The Institute of Policy Studies, School of Government at Victoria University of Wellington

POLICY Quarterly

Volume 6 – Number 3 – August 2010

Special Issue: Funding Democracy

The Institute of Policy Studies, School of Government at Victoria University of Wellington

POLICY Quarterly

Volume 6 – Number 3 – August 2010

Policy Quarterly (PQ) is targeted at readers in the public sector, including politicians and their staff, public servants and a wide variety of professions, together with others interested in public issues. Its length and style are intended to make the journal accessible to busy readers.

The journal welcomes contributions of about 4,000 words, written on any topic relating to public policy and management. Articles submitted will be reviewed by members of the journal's Editorial Board and/or by selected reviewers, depending on the topic. Although issues will not usually have single themes, special issues may be published from time to time on specific or general themes, perhaps to mark a significant event. In such cases, and on other occasions, contributions may be invited from particular people.

Subscriptions: The journal is available in PDF format on the IPS website: www.vuw.ac.nz/ips/pq. Readers who wish to receive it by email should register as *PQ* subscribers ips@vuw.ac.nz. This service is free.
For all subscription and membership enquiries please e-mail ips@vuw.ac.nz or post to Institute of Policy Studies, P.O. Box 600, Wellington.
Electronic Access: The IPS directs interested individuals to its website: www.vuw.ac.nz/ips/index.aspx where details of the Institute's publications and upcoming events can be found.

Permission: In the interest of promoting debate and wider dissemination, the IPS encourages use of all or part of the papers appearing in *PQ*, where there is no element of commercial gain. Appropriate acknowledgement of both author and source should be made in all cases. The IPS retains copyright. Please direct requests for permission to reprint articles from this publication to editor-ips@vuw.ac.nz.

Guest Editor: Andrew Geddis
Editor: Jonathan Boston
Editorial Board: David Bromell, Paul Callister, Valentina Dinica, Michael Di Francesco, Mike McGinnis and Jim Veitch

ISSN: 1176 - 8797 (Print)
ISSN: 1176 - 4325 (Online)
Volume 6, Number 3 – August 2010
Design & Layout: Aleck Yee
Production: Alltex Design

Institute of policy studies

Victoria University of Wellington
Te Whare Wānanga o te Ūpoko o te Ika a Māui
SCHOOL OF GOVERNMENT
Te Kura Kāwanatanga

Editorial Note

Money—where it comes from, how it is gained, and the uses to which it is put—matters a lot in politics. No serious electoral campaign, be it in a constituency or nationwide, can run without it. But at the same time, the role money plays in a democratic polity raises numerous concerns about potential corruption, unequal influence, and debasement of our political culture. These conflicting policy considerations, to say nothing of the self-interest of those politicians who ultimately resolve them, mean that any decision over how to regulate campaign financing will be controversial.

It is against this backdrop that parliament's specially convened Electoral Legislation Committee currently is considering the Electoral (Finance Reform and Advance Voting) Bill. This legislative proposal is but the latest chapter in a story stretching back to the 2005 election and the now-infamous Exclusive Brethren intervention in that campaign. Concerns regarding that group's activities helped spawn the Electoral Finance Act 2007, which the 2008 election campaign revealed to be critically flawed in application. Following this law's near-universally supported repeal in early 2009, the National Government embarked upon a lengthy process of public consultation over possible replacement legislation. Parliament now has to decide what to do with the fruits of that consultation process.

However, while the issue of campaign finance has a particular history in New Zealand, we are hardly unique in having to grapple with the problems it raises. Every other democratic society has had to confront it and decide on its regulatory response. In May of this year, the University of Otago Law Faculty and the Institute of Policy Studies jointly hosted a symposium at which the experiences of three comparator nations could be considered. The aim was not to uncover a perfect answer to New Zealand's problems; such an answer (if one is even available) must grow out of and accommodate our own particular circumstances. However, the papers presented on that occasion, which are reproduced in this issue of *Policy Quarterly*, may aid us in choosing what regulatory options are, or are not, suitable for our conditions.

One of those comparators, Australia, traditionally has adopted a more *laissez faire* attitude to the raising and spending of money by electoral contestants than has New Zealand. However, Graeme Orr describes how Australia's political actors show increasing interest in following New Zealand's example and placing limits on the spending of candidates, political parties and 'third parties' (which are now termed 'parallel campaigners' in the New Zealand context). He also explains how the Australian taxpayer currently provides significant support to the campaigns of individual candidates and their political parties, both directly and through funding for parliamentary and government communications.

Joo-Cheong Tham describes the constraints that Australia applies to the fundraising practices of its political actors. Interestingly, he suggests that Australia's comparatively tight rules on disclosing the identity of large donors to political parties are no longer adequate to remove the suspicion of *quid-pro-quo* dealings, and that there are some moves towards placing caps on how much donors may give. Should such moves bear fruit, they would leapfrog Australia ahead of New Zealand in terms of the amount of prescriptive control applied to those engaged in electoral activities.

Looking beyond our trans-Tasman neighbours, the United Kingdom instituted quite extensive controls on electoral spending in 2000. Jacob Rowbottom explains some of the features of that regulatory framework and draws attention to where they may have lessons for the changes proposed for New Zealand in the present Bill.

Finally, Canada has perhaps the most comprehensive and restrictive regulations on the use of money in electoral campaigns to be found amongst developed democracies. Colin Feasby, whose earlier writings proved very influential in the Canadian Supreme Court's decision that these measures pass constitutional muster, outlines just how tight a reign the law applies to electoral fundraising and spending. Whether New Zealand would be ready to adopt a similarly intensive regulatory approach is debateable.

Overall, the primary lesson that we can learn from these other nations' attempts to control the use of money for electoral purposes is that every regulatory choice creates consequences, and that those consequences then demand further regulatory choices. This is not necessarily to say that regulation is futile, or that less law is better than more. After all, a decision *not* to impose legal controls on campaign financing is a regulatory decision in and of itself. Furthermore, every developed democracy has *some* form of legal control on the use of money for political purposes, even if only to prohibit the outright purchase and sale of votes or governmental offices.

The question, then, is not whether to regulate or not to regulate campaign finance in New Zealand. Instead, it is what particular mix of prescriptive legal controls and *laissez faire* lassitude will best meet the various policy concerns that arise in New Zealand's particular political and cultural environment. That is a question on which there will be many differing opinions. It is hoped that the five articles on this topic in *Policy Quarterly* can help provide fuel for the resulting discussion.

This issue of *Policy Quarterly* also includes three articles on three very different issues. First, Derek Gill and four colleagues summarize the findings of a recent IPS project, funded via the Emerging Issues Programme, on the subject of "The Future State". The project investigated the challenges that New Zealand's public sector is likely to experience over coming decades and their implications for our system of public management.

Second, David Bromell assesses the findings of a recent book that has attracted considerable attention internationally. The publication, by epidemiologists Richard Wilkinson and Kate Pickett, argues that countries with unequal income distributions perform less well on a range of educational, health and social indicators than countries with more equal income distributions. The reasons for this and the policy implications for New Zealand (which has a relatively high level of inequality) are both worth pondering.

Finally, Paul Brown, Paul Callister, Kristie Carter and Ralf Engler explore the issues surrounding ethnic mobility. Recent studies in New Zealand indicate that a small but important level of ethnic mobility is occurring in official data collections and other surveys. The authors argue that such mobility needs to be better understood by both researchers and policy makers. The article concludes by considering some emerging ideas for handling ethnic mobility when undertaking policy analysis.

Jonathan Boston and Andrew Geddis

Andrew Geddis

The Electoral (Finance Reform and Advance Voting) Amendment Bill

While debates over what role money should play in electoral politics – a topic New Zealand follows the United States in calling 'campaign finance' – have occurred spasmodically in this country, it has received an unprecedented amount of attention since 2005. Although this article is not intended to be a general history of the topic (see instead Geddis, 2010b), some contextual background nevertheless is important to understanding the current proposals for reform contained in the Electoral (Finance Reform and Advance Voting) Amendment Bill.

Andrew Geddis is an Associate Professor at the Faculty of Law, University of Otago. In 2008, the then Labour-led Government appointed him to chair an expert panel on electoral administration and political party funding.

