in favour of winning a propaganda war."

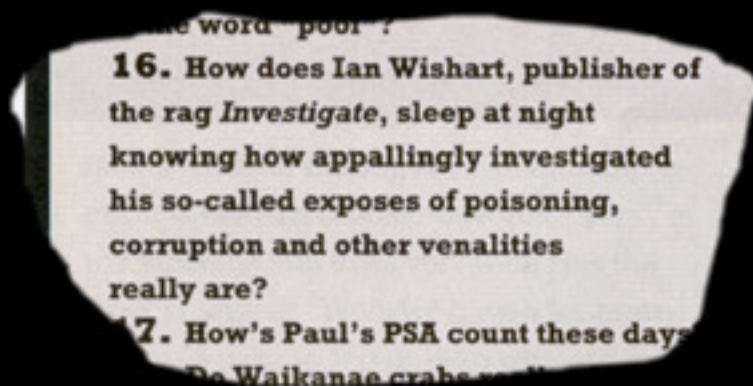
In a survey of British health workers, 13 per cent of doctors, 17 per cent of health visitors and 13 per cent of practice nurses thought it "very likely or possible" that the MMR vaccine was associated with children developing autism. When asked about a link with the bowel disorder, Crohn's disease, 13 per cent of doctors, 11 per cent of health visitors and 33 per cent of practice nurses thought it very likely or possible.

In the US opinion is equally divided and polarised. One leading authority, Dr Mendelsohn, M.D, believes that nearly 10,000 child deaths each year are related to one or more vaccines that are routinely given to children.

Dr William C. Douglass, who was honoured twice as America's "Doctor of the Year", hits the nail on the head. "The evidence for indicting immunisation is circumstantial, but compelling. However, the keepers of the keys to medical-research funds are not interested in researching this very important lead to the cause of an ongoing, and possibly, preventable tragedy.

"Can you imagine the economic and political import of discovering that immunisations are killing thousands of babies?"

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Which is probably why the critics are calling **INVESTIGATE** the best current affairs magazine in New Zealand
- we bring you news, not trash

“We may look back at the **crossroads** we are at today and wish we had decided to **make peace with nature** instead of trying to dominate it”



In Japan a delay of DPT (diphtheria, pertussis and tetanus) immunisation until the age of two has resulted in a dramatic decline in adverse side effects. In the period of 1970-1974, when DPT vaccination begun at three to five months, the Japanese national compensation system paid out claims for 57 permanent severe damage vaccine cases, and 37 deaths. During the six year period between 1975-1980, when DPT injections were delayed, severe reactions were reduced to just eight, with only three deaths.

In May 24 1996 in the New Zealand Medical Journal, J.Barthelow Classen MD, a former researcher at the US National Institutes of Health and the founder of the Classen Immunotherapies in Baltimore, US, reported that juvenile diabetes increased 60 per cent following a massive hepatitis B vaccination campaign for babies six weeks or older in New Zealand from 1988 to 1991. The same was true in other countries, including Finland, where cases of diabetes increased 40 per cent between children aged between five and nine.

US doctor Richard Moscovitz, MD, believes we have

created a society too dependent on immunisation, which itself is bringing new levels of disease rather than safeguarding us against it.

“What we forget is that millions of years of evolution have taken place on this planet and, up until the last 100 years, humans have lived in relative harmony with microbes,” he says. “Yes there have been epidemic infectious diseases in history, but they have always resolved themselves. I don’t think there is any real appreciation for what we may be doing by using so many vaccines to try to eradicate so many organisms.

“If we stay the present course, will mankind be free from infectious disease but crippled by chronic disease? Will eradication of feared diseases, such as AIDS, through mass vaccination, be one of man’s greatest triumphs or will we live in fear of deadly mutations of microbes that have outsmarted man’s attempt to eradicate them?

“We may look back at the crossroads we are at today and wish we had decided to make peace with nature instead of trying to dominate it.”





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POLLY WANTS A COPPER

As foot and mouth fears rise, SIMON JONES profiles the MAF unit whose task is to keep the nasties out

For more than 20 years Jockey Jensen was at the forefront in the war against crime in New Zealand, whether it was his involvement in major homicide inquiries or as part of the anti-terrorist squad. Yet Jensen now receives more threats in his latest battle - the fight to protect our borders from pest-ridden food, plants or animals. The work may be entirely different, but with a staff of just 23 and a whole ministry to satisfy, the pressure is just as intense.