The 2005 election not only was closely fought and unusually bitter in its tone, but it also saw a number of novel developments in terms of campaign financing. For one thing, both Labour and National spent very close to the maximum election expenses permitted by law – the first time both the major parties had done so. (Indeed, Labour probably exceeded the permitted limit when the costs of a parliamentary-funded pledge card are included in its total, while National exceeded its broadcast allocation by failing to account for GST in its total spend, but no one suffered any legal consequences for those breaches.) For another, the sources of each party's campaign funds came under some scrutiny, as a large amount of 'anonymous' and 'trust-funnelled' money poured into their coffers. Finally, the decision of several members of the Exclusive Brethren religious sect to fund a very expensive nationwide leaflet campaign against the Labour and Green parties represented an unprecedented level of 'parallel campaigner' activity.[1]

Following Labour's narrow victory in that contest, it felt the need to reform the regulation of campaign finance to address what it saw to be problems exposed during the campaign. The result was the Electoral Finance Act 2007 (EFA). This legislation's primary effect was to impose limits on the election-related advertising spending of parallel campaigners, as well as to require them to register and make some disclosure of their funding sources. It also purported to increase the transparency of donations to political parties by closing some of the more egregious loopholes in the disclosure rules.

This legislation attracted a large amount of criticism, both of its substantive content and of the process by which it was conceived and enacted (Geddis, 2008). In particular, the rules governing parallel campaigners were attacked for being overly restrictive, confusing in application, and full of unintended consequences. The imposition of restrictions on private spending on election advertising, while publicly funded

parliamentary entitlements still could be used freely for election-related purposes, also attracted criticism. Likewise, the fact that the legislation was drawn up without public or full cross-party consultation, and then passed into law on a bare majority basis following a party line vote, drew accusations of partisan intent that are undesirable in the context of electoral law.

Given the vitriol that the National Party poured upon the EFA during its passage through the House and subsequently, the repeal of much of the legislation's content following its victory in 2008 was entirely predictable.[2] What was surprising, perhaps, was that all the other parties in parliament (with the exception of the Greens) joined National in supporting repeal. While this move indicated widespread acceptance that this legislation had not worked well in application, it did not answer the question of what rules instead ought to be adopted.

Learning from Labour's previous errors, the government established a two-stage public consultation process to guide it on this issue.[3] That consultation process spawned a set of recommendations from the minister of justice to Cabinet, which then agreed to a series of legislative proposals (Cabinet, 2009). Those legislative proposals have come before the House in the form of the Electoral (Finance Reform and Advance Voting) Amendment Bill, presently under scrutiny by a specially constituted, all-party Electoral Legislation Committee.

The bill's approach to reform

The bill does not propose very much change to existing law. This fact may be largely attributed to the government's overall approach to the issue: creating law 'based on broad consensus so that the public can have confidence in the outcome of parliamentary elections and that the rules are enduring and consistent across general elections' (Ministry of Justice, 2009, para 4). Because there is fundamental disagreement as to what are the 'right' campaign finance rules for this country, an approach which effectively says 'all (or nearly all) must first agree for any change to occur' necessarily will have a strong status quo bias. That said, this conservative reform approach probably was required politically because of the National Party's trenchant criticism of the EFA's passage in the face of significant opposition from other parliamentary parties.

... one of the reasons given for not revisiting these rules is that it would subject the whole regulatory scheme to scrutiny under the New Zealand Bill of Rights Act 1990 – scrutiny that it probably would fail ...

However, a consequence of this approach is that some issues remain completely untouched, despite posing some pretty major problems. For example, the regulation of broadcast election advertising will not be changed (Geddis, 2003). Political parties still may spend only as much on television and radio advertisements as the Electoral Commission gives to them pre-election through the broadcast allocation. Parallel campaigners will remain barred from airing overtly partisan messages in the broadcast media. Rather worryingly, one of the reasons given for not revisiting these rules is that it would subject the whole regulatory scheme to scrutiny under the New Zealand Bill of Rights Act 1990 – scrutiny that it probably would fail (Ministry of Justice, 2009, para 82).

Nevertheless, the bill obviously contains *some* amendments to the current law. The following is not intended to be a complete discussion of the proposed reforms. Rather, it outlines the broad intent of a number of the more notable aspects of the bill, as well as indicating some potential shortcomings that will need to be addressed by the Electoral Legislation Committee. It also serves as a background for the following articles, which provide some international perspective on New Zealand's proposed changes.

Changes to the regulated period

Perhaps the most important proposed change is one that was incorporated into the bill at a very late stage, certainly after it was signed off by Cabinet late last year. As it stands, the bill changes the definition of the 'regulated period' from the traditional three months before polling day. This definition matters, as the legal constraints on campaign spending by candidates and parties apply only during this period, so if it is shortened (or lengthened), then those constraints become less (or more) intensive. The bill instead defines the regulated period as beginning the day after 'default day', with this date falling three months before the latest possible date an election could be held by law. However, if the prime minister announces the election date before default day, then the regulated period starts the day after that announcement; unless the announcement is made more than three months before polling day, in which case it starts three months prior to the latter date.

The intent of this change is to avoid having a regulated period that applies retrospectively (as New Zealand elections often take place with less than three months advance notice). While political parties and their candidates may be able to manage the risks associated with retrospective regulation, the imposition of new rules on parallel campaigners during the regulated period (see below), as well as the possible future harmonisation of parliamentary funding rules with private campaign finance law (see below), increases concerns over this matter.

However, the desirability of the precise form of the proposed change is questionable. For one thing, determining the latest possible date on which an election can be held is not straightforward, as it depends in part upon administrative requirements such as leaving time for the return and count of special votes and holding judicial recounts. More significantly, the change has the potential to

significantly shorten the regulated period, especially where the prime minister calls an early election. This step could give the incumbent party a significant advantage, as only it will know when the regulated period will commence – thus enabling it to spend significant amounts just before that date without these counting towards the party's limited 'election expenses'. It should also be noted that shortening the regulated period, especially in a way that may benefit the incumbent party, was not a proposal which gained widespread support during the public consultation preceding this bill.

There seems no easy solution to the problem of avoiding retrospectivity whilst also negating any possible partisan advantage. However, one possible response would be to fix the election date in law as being (say) the third Saturday in November, with the regulated period to commence three months (or 90 days, to be neater) prior to this date. To deal with the problem of a required early election – such as where the government loses the confidence of the House – this date could be altered only by a resolution of the House. In other words, the power to decide the election date should be taken from the hands of the prime minister and placed with parliament.

Changes to the definition of 'election advertisements'

The bill contains a new definition of what constitutes an 'election advertisement' (and hence the sorts of communications that fall under regulatory control if they are 'promoted' within the regulated period). The definition has the following important features:

- it covers 'an advertisement in any medium', as opposed to the current definition which applies only to publication in traditional, print-based media such as newspapers, billboards and handbills;
- it covers both 'express advocacy' (i.e. messages that explicitly call for a vote for or against a named candidate or party) and 'fake-issue advocacy' (i.e. messages that call on voters to vote for or against an issue closely connected with an unnamed party or candidate). Interestingly, this definition is very similar to the one contained in the EFA. It may capture a slightly narrower range of expressive forms – only applying to 'advertisements', rather than to 'any form of words or graphics' – but the same types of messages are covered. However, the freedom of expression concerns involved with that earlier legislation are not as sharp in the context of this bill. For one thing, the proposed regulation of election advertising by parallel campaigners is less extensive under this bill (see below). For another, the Electoral Commission is under a duty to provide advice as to whether a particular communication constitutes an election advertisement, with reliance on that advice then providing a defence against any future prosecution (see below). Consequently, the Electoral Commission will, on a case-by-case basis, resolve much of the uncertainty regarding how the provision is to apply.

Having said that, although the definition of election advertising excludes a range of messages from its ambit (such as news reportage and commentary), there is no exception for communications internal to a group or company as existed under the EFA. Therefore, election-related messages from a union's executive or a company's directors to their members or shareholders could be deemed election advertisements, and thus fall within the regulatory reach of the bill. It is questionable whether such a limit (albeit mild) upon freedom of association is justified: what pressing and substantial interest is there in regulating how members of a voluntary group communicate amongst themselves about an upcoming election?

Changes to the regulation of parallel campaigners

The EFA's controversial imposition of limits on how much individuals or groups not directly contesting the election could spend on election advertising make this the bill's most contentious issue. In earlier proposal documents, the government appeared open to reintroducing spending limits, albeit at a far higher level than under the previous legislation. However, that option was rejected by Cabinet, with 'no consensus' and 'strong opposition' cited as the reason (Ministry of Justice, 2009, para 77). Instead, the bill simply requires any 'promoter' of an election advertisement who intends to spend more than $12,000 on election advertising during the regulated period to first register with the Electoral Commission. There will be no limit on what such promoters can spend on election advertising, no requirement to disclose what they spend on election advertising and no requirement to disclose where their funding comes from.

> **... transparency will only work if registration actually reveals who is behind the advertising. Consequently, the definition of 'promoter' and the details that such persons (be they natural or legal) must provide to the Electoral Commission become very important.**

The idea is that a central register of big-spending parallel campaigners will improve transparency, by providing 'a central point where [their details] … could be readily accessed by the public and the media' (Ministry of Justice, 2009, para 75). Individual election advertisements from such sources will also have to carry the name and contact details of their promoter. However, transparency will only work if registration actually reveals who is behind the advertising. Consequently, the definition of 'promoter' and the details that such persons (be they natural or legal) must provide to the Electoral Commission become very important. The bill's present definition is not clear

as to exactly who qualifies as a promoter, especially where an election advertisement is produced and paid for by a group rather than an individual. This issue will need clearing up if registration and labelling is to achieve its desired goal.

The bill's relatively relaxed regulation of parallel campaigners must also be viewed in the light of the ongoing regulation of political parties. As discussed below, the existing spending limits on political parties' election advertising will be retained. And, as noted earlier, at both the 2005 and 2008 elections this limit actually constrained the National and Labour parties' activities, in that each spent as much on election advertising as the law permitted. Consequently, if the largest parties literally cannot spend any more on advertising, there will be an incentive to farm out advertising spending to individuals or groups not subject to limits. Note also that there is nothing in present (or the proposed) law to stop political party officials coordinating a parallel campaigner's advertising campaign with their own. Consequently, there is good reason to expect more such spending from parallel campaigners in future elections, whether genuinely independent or linked to parties and their candidates.

Finally, existing law requires parallel campaigners who wish to campaign for a political party or candidate to obtain that party or candidate's written permission, giving them an effective veto over such messages.[4] Election advertisements that *oppose* a political party or candidate do not require such authorisation. The bill retains this distinction regarding how each form of electoral speech is treated. This is a disappointing move, as it requires parallel campaigners to run predominantly negative advertising campaigns at election time.

Changes to the limits on political party and candidate election spending

As intimated earlier, this issue largely remains untouched. Spending limits will continue to apply only to the costs associated with election advertising (thus excluding campaign activities like travel, opinion polling, hiring consultants and the like) undertaken within the regulated period. These limits will be inflation indexed, but only back to the 2008 election.[5] It is only in the last couple of election cycles that the limits on parties have had more than notional application, while there is little evidence that the spending limit on individual candidates is stifling competition in electorate contests. However, as noted above, the fact that the limits impose a real constraint on parties' and candidates' advertising activities does generate incentives to redirect spending into less regulated areas, such as by parallel campaigners.

Regulating private campaign financing without taking into account the extensive state subsidies provided to parliamentary parties and their members of parliament to enable them to do their jobs as representatives gives incumbents an undesirable advantage.

Changes to election expenses apportionment

The bill contains a number of provisions which set out how election expenses related to advertising that promotes both a candidate and his or her political party get apportioned between the two campaigns. These provisions are motivated by a High Court decision in an election petition brought in the wake of the 2005 election.[6] That decision interpreted and applied the existing apportionment rules in a way that differed from the advice given to candidates by the chief electoral officer before polling day. The bill seeks to avoid future confusion by largely codifying the court's decision, ensuring that the legislative language and judicial understanding clearly match.

Changes to the disclosure of donations to political parties

The current rule that the identities only of individual donors giving more than NZ$10,000 to political parties or NZ$1,000 to individual candidates must be disclosed to the public will not change. However, parties will have to release additional information, in terms of the amount of donations they annually receive within fiscal bands: less than $1,000; $1,000–$5,000; $5,000–$10,000. This innovation provides a useful extra measure of transparency and further illustrates how political parties increasingly are becoming recognised as quasi-public organisations (Geddis, 2009). Furthermore, the bill contains an 'associated persons' test to further tighten loopholes in existing disclosure law by requiring donations from related parties to be bundled together and disclosed once they exceed $10,000. However, the efficacy of this measure is undermined by allowing the political party's secretary to describe the bundled donations however he or she chooses, so all the public may get to see is that some group of entities called 'Associated Donors' gave the party a certain sum of money the previous year.

Furthermore, missing from the bill is any definition of what actually constitutes a donation. For example, if a union expressly agrees to spend money on advertising in support of a party, is that a 'donation'? Equally, if a political party charges money to meet with a minister, does that meeting have a value all of its own or is it a 'donation'? These questions will arise, and without a legislative indication of the answer they will be resolved by the Electoral Commission (and eventually the courts).

Changes to the use of parliamentary funding

This is an overdue move, albeit one that is largely phrased in terms of 'more work will be done in this area' (Ministry of Justice, 2009, para 95). Regulating private campaign financing without taking into account the extensive state subsidies

provided to parliamentary parties and their members of parliament to enable them to do their jobs as representatives gives incumbents an undesirable advantage. It is encouraging that the government appears serious about harmonising the rules that apply to these two forms of political funding.

Changes to the responsibilities of the Electoral Commission

The bill will require the newly restructured Electoral Commission to provide advisory rulings to parties, candidates and the public as to whether a particular message constitutes an 'election advertisement'. Furthermore, the government intends that good faith reliance on this advice will provide a defence against any future prosecution for breaching electoral law (Ministry of Justice, 2009, para 92). In other words, the commission's word on the matter will be final, at least as far as an individual inquirer is concerned.

The reason for this innovation is that because campaign finance regulation contains grey areas of application and generates political incentives to accuse rivals of breaching the rules, it is desirable to allow the administrative agency to issue immediate rulings that can be relied on. The courts can still review the 'correctness' of any ruling as a matter of law, but the immediate recipients can be sure that they will not suffer later consequences for relying on a 'wrong' bit of advice. This will permit the election campaign to proceed in certain waters, rather than causing participants to trim their sails for fear of getting caught in an unexpected judicial gale.

However, it is questionable whether the bill as written will achieve these objectives. At present, it appears to be assumed that reliance on the commission's advice means that a person cannot subsequently be found to have 'wilfully' contravened various prohibitions in the bill, hence cannot be found guilty of an offence that requires this *mens rea*. Whether the courts necessarily would take the same view of the matter is debatable. Furthermore, good faith reliance upon the commission's advice as to whether a particular message is an election advertisement should be a complete defence against any allegation in any election petition that a candidate committed a 'corrupt practice' by spending more than the statutory maximum on election expenses. At present the bill does not explicitly state that this is the case.

Finally, the bill requires that the commission treat as confidential any proposed advertising messages on which it is asked to advise, as well as any advice it gives, until after the election process is completed. This is undesirable, as it will hamper the development of a publicly available set of rulings from the commission that may guide other electoral participants. More preferable would be a requirement that any person seeking advice inform the commission when they intend to publish the advertising message, with the commission only under a confidentiality obligation until that point in time.

Issues for the future

While the bill makes a number of changes of varying significance to New Zealand's legal control of campaign financing, it does not dramatically alter that regulatory framework's basic structure. For that reason, the bill can be described as a conservatively reformist measure. However, while this regulatory approach may draw some of venom from the debate around the bill, it does mean that a number of issues remain open for future debate. In particular, the vexed issue of election advertising via the broadcast media and the way in which the broadcast allocation rations access amongst the political parties still requires attention. The shift to digital broadcasting and the growth of the internet mean that the Broadcasting Act 1989 as a whole is becoming outdated (Geddis, 2010a), while the specific measures designed to prevent 'unfair' access to the airwaves create a pro-incumbent bias that cannot be justified in an MMP environment (Geddis, 2003). Consequently, it can be confidently predicted that the bill currently before the House will not be the final word on campaign financing in New Zealand.

1 In this article I will use the government's currently preferred term 'parallel campaigner' in place of the previously used 'third party'. Either term refers to the election-related activities of individuals or groups interested in affecting the outcome of, but not directly contesting, the vote themselves.
2 In point of fact, the repeal was limited to those parts of the legislation that imposed restrictions on parallel campaigner activities. The new rules governing the disclosure of donations to political parties were retained in effect.
3 This consultation process is outlined at http://www.justice.govt.nz/policy-and-consultation/electoral/electoral-finance-reform/.
4 If parties or candidates agree to allow the spending, they must account for it as part of their own election expenses.
5 The proposed limits on political parties are thus $1.015 million + NZ$20,300 per electorate seat contested (to a maximum of NZ$2.436 million), while individual candidates have a $20,300 limit on election expenses.
6 *Peters v Clarkson* [2007] NZAR 610.