The 54-year-old is the Ministry of Agriculture and Forestry's head enforcement officer and the man charged with ensuring the country's farming industry remains disease-free from a whole host of international predators.

"All it takes is one small outbreak of fruit fly or foot and mouth disease in the middle of the Waikato and our whole dairy industry could be brought to a halt," says Jensen, underlying the importance of his work.

It's not always a point appreciated by travellers and even commercial smugglers. Jensen predicts as many as 40 per cent of passengers from Asia region knowingly or unknowingly attempt to bring in food or plant products into New Zealand, some of which may be disease ridden or a risk to our environment.

"Most countries around the world have pests and disease that are not acceptable in other countries, therefore they put embargoes and constraints on what products can come in from those countries," he says. "New Zealand has got bugger all of these because we are to a large degree pest and disease free. Our access to markets worldwide are much broader because of that status. 60% of our income comes from exports so it is imperative we keep these trade channels open."

Soon MAF will launch one of its biggest awareness campaigns yet to highlight the dangers of bringing in foreign food or plants. \$200 on the spot fines will

be imposed at airports from July 1 for offenders who unknowingly bring in products, while intentional smugglers face up to \$100,000 fines or five years in prison.

Jensen heads what he describes as the 'CIB branch of the MAF Biosecurity Authority and quarantine service'. All seven investigators at Auckland International Airport are former police detectives and their job is to whittle out the professional smugglers and build cases around them. They are aided by the regular quarantine service with their array of x-ray machines, sniffer dogs and uniformed staff who undertake manual searches.

Yet Jensen believes those who unwittingly bring in fruit or plants are just as problematic as the smugglers.

"The reality is this," he says. "If you were to bring in a mango from the islands and it was infected with fruit fly which you didn't know about, the outcome for that fruit fly being introduced in New Zealand is the same whether you meant to bring that fruit in or you accidentally bring that fruit in. The outcome to the New Zealand economy is the same.

"A deliberate smuggler would be somebody who came in with a mango after declaring they have not got fruit products on them. They may have the fruit concealed in the toes of a shoe, a sock or inside the lining of their jacket.

"They do it because they do it," he adds. "When it comes to plants some people will try and introduce a plant to New Zealand which is rare or non-existent because of commercial reasons. But they don't always

realise or care about the dangers they are creating.

Three years ago export markets within 30km of the Auckland suburb of Mt Roskill had to be shut down for three months following an outbreak of fruit fly. An emergency response team had to show the problem was totally eradicated before exports could resume.

In comparative terms with other countries, it was a tiny, insignificant outbreak, yet it cost millions of dollars and at least a dozen jobs.

Cases of commercial smuggling are rare, but they do happen. Jensen says that New Zealand is usually used as a conduit for the US or European market. "Australia is a bit of an oasis for exotic wildlife," he says. "Usually they bring it into the country, rear it and export it."

In 1995 smugglers attempted to bring in 200 wild parrots from Australia by flying direct, under radar, to Matamata airport. The birds were off-loaded but later rounded up by MAF officials. All eight people involved received jail terms ranging from six to 18 months.

"We've had plenty of cases of people trying to bring their pets through," he says. "Some put their birds in the inside lining of their coat. We caught one person with a reptile in his pocket, while another European passenger put his dog in the carrier luggage."

MAF is dealing with one case at the moment involving a British man who quarantined 100 rare parrots imported from Britain. When vets found a disease and ordered them



Australian Shingleback lizards en route to New Zealand: just part of a \$140,000 illicit cargo



Is New Zealand's Eden at risk? This snake was found living as a pet in Auckland

destroyed, the man is alleged to have swapped the parrots with less valuable ones. MAF is currently considering charges.

"It was very difficult, but he managed to do it," claims Jensen. "He produced almost identical parrots and when they were destroyed the deception was picked up. It's a bit like a financial controller of a company tapping the funds. Hard, but not impossible. The problem is only discovered once a massive audit is undertaken." So far 17 of the parrots removed have been tracked down, while the hunt continues.

For his part, the man at the centre of the investigation denies any wrongdoing and rubbishes the idea of "an identical parrot-switch" which would have been of no economic benefit.

MAF's enforcement team is not without its critics. Recently bio-security at ports was heavily criticised for a supposedly poor detection rate. Forest Research bio-security expert Gordon Hosking recently slammed the department after claiming that painted apple moths are still at large in New Zealand, effecting native tree species. He recommends better co-ordination between the country's bio-security agencies. "Communication between Forest Research and MAF is poor," Hosking was quoted in the *Wellington Evening Post*. "The campaign to eradicate the painted apple moths has been a total failure."