References

Cabinet (2009) 'Minute of decision: campaign finance reform package', CAB Min (09) 45/10

Geddis, A. (2003) 'Reforming New Zealand's election broadcast regime', *Public Law Review*, 14, pp.164-82

Geddis, A. (2008) 'New Zealand's Electoral Finance Act 2007 and its discontents', *Public Law Review*, 19, pp.215-33

Geddis, A. (2009) 'The legal status of political parties under MMP', *New Zealand Journal of Public and International Law*, 7 (1)

Geddis, A. (2010a) 'Broadcast media, political speech and the "Rupert Murdoch problem"', in K. Ewing, J. Tham and J. Rowbottom (eds), *The Funding of Political Parties,* London: Routledge (forthcoming)

Geddis, A. (2010b) 'Debating election finance reform', in R. Miller (ed.), *New Zealand Government and Politics,* 5th edition, Auckland: Oxford University Press

Ministry of Justice (2009) 'Electoral finance reform package', advice attached to CAB Min (09) 45/10

Jacob Rowbottom

FINANCING Political Parties in the United Kingdom

Shortly after the 2010 general election in the United Kingdom, the new Conservative/Liberal Democrat coalition government promised to reform the way British political parties are financed and 'to remove big money from politics'. Such promises are not new, and in the last decade there has been no shortage of legislative action on party funding. The problem has been that the laws failed to address some of the biggest concerns about money in politics, and that the political actors found strategies to avoid the controls. Looking at the UK approach, this article aims to give an overview of the controls in place, while highlighting some of the main difficulties experienced. While the UK laws have some differences compared with those proposed in New Zealand (particularly in relation to third-party activity), there is much common ground and the British experience may offer some lessons and show some of the pitfalls in regulating political finance.

Jacob Rowbottom is a university lecturer and Assistant Director of the Centre for Public Law, King's College, University of Cambridge.

Election finance in the UK has been regulated since the Victorian era. The controls on election spending have their roots in the Corrupt and Illegal Practices Act 1883, which was the first statute to impose a limit on the amount that candidates can spend during their campaigns. That law attempted to combat problems of bribing and treating voters by capping the amounts spent. While subject to amendment, this legal framework for regulating election spending remained in place during the 20th century. These controls limited only spending in relation to specific candidates and did not cap spending to promote the election of a political party generally.

As election campaigns became increasingly centralised and focused on the national party, the shortcomings of the framework became obvious. An indirect control on spending by political parties at the national level was, however, achieved through the regulation of the broadcast media, which prohibited paid advertising for political messages. Denying political parties the option of spending money on television advertisements, often a major expense in other jurisdictions, helped to restrain the cost of elections.

The regulatory framework was subject to a major overhaul in the Political Parties, Elections and Referendums Act 2000 (PPERA). This legislation sought to address concerns about an 'arms race' of economic resources between the major political parties and the dependence on large donors. The PPERA introduced spending limits for political parties in the campaign period, which were added

to the existing restrictions on candidate spending. It also brought about greater transparency by requiring the disclosure of donations to political parties and registered third parties above a certain threshold. At the time of writing, the British framework for regulating political finance includes:

- limits on electoral expenditures during the campaign period by candidates, political parties and third parties;
- disclosure of donations above a specified amount to parties, candidates and registered third parties;
- a ban on all political advertising in the broadcast media.

Even with these measures in place, the PPERA has not ended the concerns about party funding in the UK. The last decade has seen numerous scandals and controversies surrounding donations to political parties. Most notable has been the 'loans for peerages' controversy, in which it was alleged that donations and loans to the Labour Party had secured nominations for honours. Other controversies have focused on allegations that donations secured government contracts and of donations being channelled through intermediaries to avoid the transparency rules. Even where the donors have been cleared of any wrongdoing after investigation, such episodes have fuelled speculation and led to further calls for reform of the party funding laws.

The continuing controversy need not be seen as a failure of existing laws, but as a sign of some success. Making the parties' sources of income more transparent will often generate suspicion that a donor received a political favour in return for the contribution. The legislative framework is also complex and detailed, which means there are now more rules for politicians to fall foul of and consequently controversies are more likely to arise. For example, media attention often focuses on whether a donation was properly disclosed to the Electoral Commission or whether a permissible donor made the donation. Prior to the PPERA, politicians were under no legal duty to disclose donations and allegations about the sources of funding relied simply on political argument rather than on a specific legal provision. That the PPERA has resulted in a proliferation of party funding scandals is unsurprising, and may be a sign that it has raised ethical standards and expectations rather than reflecting a decline in politicians' integrity.

In the 2010 general election, the maximum amount that could be spent by a political party contesting all 632 seats in Great Britain was £18.96 million.

If the New Zealand reform proposals are enacted, the British experience suggests that the controversies and concerns will continue for as long as parties rely on private sources of funding. Reforms are likely to be followed by calls for more reform. This is not, however, an argument for inaction. Public ignorance would have avoided the scandals and speculation over the last decade, but the democratic process would have been worse off for it. With this background in mind, the remainder of this article will look at some of specific difficulties that have arisen in the British system. To do this, the various types of regulation will be discussed in turn.

Spending limits

The UK has two tiers of spending control. The first tier applies to spending by candidates and the second tier to political parties. The spending limits for political parties are in place for the 12 months prior to a general election, and four months prior to elections for devolved assemblies and the European Parliament. In the case of general elections this obviously creates some uncertainty, as the date of the election is normally announced weeks prior to the polling day. This currently gives the party in government an advantage (given its power to dissolve parliament), as it will be able to plan its finances knowing the election date in advance. By contrast, opposition parties lack this advance knowledge and may therefore be caught off-guard by a snap election. An opposition party that mistakenly anticipates an election being called on a particular day may also deplete its resources campaigning for an election that is not called. The new coalition government's proposal for fixed-term parliaments in the UK should, however, address these concerns.

The overall limit on party spending varies according to the number of seats being contested. In the 2010 general election, the maximum amount that could be spent by a political party contesting all 632 seats in Great Britain was £18.96 million. The cap has been subject to criticism from some quarters on the grounds that it is set too high and still allows for an arms race between parties. Consequently, some have called for the maximum expenditure limit to be reduced to £15 million. Another line of criticism is that the limits apply only in the year prior to an election. While a 12-month regulated period seems lengthy, calls have been made to extend the controls and impose annual caps on party spending outside election years. This would curtail pre-election spending by parties which can arguably have a greater long-term impact on voters.

The second tier of spending controls is imposed on the candidates, who are limited to spending £7,150 plus an additional 7 or 5 pence for each person on the electoral roll in the constituency. The limits on candidate election expenses are applicable for a shorter period of time, namely from the dissolution of parliament, leaving a campaign period of roughly four weeks.

The dual tiers of regulation created some complexity and led to a number of difficulties (Rowbottom, 2010, pp.117-212). First, the line between candidate and party spending is difficult to draw, as activities to support a party can benefit candidates and vice versa. It can therefore be unclear under which set of spending limits an item of campaign expenditure should fall, and campaigners are advised to consult the Electoral Commission for guidance.

Secondly, the short duration of the regulated period for candidate spending provided an incentive for higher spending to take place in key constituencies prior to the dissolution of parliament. The

significance of this trend is underlined by research from political scientists highlighting the importance of local activity to electoral outcomes (Johnston and Pattie, 2010). To address the concern that large sums were being channelled to marginal constituencies shortly before an election was called, a new set of spending limits was enacted in 2009 to cap candidate spending in the months prior to the dissolution of parliament (the so-called 'long campaign').[1]

Third-party spending limits

The controls on political party spending would be undermined if third parties could spend without restraint. To prevent political money being channelled to groups other than the formal political parties, spending limits are applied to third-party campaigns. Like the party spending limits, there is a two-tier system, with one set of limits on campaigning in support of the party and another on campaigning for a particular candidate.

Third parties that wish to spend over £10,000 in England or over £5,000 in Scotland, Wales or Northern Ireland on 'election material' during a regulated campaign period must register with the Electoral Commission. Spending by registered third parties in the 12 months before a general election is capped at £793,500 in England, £108,000 for Scotland, £60,000 in Wales and £27,000 in Northern Ireland. Two or more third parties working together in a campaign cannot aggregate their spending limits, and the spending by all the third parties on a co-ordinated campaign would count towards the expenditure limit of each.

For the third-party controls, 'election material' is defined as material 'which can reasonably be regarded as intended' to 'promote or procure the electoral success' or 'enhance the standing' in an election of a political party, or of parties and candidates who 'advocate (or do not advocate) particular policies'. The promotion of a party's electoral success or standing also includes 'prejudicing the electoral prospects at the election of other parties or candidates' or 'prejudicing the standing with the electorate of other parties or candidates' (PPERA, s.85). As a result, the provision covers negative campaigning by candidates. To count as 'election material', a publication need not expressly refer to a political party or candidate (s.85(4)). Guidance published by the Electoral Commission states that material campaigning on a policy which happens to be associated with one political party counts as 'election material', as does material 'publicising the names of candidates who have a particular view on an issue such as hunting or education' (Electoral Commission, 2010, para 2.5). Consequently, there is no 'magic words' requirement to distinguish electoral expression from ordinary political speech. The controls do not apply to communications to members within an organisation, 'provided that the material relates to an issue within the aims or objectives of the organisation' (Electoral Commission, 2010, para 3.8). A union sending material to its members assessing a party's industrial relations policy would not therefore fall within the controls.

While it may have been thought that caps on political party spending would encourage more sums to be channelled to independent bodies, the experience so far shows that this has not been a significant problem.

In relation to expenditures in support of a particular candidate, third parties can spend only £500 in the formal campaign period (beginning with the dissolution of parliament) (Representation of the People Act 1983, s.75). An earlier version of the law had limited third-party expenditures to £5, but was found to violate the right to freedom of expression under article 10 of the European Convention on Human Rights in 1999.[2]

In addition to the spending controls, registered third parties (i.e. those going over the £5,000 or £10,000 spending threshold) have to disclose donations received of over £7,500 from a single source that are made to pay for the election material. Donations to a third party that go into general funds and are not to be used for campaigning do not have to be disclosed. One question is how easily can that line be drawn? The third parties do not have to make donations out of a segregated political fund, so it may not always be clear which donations have been given to cover the cost of election material. As of June 2010, only 21 donations to third parties have been disclosed to the Electoral Commission since 2001. The transparency regime therefore sheds a small amount of light on who bankrolls the third parties.

Currently, there are only 32 registered third parties, consisting largely of pressure groups and trade unions. At the 2005 general election, 25 registered third parties submitted returns for electoral expenditures, of which two spent over £100,000 (the trade union Unison spent £682,115 and the Rural Action Group spent £550,370). The total amount spent by all registered third parties in 2005 totalled £1.7 million. While it may have been thought that caps on political party spending would encourage more sums to be channelled to independent bodies, the experience so far shows that this has not been a significant problem. One explanation may be that the caps on party spending are sufficiently generous that such strategies are not necessary. Alternatively, it may be that much political spending by third parties does not count as 'election material' and thereby falls outside the controls.

There is much independent activity that appears to take place outside the third-party controls, three examples of which will be given here. The first is political campaigning by newspapers and broadcasters, which are exempt from the controls. While broadcasters are subject to legal regulation requiring news and politics to be covered with 'due impartiality', newspapers are free to engage in partisan advocacy. In Britain there is a long history

of the national press having partisan attachments and seeking to influence elections. The press thereby occupies a privileged position, which allows it to use its resources to influence an election in a way that would not be permitted of any other organisation.

The second example is policy work by think tanks, which can play an influential role in election campaigns and in political debate more generally. The think tanks are independent entities, but clearly have political effects by promoting particular issues and producing research that may support a party's stance and lend it some credibility from seemingly independent experts. For example, the Institute of Public Policy Research is a registered charity, but is often seen as a testing ground for Labour Party ideas. The Taxpayers' Alliance, a charity which campaigns for lower public spending and taxation, has become increasingly influential in Britain and receives much media attention. While maintaining its independence, it is often associated in the press with the Conservative Party.

Although think tanks are not formally exempt from electoral finance controls, much of what they produce will not count as 'election material' and thereby falls outside the ambit of regulation. In such circumstances the think tank does not have to disclose donations received. This means that think tanks can provide an ideal location for political funds where the donor does not want his or her identity to be disclosed. In one recent lobbying scandal, a former minister advised an undercover journalist posing as a lobbyist to donate money to a think tank as a way of securing access to ministers, but without attracting public attention.

A third example is political activity on the internet, which is an increasingly important way that third parties can influence an election campaign. While outside the formal party organisation, many political blogs and websites have a party allegiance. Most notably, ConservativesHome is a website aiming to provide a forum for grassroots members, founded by Tim Montgomery, a former Conservative Party aide, and in 2009 Lord Ashcroft (a leading party donor) bought a majority stake in the site. LabourList is a forum for Labour Party activists which is funded through donations, sponsorship and advertisements. Similarly, Left Foot Forward provides a forum for 'progressives'. According to the website it is non-partisan, but the title of the blog suggests where its loyalties lie and it was launched with help from the Labour Party members' organisation Progress and from some Labour Party donors.

In addition to this, many leading individual bloggers have links with the political parties. The websites are not, however, covered by the same exemption that applies to broadcasters and newspapers. Consequently, some of the spending by these websites that are engaged in electoral campaigning could potentially come within the third-party spending limits. It is not clear whether the various online campaigners will spend enough on election material to require registration. However, those larger sites that employ one or more people full time could well meet the threshold.

At the time of the PPERA's enactment it was thought a donation cap would be too great an interference with the freedom of parties or donors, and that the spending caps would curtail the demand for money in any event.

Donations

Donations above a certain threshold to the political parties, registered third parties and other regulated bodies have to be disclosed to the Electoral Commission (PPERA, s.62).[3] For donations to a central political party, the threshold is £7,500. Donations must be made by a 'permissible donor', which includes companies, unincorporated associations and trade unions, as well as individuals on the electoral register (s.54). The 2000 Act provides that where there is an agency relationship, in which one person receives money to be passed on as a donation to the party, the identity of the original source of funds must be disclosed. The register of donors to political parties and third parties can be accessed on the Electoral Commission website and aims to promote transparency by revealing the sources of income. By making such information public, the hope is that deals between donors and politicians will be discouraged, given the threat of adverse publicity.

The regulation of donations has, however, faced a number of difficulties where devices can be used to evade the spirit if not the letter of the law. First, and most notably, in the 'cash for honours' scandal individuals gave funds to political parties as loans, not as donations. Under the original terms of the PPERA, commercial loans did not have to be disclosed. Much debate at the time concerned whether the loans given by the individuals were really on commercial terms. However, the law has since been amended so that commercial loans also have to be disclosed (PPERA, part IVA).

A second area of controversy concerns donations given by institutions. Companies that carry on business in the UK and unincorporated associations whose activities are based in the UK can donate money to a political party (PPERA, s.54).[4] In the absence of an agency agreement, the company or unincorporated association is recorded as the donor. This means that while an individual who is not on the electoral register cannot make a donation, a UK-based company owned by that individual can give money. Institutions can also undermine the transparency requirements, as it may not be known who or which interests are behind the company or association making the donation. This problem was to some extent addressed by a requirement that an unincorporated association disclose donations it receives of over £7,500.[5] However, concerns about transparency still arise in relation to

companies, which do not have to disclose their sources of income.

The UK does not impose a limit on the amounts that can be donated to a political party. At the time of the PPERA's enactment it was thought a donation cap would be too great an interference with the freedom of parties or donors, and that the spending caps would curtail the demand for money in any event. This relaxed approach to donations did not last and the absence of a donation limit has been the cause of much controversy in the last decade. Individuals have made a number of very large donations, some in excess of £1 million. Institutions have also made large donations. For example, in 2005 the company 5th Avenue Partners gave £2.4 million to the Liberal Democrats; between 2003 and 2009 Lord Ashcroft's company Bearwood Corporate Services donated over £5 million to the Conservative Party; and between 2007 and 2009 the trade union Unite donated over £11 million to the Labour Party.

The major political parties are committed to some reform of donations, at least to the extent of considering whether a cap should be imposed. Yet if such a cap is introduced there will be difficult questions about the level at which it should be set, how it should apply to institutions, and how the techniques of evasion can be avoided. These issues of detail and design are likely to be the main barriers to an agreement on reform among the parties and have been the main sticking points in previous negotiations.

Broadcasting

All broadcasters, both publicly and privately owned, are required to cover politics and current affairs with 'due impartiality' (Geddis, 2010). A stricter set of rules applies in the context of an election, where the broadcasters have to go to greater lengths to treat parties and candidates fairly. Political advertising in the broadcast media is prohibited. The ban is broader than its New Zealand equivalent and prohibits advertisements 'directed towards a political end', and by anybody 'whose objects are wholly or mainly of a political nature' (Communications Act 2003, s.321). Consequently, it applies to all political groups and not just parties and candidates, and it applies to political messages generally, as opposed to just electoral messages.