Yet, Jensen says New Zealand is still leading the field in international detection rates.

"The only way you will ever get a 100 per cent detection rate is if you ban tourists and stop trade," he insists. "We have a 98 per cent detection rate at airports and I have no reason to believe that is different at ports."

"Cargo ships are pretty well screened and clearance rates at ports are just as high as airports," he adds. "There is no major occurrences coming as a result of cargo coming off that hasn't been cleared. And if there is we are onto it very quickly. Although we don't screen every item

that comes off, we clear everything that is deemed to be a risk."

Jensen and MAF are also battling against apathy amongst Kiwi exporters who are openly flouting laws. "Exporters call something facilitation, where as we would call it fraud," says Jensen, referring to companies and individuals which alter certification documents on the type of goods they are exporting. "Government to government certification allows products to flow freely between countries. And if that is altered in any way for 'facilitation' reasons, then that is fraud. They are circumventing the bilateral agreements between governments. That is a big part of our role." Before working at MAF, Jensen served in the police force for 20 years, mainly in Auckland, but he finished his police career as a Queenstown detective.

Much of that time was spent investigating high profile crimes, including the much-publicised \$400,000 Armourguard heist in 1984.

Jensen says that he comes across former colleagues in various government departments and private agencies almost every day - in fact there are now more trained police detectives working outside the police force in Auckland than in it.

That in itself is depriving the police of much-needed experience, as cops with 15 or more years experience like Jensen are being replaced with an enthusiastic but inexperienced breed.

"There are times I wonder where the mentors in the police have gone," he says. In my day you have to be in the service for 10 or 12 years before you interviewed a murder suspect, now you have rookie cops out there doing the job with just 18 months experience. That's putting enormous pressure on them and enormous pressure on the police as a whole if mistakes are made because of inexperience.

"People expect a very high performance and if you take



on that role you've got to make sure you do it correctly.

"The other side of the coin is that it might be more lucrative outside the police force, they may be better opportunities and more money. The police have gone through enormous changes, and as a result of those, some haven't been able to adapt and some haven't wanted to.

"For example, the police service is all about output now rather than traditional crime fighting. The increased accountability has changed the whole environment. Before you used to get funded on what you said you were going to do. Now you get funded on what you've done, which makes a big difference."

That change, says, Jensen, has changed the whole culture of the police force from an organisation that used to be wholly about protecting life and property, to an organisation which must meet government set targets and expectations

"In earlier days it was very altruistic," he says. "But that benevolent attitude costs an enormous amount of money which we can't continue to fund nowadays.

"The police has always been a vocation because you do not make any money out of it. The people you deal

with are either people who have committed crime or want something. So, there is always a demand and when that demand is coupled with restrictions and constraints, less resources and increased accountability, then I guess some people don't like that.

"For me it was the right time to move and I needed a new challenge. I don't know if I would have remained as worthy to the police if I had stayed. But there are a lot of people still around who are just marking time and that is sad."

Despite working on high profile homicides and drug investigations, Jensen doesn't feel his work is devalued now. "There is much bigger accountability on my shoulders now than I ever had at the police," he says. "Because I had a standing army behind me in the police. We are only a small group of 23 with a Ministry of a couple of hundred. There aren't the same resources, you have to operate much more frugally but the expectations are higher.

"I've had more threats against my well-being in this position than I ever had in the police because people take umbrage to being exposed through enforcement."





THE END OF EMPIRE:

IS IT LIGHTS OUT TIME FOR PARLIAMENT?

AN ESSAY ON THE CONSTITUTION: IAN WISHART on why the Treaty of Waitangi and Parliament are both dinosaurs

Helen Clark's worst nightmare could be about to come true - moves are afoot to set up a nationwide referendum on whether New Zealand should adopt a written constitution. Although the idea has increasingly been debated over dinner tables and in the media over the past 12 months, the Government has tried to steer clear of the issue, and as recently as Waitangi Day the Prime Minister lashed out at critics who believe she is heading an unconstitutional - and therefore technically powerless - administration.

A *New Zealand Herald* report quoted Clark as saying that the "real agenda" of Waitangi protestors this year was to raise the question of the legitimacy of the Crown and New Zealand's system of government.

"That's not a debate we're going to engage in," Clark reportedly said.

Now, she may not have a choice.

More than a hundred delegates to a sovereignty conference in Hamilton spent a weekend debating the issues that Clark is too afraid to, and as a result they've estab-

lished a Constitution Trust, which has been tasked with organising a citizens initiated referendum on whether New Zealand should have a written constitution.