The ban has come under criticism from a number of academic commentators, in particular in the light of two rulings from the European Court of Human Rights which found similar bans in Switzerland and Norway to be in violation of the right to freedom of expression under article 10 of the European Convention.[6] However, in 2008 the House of Lords declined to declare the ban incompatible with the European Convention.[7] Unlike the Strasbourg Court, the House of Lords found a ban to be a proportionate measure to protect the integrity of the electoral process. While upholding the legislation, two of the lords expressed a willingness to consider future challenges to the application of the ban, for example where it has a discriminatory effect. This might arguably arise where the ban prevents a political group, such as an environmental organisation, from advertising in response to a commercial advertisement by an oil company.

While regulations are a necessary and important part of a fair process, one lesson from the UK is that there are limits to what such legal controls can achieve.

Aside from the ban, political parties are entitled to free time on the public service broadcasters. In a general election, at least one broadcast is allocated to parties contesting one sixth or more of the seats up for election. While this allows parties with no MPs to access the mass media, the larger political parties are normally allocated more slots on television and there have been (albeit unsuccessful) legal complaints that the smaller parties are treated unfairly.

The televised debates between the leaders of the three main political parties, held for the first time in 2010, added a new dimension to the issue. The debates proved to be the most high profile campaign 'event' and played a central role in giving the Liberal Democrats greater exposure. Unsurprisingly, the smaller parties argued that the broadcasters' inclusion of the leaders of only the Labour, Conservative and Liberal Democrat parties was a breach of the impartiality obligations. However, when faced with that argument, a Scottish court declined to issue an injunction restraining the broadcast of the third leaders' debate a week before the election.[8] This type of issue is one faced whenever a subsidy, in this case media access, is to be allocated among political speakers and raises difficult questions about the appropriate threshold for inclusion.

Parliamentary funding

The central issue with parliamentary funding in the last year has been the expenses scandal, in which the Daily Telegraph published leaked details of the expenses claimed by MPs. Following this, the system for allowances has been reformed and a number of MPs have been found to be in breach of the rules and have made repayments. A small number have also faced criminal prosecution. Possibly the biggest effect has been the political backlash, with a large number of MPs standing down at the 2010 election. While the expenses scandal focused on allegations that MPs had gained personally through the expenses, there have also been concerns about parliamentary funds being channelled to political parties.

One way parliamentary funds can end up in a party treasury is by the allowance for an MP's office being used to rent space from the party headquarters in the constituency. In November 2009, the Committee on Standards in Public Life concluded that such a practice should not be prohibited, as there was little evidence of abuse. Instead, such arrangements are now subject to an audit by a qualified independent assessor to ensure the market rate for the premises is not exceeded.[10] While this ensures that public funds are not misused, the practice

does give the party with a sitting MP a regular source of income.

A second route is through the use of parliamentary allowances for communications to voters. MPs have allowances for informing constituents and replying to messages. The rules provide that such allowances are not to be used for partisan purposes. For example, party logos and slogans should not be used in material funded through the allowances. However, the line between an MP informing constituents of his or her work and the use of such resources to persuade or promote his or her re-election is a difficult one to draw. Political references will sometimes be necessary to explain a particular stance to a constituent, and even those communications that merely raise the MP's profile potentially contribute to a re-election campaign.[11]

Third, there is a practice known as 'tithing', in which MPs and councillors are asked to contribute a percentage of their salary to their political party. This is not an improper use of public funds, as it is merely a donation coming from the representative's salary (albeit that it is demanded by the party as a condition of membership). However, like the use of communications allowances, this approach means that parties that are already in power attract further resources, which help them stay in power. The danger is that such practices can reinforce the status quo.

These issues are connected with a much broader issue about the advantages enjoyed by incumbents. There are many rules stating that government property and resources should not be used for 'political purposes', yet it is difficult to define just what these are. For example, inevitably some partisan points will be made at a ministerial press conference. Similarly, the use of civil servants in developing government policies will provide an advantage when defending those policies in the electoral arena. It is likely that incumbents will also receive greater media attention in the coverage of political events. The benefits of being in office are thus very hard to regulate through any strict rules. While it is important to police the system to avoid clear abuses, a fair process may also require that opposition parties and those not elected receive some support to offset some of the advantages of incumbency.[12]

Conclusion

The controls on political donations and party expenditures in Britain have not yet been in force for a decade, but have been subject to regular revision. Part of this relates to the complexity and technical nature of election regulations. Unforeseen problems inevitably emerge once a new framework is in place and loopholes need to be closed. The complexity is not helped by the new framework having been superimposed on the longstanding candidate expenditure limits that were introduced in the Victorian era. However, the calls for reform are not just due to difficulties in design, but are also based on policy considerations. These include demands to cap donations to parties and to extend the spending limits to cap party expenditures on an annual basis. These demands have largely been fuelled by the numerous scandals, which have often come to light as a result of the increased transparency in the UK's political funding.

While regulations are a necessary and important part of a fair process, one lesson from the UK is that there are limits to what such legal controls can achieve. The law is targeted at electoral activities, which are just one part of political process. Even with these rules in place, considerable power still lies with those who control the infrastructure of political communications, such as the mass media and the think tanks, which provide a channel for economic resources to influence politics outside the legal regulations. All the main political parties promised reform in their 2010 election manifestos and the new government may have the political capital to push through a new set of reforms, just as Labour did in its early years. Yet even if it does, it is unlikely that the issue will go away.

1 Spending by individual candidates in the five months prior to the dissolution of parliament is now limited to £25,000, with an additional sum for each person on the electoral roll in the constituency. The long campaign limits come into effect after the parliament has been sitting for four years and seven months. If an election is called much earlier, then the pre-campaign limits do not apply.

2 *Bowman v UK* (1998), 26 EHRR 1. See also *R v Holding* [2005], EWCA Crim 3185.

3 This includes a series of smaller donations given over the same year, the aggregate of which exceeds the threshold.

4 Companies must be registered under the Companies Act 2006 and incorporated in the EU.

5 If the association is to make donations of over £25,000 in a year.

6 *VgT Verein gegen Tierfabriken v Switzerland* (2002), 34 EHRR 4 and *TV Vest As & Rogaland Pensjonistparti v Norway* (2008), 48 EHRR 120.

7 *R (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15.

8 *Scottish National Party* [2010], CSOH 56. However, compare *Houston v BBC* [1995], SC 433.

9 See the 12th report of the Committee on Standards in Public Life, MPs' *Expenses and Allowances* (2009, Cm 7724) at [7.14-15], finding that this issue requires further investigation before any further steps are taken.

10 Independent Parliamentary Standards Authority, *The MPs' Expenses Scheme* (2010, HC 501) at [9.7].

11 For discussion of the difficulties, see House of Commons Standards and Privileges Committee, *Use of Pre-paid Envelopes and Official Stationery* (HC 1211 2008).

12 For example, opposition parties in parliament receive Short and Cranborne money, which recognises that some public funds should be allocated to offset some of the advantages of incumbency.

References

Electoral Commission (2010) *Non-Party Campaigners: guidance on expenditure and donations for elections in 2010*, London: Electoral Commission

Geddis, A. (2010) 'Broadcast media, political speech and the "Rupert Murdoch problem"', in K. Ewing, J. Tham and J. Rowbottom (eds), *The Funding of Political Parties,* London: Routledge (forthcoming)

Johnston, R. and C. Pattie (2010) 'Local parties, local money and local campaigns: regulations issues', in K. Ewing, J. Rowbottom and J. Tham (eds), *The Funding of Political Parties,* London: Routledge (forthcoming)

Rowbottom, J. (2010) *Democracy Distorted,* Cambridge: Cambridge University Press

Colin Feasby

Contemporary Issues in Canadian Political Finance Regulation

Introduction

Canada shares with New Zealand a heritage of British constitutional traditions and the Westminster form of parliamentary government. These common origins make comparative study of the two countries' experiences regulating political finance inviting. Canada and New Zealand, however, differ in important ways which have had significant impacts on the regulation of political finance. This article outlines the Canadian political finance regime and identifies some contemporary issues that may be of interest to observers from New Zealand.

The article begins with a brief review of the Canadian context, including the electoral system and political finance regulation. Part two concerns the Canadian constitution and its impact on political finance regulation. The development of political finance jurisprudence in Canada through disputes involving third-party spending limits and the differential treatment of small political parties are discussed. The third section considers the impact of amendments to the Canada Elections Act 2000 (CEA) in 2003 and 2006 that introduced contribution limits and quarterly allowances for political parties. Lastly the article discusses ways in which political spending may escape regulation in Canada.