The Trust has already raised enough money to fund the referendum application, but will be seeking further public donations to cover costs of producing and distributing petition forms, and also plans to call for volunteers to help collect signatures as fast as possible.

Parliament's Clerk of the House must first approve the wording of the referendum question, and organisers are hoping to collect up to 400,000 signatures.

The first realisation that New Zealand had a serious constitutional crisis on its hands came in the February 2000 issue of *Investigate*, which revealed that a key principle of international law had not been complied with when New Zealand gained independence from Britain.

That principle was simple and easy for Kiwis to understand: the colonial government that governed New Zealand prior to independence drew its constitutional authority to do so directly from Britain. New Zealand was a colony, the Sovereign was in London.

But once independence was granted, sovereignty over New Zealand passed - under international law - to the peo-

ple of New Zealand. At that point, say constitutional experts, the New Zealand Government of the day no longer had any right to govern because it no longer had constitutional authority to do so. Its orders from London had been cancelled, and it needed to seek fresh orders from New Zealand voters.

But that didn't happen.

Instead of calling a national referendum to ratify independence and seek a nationwide mandate for the electoral and judicial systems, the colonial government and its bureaucracy in New Zealand assumed that they still retained a legal right to govern, and that sovereignty had not transferred to the New Zealand people but to the New Zealand Parliament.

Judging by the number of bureaucratic and political cock-ups of recent years, it's not difficult to understand how it happened, but the end result is more sinister.

Instead of, as in the US or even the Romanian constitutions, Parliament acknowledging that it draws its authority from the sovereignty of the people, the New Zealand Constitution Act of 1986 states that the New Zealand Parliament has a divine right to rule, similar to the divine right of kings, and is sovereign in its own right.

With the judiciary, the military and the police all swearing allegiance to Parliament, there are no longer any constitutional checks and balances in the New Zealand system and Parliament has the power to enforce any law it chooses to make against the New Zealand people.

It was under this new Constitution Act that the last Labour Government decided it had the right to sell state-owned assets without paying attention to public opinion, and the current Parliament is claiming the same divine right in refusing to ratify the Norm Withers referendum on tougher sentences for violent crime, passed by a 93 per cent majority at the last election.

So what's to stop Parliament refusing to ratify a new referendum if 85 percent of voters support a written constitution?

Although legally there is nothing to force the Government to accept it, constitutionally it would be a public show of force that the existing Parliament no longer had the confidence of its citizens, and it would open the Government to a legal challenge under international law over its continued right to govern.

But what happens if New Zealanders do vote overwhelmingly for a new constitution? The impact is likely to be extensive. If New Zealand decides on constitutional change and to finally ratify its independence from Britain, it would make the Treaty of Waitangi null and void.

Because the Treaty was signed between Maori and the British Crown, Maori would need to look to Westminster for any further compensation under the Treaty, and is that practical?

Under international law, Britain remains liable for breaches of the Treaty of Waitangi, most of which happened in the first five decades immediately following colonisation and during the period that New Zealand was still controlled by a British Governor.

Constitutionally, it is almost indisputable that London



should be paying the Waitangi bill, not Kiwi taxpayers.

Prior to the Treaty of Waitangi being signed, the British Government had decided on a new policy where responsibility for native affairs in new colonies would continue to be held by the Governor, regardless of whether the colony concerned had its own Parliament.

The reason for this was simple: Westminster didn't trust local legislatures elected by colonial settlers to be impartial in their dealings with natives.

For the first twenty years after Waitangi, this policy was followed religiously, and this appears to be one of the reasons that successive New Zealand Governments never felt bound by the Treaty - it was a deal being handled from London, not Wellington.

The 1852 Constitution Act, which remained in force right through until 1986, was structured specifically to ensure that the New Zealand Parliament had no role in Maori affairs, which was to stay as part of the Governor's portfolio on behalf of the Crown in England.

So how did it go so wrong?

By the 1860s, regardless of their constitutional inability to take a role in native affairs, the New Zealand Gov-

ernment took a series of actions that effectively sidelined the Governor.

They included a decision to quite simply steal Maori land. Land that was not actively being worked on or lived on by Maori would become Crown land by default.

Another little stunt the colonial politicians and bureaucrats pulled was even more devious. The 1852 Constitution guaranteed Maori chiefs the right to vote, but the bureaucrats imposed a catch: you couldn't vote unless you allowed the Crown to take title over your Maori land.

It was an item of extreme irritation to the colonial settlers that Maori owned their land outright, while all land owned by white settlers was owned in name only - real title was retained by the Crown.

That situation occurs to this day. The land your house sits on is not owned by you - the word "freehold" is a legal description of a lease from the Crown.

So by preventing Maori from voting until they'd given control of their lands to the Crown, the colonial Parliament was effectively making Maori subservient to the local legislature.

And although it was the New Zealand Parliament that took the unconstitutional steps, it was Westminster and its Governors who failed to rein in the colonials, and the colonial Parliament's 1852 Constitution which stayed in force until 1986 wasn't designed to incorporate the principles of the Treaty.

The question then arises, where to from here? As the debate stands in New Zealand at present, on one side there are numerous Maori groups who want the Treaty to be seen as the founding document of New Zealand.

On the other side are concerned non-Maori who regard the Treaty as giving preferential treatment to Maori.

But there's an even bigger cultural chip on the shoulder that is clouding the issue on both sides: monarchical attitudes.

Despite their apparent differences, Maori and European society was actually very similar in structure. Both were ruled from the top down, with an aristocracy and peasants. neither system was democratic or republican. Working class Brits did not have the vote, and nor did working class Maori. Their respective societal "betters" decided what was good for them.

And this is where the real differences are emerging over the Treaty debate. Culturally, Pakeha and urban Maori have in a large measure over the last century moved towards a republican view of life, where everyone has a vote, a person's home is their castle and the Government are our servants, not the other way around.

But the Maori tribes, and Tainui are a perfect example, still languish in the aristocratic and autocratic culture of the 19th century. To them, honouring the Treaty does not mean that the whole tribe shares equally in the gains, it means that the power and the mana is returned to the men - and it is inevitably men - at the top of the tribal ladder.

And this is why I believe the Treaty of Waitangi is now irrelevant. Yes, it was broken horrendously. Yes, the Maori people were betrayed and suffered enormously at the hands of the Crown and its representatives in successive New Zealand Parliaments. But the Treaty at the end of the day was a deal struck between two groups with a similar colonial outlook on life.

The Treaty is nothing more than a colonial document reflecting what are now long outdated colonial attitudes on both sides.

Where two world wars resulted in the break-up of empires around the world and a resulting change in public

Government House, Auckland, 1860s



Time

for change

In February 2001, [the Constitution Trust](#) was formed by a group of New Zealanders who believe it is time for the people to bring Parliament back under public control

To that end, [the Constitution Trust](#) has been tasked with organising a Citizens Initiated Referendum asking New Zealanders if they would like New Zealand to adopt a written constitution, and we're asking for help collecting signatures

If you are sick of hearing news stories about MPs' lush expense accounts, and the gravy train for civil servants, and if you believe successive Governments have abused their powers, please support us by donating five dollars to:

[the Constitution Trust](#)
PO Box 302-188
North Harbour
Auckland

Time

for a written constitution for new zealand

attitudes to authority, Maoridom at a tribal level is still locked in an archaic timewarp.

It has nothing to do with culture. It has everything to do with power. Just as the illegal government and illegal bureaucracy in Wellington don't want to give up their ever increasing powers, nor do the families and individuals who sit at the top of the Maori tribal tree want to relinquish their power.

To this day, there are those who support the claim that the colonial Parliament in Wellington is illegal, but who then venture that the legitimate Government is a Maori one, headed by a Maori monarch who in turn swears allegiance to the Queen at Buckingham Palace.

They might be technically correct in a strict legal sense - leaving aside the international law implications of gaining

ereignty is important in light of the ongoing, timewasting debate in New Zealand on the same point. Clearly the British realised the Maori were still sovereign.

Returning to the main point, however, assuming the Maori groups are correct, they only retain sovereignty over those lands that they still control today, or which they should lawfully still have control of.

This would include lands that were later wrongfully confiscated by the Crown, but would not include lands which had been legitimately sold and which are now in private ownership. So yes, you could in fact have two nations sharing the territorial space of New Zealand, in much the same way that Scotland, England and Wales do.

However, if the Pakeha territory opts for a republican system of Government based on the sovereignty of the

“
Why would anyone voluntarily ditch one colonial, creaking, lame-duck, monarchical, autocratic Parliamentary system in favour of another creaking, lame-duck, monarchical, autocratic Parliamentary system run by a different group of people?
”

independence from Britain at some point in the past, but the principles these groups promote are as constitutionally outdated as the ones currently being used to prop up Helen Clark's government.