Colin Feasby is a partner in the Calgary office of Osler, Hoskin & Harcourt LLP. He has written extensively on issues of campaign finance regulation in Canada.

The Canadian context[1]

The Canadian electoral system

Canada is a federation comprised of ten provinces and three territories. The federal parliament is a bicameral legislature comprised of an elected House of Commons and an appointed Senate. The provincial and territorial assemblies are unicameral and comprise elected representatives. All elections to the federal House of Commons and provincial legislatures follow the traditional Westminster form: the candidate receiving the most votes in each electoral district is elected.

Canada is a large country with diverse geography, economy and culture. The most obvious example of this diversity is the majority French-speaking province of Quebec. Throughout much of Canada's history, regional and linguistic-cultural differences were brokered through two large centrist political parties, the Liberal Party and the Progressive Conservative Party. During the second half of the 20th century a smaller, left-leaning party affiliated with organised labour, the New Democratic Party (NDP), also consistently elected a small number of representatives to the House of Commons.

Canada's longstanding party system broke down in the late 1980s and early 1990s. The breakdown translated into a fractured House of Commons following the 1993 federal election. The Bloc Québécois (BQ), a separatist party, took most of the seats in Quebec in the 1993

federal election and formed the official opposition. The Reform Party, a populist and ideologically conservative party based in Western Canada, came third in the election. The NDP finished fourth and the formerly governing Progressive Conservative Party was reduced to a small rump in fifth place. This five-party system has now become a four-party system as a result of the merger of the Reform Party and the Progressive Conservative Party. Once again there are two large parties: the Liberal Party and the Conservative Party. However, in the period since 2004 neither has been able to form a majority government. The Liberals and then the Conservatives have ruled in minority governments without any formal coalition with the NDP or the BQ. The result has been frequent elections and more aggressive partisan tactics than Canadians have been accustomed to over the past century.

Framework of political finance regulation

The CEA political finance regime is based on election expense controls and disclosure. However, political party and candidate expenses are regulated only during an election period. An 'election period' is defined by the CEA as being 'the period beginning with the issue of the writ and ending on polling day'. An expense includes 'any cost incurred, or non-monetary contribution received, by a registered party or candidate ... used to directly promote or oppose a registered party, its leader, or candidate during an election'. Outside an election period there are no limits on the expenditures of political parties and candidates. The election expense limits for political parties and candidates are determined by a statutory formula that is adjusted annually for inflation. Candidates and political parties must file financial returns with the chief electoral officer following an election.

Contributions to political parties, candidates and electoral district associations have been regulated by way of mandatory disclosure since 1974. Contributions are defined by the CEA broadly to include monetary and non-monetary contributions and also a candidate's own funds used for election expenses. The regulation of contributions captures money transferred from the private domain to the political domain. A transfer of money between entities within the political domain – candidates, electoral district associations and registered political parties – is not a 'contribution'. Contributions may not be made indirectly to conceal the identity of the contributor. The name and address of all individuals making contributions of over $200 must be disclosed by the candidate or political party receiving the contribution.

The existing contribution disclosure approach was reinforced by the introduction of contribution limits in amendments to the CEA in 2003.[2] Contributions by corporations and trade unions were prohibited, subject to a limited exception for contributions of up to $1,000 to candidates and constituency associations. Individual contributions were limited to $5,000 adjusted annually for inflation to 'each registered political party and its registered associations, nomination contestants, and candidates'. Further amendments to the CEA contained in the 2006 Federal Accountability Act reduced individual contribution limits to $1,000 (adjusted annually for inflation) and extinguished the right of corporations and trade unions to contribute even $1,000 to candidates and constituency associations.[3]

There are three forms of public funding in the Canadian political finance regime: tax deductions for contributors; reimbursement of election expenses for candidates and political parties; and political party allowances.[4] A candidate who receives 10% of the vote is entitled to be reimbursed 60% of his or her election expenses. A political party which receives 2% of the national popular vote or at least 5% of the votes in the electoral districts in which it endorsed candidates is entitled to be reimbursed 50% of its election expenses. Political parties which qualify for reimbursement of election expenses also qualify for a quarterly allowance determined by the number of votes cast for the party in the last general election.

There are three forms of public funding in the Canadian political finance regime: tax deductions for contributors; reimbursement of election expenses for candidates and political parties; and political party allowances.

The Canadian constitution and political finance

Charter review

Political finance regulation exists in the shadow of the Canadian Charter of Rights and Freedoms.[5] The charter is a constitutional bill of rights which sets out rights that limit the power of the state. Laws that contravene the charter may be declared to be invalid and of no force or effect. As a result, courts play a hand in shaping political finance regulation through case law. The implicit threat of litigation also shapes choices made by parliament in regulating political finance. Political finance regulation engages three main aspects of the charter: freedom of expression (s.2(b)), the right to vote (s.3) and the right to equality (s.15).

The first element of charter analysis is consideration of whether the challenged legislative provision violates a protected right. The plaintiff bears the burden of establishing that a charter right has been infringed. The charter, unlike the US Bill of Rights, contains an explicit limiting principle. Section 1 of the charter provides that rights guaranteed are subject 'to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'.[6] Once a

plaintiff proves the violation of a right, the state bears the burden of proving that the limit on the right is reasonable and justified. The justification test is comprised of two main aspects. First, the court must determine whether the legislation addresses a pressing and substantial objective. Second, the court must determine whether legislative means are proportional to the objective. The second part of the test considers: (1) whether the means and objective are rationally connected; (2) whether the means minimally impair the right in question; and (3) the salutary and deleterious effects of the legislation.[7]

Most charter challenges to political finance regulation have taken place at the margins of the political finance regime. There have been repeated challenges to the regulation of third-party (or 'parallel campaigner') spending and to the preferential treatment of political parties and candidates in respect of public funding. The core elements of the political finance regime that apply to the major political parties have not been challenged. Indeed, the courts have proceeded on the implicit assumption that financial disclosure and spending limits on candidates and political parties are constitutional.

Third parties

Third-party expenditures were first regulated in 1974 and have been a source of controversy ever since. After being declared unconstitutional in the mid-1990s, third-party spending limits were adopted again in amendments to the CEA in 2000. The third-party spending limits were promptly challenged by Stephen Harper, now Canada's prime minister, who was the leader of the conservative interest group the National Citizens' Coalition (Geddis, 2004; Feasby, 2005). Harper asserted that third-party spending limits violated section 2(b) of the charter by unreasonably infringing upon freedom of expression.

The third-party spending limits applied to communications which 'promote or oppose the election of one or more candidates in a given electoral district, including by (a) naming them; (b) showing their likeness; (c) identifying them by their respective political affiliations; or (d) taking a position on an issue with which they are particularly associated'. Harper contended that the limits were either vague or overly broad and, as a result, unduly infringed upon freedom of expression. He further asserted that there was no evidence to support the government's claim that third-party spending was a threat to the integrity of elections. The financial limits, Harper also contended, were unreasonably low and did not permit effective campaigning.

When third-party spending limits were adopted in 2000, third parties were also required to file a return with Elections Canada disclosing details of their contributions and expenditures.

The spending limits permit third parties to spend $3,000 per electoral district to a maximum of $150,000 nationally.

The Supreme Court of Canada accepted that the purpose of third-party spending limits was to promote equality and that this purpose was pressing and substantial. The court dismissed the claim that there was no evidence to support the existence of a pressing and substantial objective, holding that parliament had acted based on a reasoned apprehension of harm and that a relaxed evidential standard applied given the importance of the objective. It went on to reject Harper's argument that the third-party limits were vague or overly broad. The court acknowledged the breadth of the restrictions, but found that such breadth was justifiable in the circumstances.

The court split over whether the limits in question were too low. The majority deferred to parliament and accepted that the limits allowed for a modest informational campaign. The minority concluded that 'the limits imposed on citizens amount to a virtual ban on their participation in political debate during the election period'.[8] The disagreement between the minority and the majority stemmed, in part, from the poor evidential record before the court. A challenge to British Columbia's restrictions on third-party spending, which are nearly identical to the federal limits, has been heard by the BC Supreme Court and is pending before the BC Court

Table 1: Third-party expenditures in the 2000, 2004, 2006 and 2008 general elections[10]

	Number of registered third parties			
Expenditure levels	**2000**	**2004**	**2006**	**2008**
No return	0	4	7	4
$0.00	6	12	7	3
$0.01–$4,999.99	30	31	44	32
$5,000.00–$9,999.99	8	4	2	4
$10,000.00–$24,999.99	2	4	5	7
$25,000.00–$49,999.99	1	3	8	5
$50,000.00–$99,999.99	1	4	5	4
$100,000.00 and over	2	1	2	5
Total number	50	63	80	64
Total expenditures	$573,854.20	$720,227.93	$1,067,680.75	$1,430,579.14
Average expenditure	$11,477.08	$12,207.25	$14,625.76	$23,842.99

of Appeal.[9] This case offers the possibility of revisiting the debate over the type of campaigns that can be conducted within the third-party limits with the benefit of a more complete evidential record which includes expert testimony.