Why would anyone voluntarily ditch one colonial, creaking, lame-duck, monarchical, autocratic Parliamentary system in favour of another creaking, lame-duck, monarchical, autocratic Parliamentary system run by a different group of people?

It doesn't matter how well intentioned they are, or whether they can trace the legal authority for their claim back to the Declaration of Independence or the Treaty - the system of Government they offer at present is just as shonky as the one already in power.

Which isn't to say that their claim is wrong. If Maori tribes did indeed retain sovereignty over their own lands and people, which the British House of Commons acknowledged was the case in 1844 (they expressly debated the point that the Treaty had been "injudicious" because it did indeed give Maori "full sovereignty over their lands" - a concept foreign to the 'Crown owns all' doctrine applicable to British subjects), then New Zealand's independence from Britain at some point, or a constitutional change affecting the Wellington Parliament, could have no impact on what Maori did with their own land.

Just as a sidebar, the British acknowledgement in 1844 that the Treaty did allow Maori to keep such sov-

people, not the Crown, with a written constitution, and the Maori nation opts for a tribal system of administration akin to a monarchy, where do you think most Maori people will swear allegiance to? To a system that recognises all are born equal, and which guarantees constitutional protection to all, or to a Tainui-like government that rules, like Helen Clark, from the top down?

Regardless of the rights or wrongs of the issue, the choice is Maoridom's as to which system it prefers, so here's how I see the concept developing.

A referendum is held in which New Zealanders vote overwhelmingly in favour of adopting a written constitution and ending Parliament's absolute domination. What happens next?

For a start, we'll have to deal with Waitangi grievances once and for all, fully and finally. I would propose that all Crown land be returned to its previous owners, whether Maori or Pakeha, because there is no inherent reason for the Crown to own land. Nor would the Crown necessarily exist after this point.

If Maori have legitimate claims to any privately owned land, then New Zealand should take a case to the International Court of Justice against Britain for financial compensation of that or any other legitimate Waitangi grievances.

But there must also be a recognition from Maoridom that no further liability will fall on New Zealanders for Waitangi issues from that point.

DOMINION OF NEW ZEALAND)

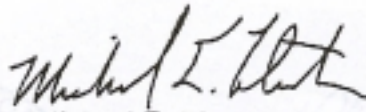
CITY OF AUCKLAND)

CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA)

SS

I, Michael E. Thurston, Consul of the United States of America at Auckland, New Zealand, duly commissioned and qualified, do hereby certify that Nicole Walker, of Auckland, New Zealand, whose signature and seal are subscribed and affixed to the annexed certificate, was at the time she signed the annexed certificate a Deputy Registrar of the Department of Courts under the laws of New Zealand.

IN WITNESS WHEREOF I hereunto set my hand and affixed the seal of the American Consulate General at Auckland, this 8th Day of July 1999



Michael E. Thurston
Consul of the United States of America

DOMINION OF NEW ZEALAND: The US Government says we are still a British colony

Having regained control of their own lands and therefore their own affairs, if Maori tribal leaders try to impose a Tainui-type administration on ordinary Maori they have the right to do so without interference from citizens of the new New Zealand, but Maoridom's aristocracy runs a grave risk that their people will either openly revolt against the archaic and non-democratic system, or vote with their feet and switch allegiance to the other nation.

The best option, however, I believe to be this: that a new constitution recognises the complete sovereignty of every citizen, Maori or Pakeha, over the land they live on and their own lives. What you do on your land or with your life is your business, so long as it does not infringe on the rights of others.

It might be, for example, the right to dig for antique bottles in your own backyard without being prosecuted by the Crown and fined \$6,000, as one New Zealander was recently (what gives the Crown the moral right to restrict you from digging on private property? The legal right is of course the fact that the Crown owns the land, you don't).

But this state of affairs would go a long way to giving

Maori tribes in effect what they want - it doesn't matter whether you own half the Waikato or just a quarter-acre section - you are sovereign over yourself and your property.

The constitution would safeguard all human rights and responsibilities and provide for a police force and judicial system loyal to the people, not the Crown, capable of enforcing those safeguards.

Welfare, education, health and defence can still all be paid for from taxes, if that is the will of the people - perhaps a sales tax rather than an income tax.

I suspect that were such a country to emerge, that you would see Maori and Pakeha reunite and forge ahead with a vast new energy. Instead of wasting our time and effort arguing about the past, we could start focusing on the future.

Then maybe we'd all have a national day to celebrate.