When third-party spending limits were adopted in 2000, third parties were also required to file a return with Elections Canada disclosing details of their contributions and expenditures. Any future litigation over third-party spending limits will benefit from the data that has been gathered by Elections Canada from third-party election expense returns. Table 1 indicates that third-party spending is increasing; however, it is also clear that third-party spending remains negligible when compared to political party and candidate spending. For example, the Conservative Party together with its candidates spent $37,235,930 in the 2006 federal election. Furthermore, few third parties spend the maximum allowed under the limits, which suggests that there would be little risk in raising them.

Small political parties

The Canadian political finance system employs a series of thresholds, outlined above, to ensure that public funding flows only to 'serious' candidates and political parties. Prior to 2003 political parties were required to field 50 candidates to become a 'registered political party' with Elections Canada. Registered political parties receive a number of benefits, including candidate–political party affiliation identified on the ballot and the right to issue tax receipts to donors. The ability to issue tax receipts enhances political parties' fundraising capacity, as donors are more likely to contribute if they receive a benefit in return in the form of reduced taxes.

Miguel Figueroa, leader of the Canadian Communist Party, challenged the 50-candidate threshold on the grounds that it violated the right to vote and to run for office protected by section 3 of the charter.[11] Figueroa contended that the threshold created a systemic bias against small political parties and in favour of large political parties. The systemic bias prevented small parties from communicating their messages to voters and playing a meaningful role in the electoral process. The government response was that the 50-candidate threshold and the systemic bias in favour of large parties was justified because regulations should enhance the ability to communicate of those parties which have a reasonable chance of forming the government.

The majority of the Supreme Court of Canada disagreed. The court held that 'participation in the electoral process has an intrinsic value independent of its impact upon the actual outcome of elections'.[12] Justice Iacobucci went on to observe that 'the ability of a political party to make a valuable contribution to the electoral process is not dependent on its capacity to offer the electorate a genuine "government option"'.[13] The court concluded that 'legislation that exacerbates a pre-existing disparity in the capacity of the various political parties to communicate their positions to the general public is inconsistent with s.3'.[14] As a result, the court held that the 50-candidate threshold was unconstitutional.

Case law following Figueroa has been divided. The Ontario Court of Appeal heard a challenge to the thresholds political parties must meet to qualify for election expense reimbursement and allowances.[15] The small political parties that brought the challenge took the position that the Supreme Court's decision in Figueroa meant that thresholds to qualify for public funding must be unconstitutional. The Ontario Court of Appeal agreed that the thresholds violated section 3 of the charter, but held that infringement was justified because thresholds were required to maintain public confidence in the electoral process. At about the same time, the Ontario Superior Court of Justice reached a contrary result, finding a threshold for the refund of candidate deposits in Ontario's Election Act to be unconstitutional.[16] The court applied Figueroa and concluded that the benefit of the threshold was 'overcome by the deleterious effects of diminishing the capacity of [small] political parties to present their ideas and opinions'.[17] The Supreme Court of Canada may have to once again consider the rights of small political parties in order to give clear guidance to the lower courts.

Prior to 2003 political parties were required to field 50 candidates to become a 'registered political party' with Elections Canada.

Public funding and contribution limits

Prior to the 1993 breakdown of the duopoly that controlled Canadian politics for most of the 20th century, the Liberal Party and Progressive Conservative Party raised similar amounts of political funds. Both parties were dependent on corporate donations. The NDP, by contrast, received fewer corporate contributions and instead relied upon financial support from trade unions. The financial equilibrium between the Liberal Party and the Progressive Conservative Party, together with the similar sources of funding, meant that there was little partisan advantage to be gained from changing the fundraising rules.

The Liberal Party dominated fundraising in the fragmented party system that lasted from 1993 to 2000. The Liberal Party was particularly successful at raising corporate funds, as it was the only political party that could plausibly form the government. During the 1993–2000 period the populist and ideologically conservative Reform Party established an effective grassroots fundraising system. After 2000, the Reform Party's heirs, the Canadian Alliance, and, later, the Conservative Party built upon this fundraising foundation by adopting direct and targeted advertising and other strategies imported from the United States to maximise the number of contributors and contributions.

Contribution limits were adopted by

the governing Liberal Party in 2003 as part of an effort to rehabilitate the party's image following the 'sponsorship scandal', in which advertising agencies associated with the Liberal Party were used as conduits for government sponsorship of events in Quebec. Even though there was no proof that any of the sponsorship funds returned to the Liberal Party through political contributions, political finance reform including contributions was expedient in the circumstances.

The contribution limits had greater effect on the Liberal Party than on the Conservative Party (Flanagan and Coletto, 2010). The effects of contribution limits were not lost on the Conservative Party when it took power after the election in 2006. One of the reforms it implemented in its Federal Accountability Act 2006 was a reduction in individual contribution limits to $1,000 and a prohibition on corporate and union contributions.

Table 2 shows the persistent fundraising advantage enjoyed by the Conservative Party since contribution limits went into effect at the beginning of 2004. The Liberal Party has identified the need to develop a more grassroots approach to fundraising, but has been unable to match the success of the Conservative Party. As the contribution limit system enters its seventh year, the Conservative Party retains a comfortable fundraising advantage over the Liberal Party and, indeed, over all of the opposition parties combined.

Some prominent Liberals, including Liberal Party president Stephen LeDrew, foresaw that contribution limits would damage the Liberal Party's dominant financial position. LeDrew decried the reforms as 'dumber than a bag of hammers' (Gray, 2006). To mitigate the anticipated impact of the contribution limits, public funding of political parties through allowances paid quarterly was introduced. Funding is determined according to a per vote rate based on votes received by each political party in the prior election. The per vote funding amount was set at a level that was intended to replace the funds that would be lost by political parties by reason of the contribution limits.

The allowances mitigated the loss of corporate contributions and large contributions from individuals lost by the Liberal Party. For the Conservative Party, which lost comparatively little as a result of the contribution limits, the allowances were mostly additional funding rather than replacement funding. Success in private fundraising together with public funding has resulted in the Conservative Party having far greater financial resources than any political party had prior to the adoption of contribution limits and allowances. Table 3 shows the annual allowances paid to political parties since 2004.

The Conservative Party's financial advantage has had an impact on the conduct of politics since 2006. Since 2006 the Conservative Party has governed twice as a minority government. The funding advantage enjoyed by the party has allowed it to govern with more authority than normal in a minority situation. The opposition parties have been reluctant to bring down these minority governments because the Conservative Party has been the only political party that has had the financial wherewithal to comfortably fight an election. As a result, there have been instances where opposition parties have threatened to bring down the government only to relent and compromise, in part because of financial considerations.

The Conservative Party also provoked a crisis over the budget in 2008 by threatening to eliminate the quarterly allowances paid to political parties. The removal of public funding would damage the opposition parties more than the Conservative Party. The threat to funding was one of the few things that has galvanised the opposition parties and caused them to make a convincing threat to defeat the government. The Conservative Party withdrew its proposal.

Table 2: Contributions to major political parties 2004–09

Party	2004	2005	2006	2007	2008	2009*[18]
BQ	$858,746	$734,729	$529,513	$429,971	$713,085	$621,126
Cons.	$10,949,559	$17,847,451	$18,641,306	$16,983,630	$21,179,483	$17,707,846
Lib.	$4,719,388	$8,344,162	$9,063,126.36	$4,471,903	$5,811,492	$9,564,677
NDP	$5,194,170	$5,120,827	$3,972,762.57	$3,959,451	$5,412,940	$4,035,492

*2009 data based on quarterly returns, as not all annual returns have been posted by Elections Canada.

Table 3: Annual allowances paid to major political parties 2004–09

Party	2004	2005	2006	2007	2008	2009
BQ	$2,733,868	$3,064,864	$2,950,984	$2,953,218	$3,017,092	$2,742,215
Con.	$7,913,512	$7,331,172	$9,388,357	$10,218,123	$10,439,132	$10,351,071
Lib.	$9,141,408	$9,087,333	$8,572,965	$8,517,049	$8,701,263	$7,219,593
NDP	$2,883,919	$3,879,817	$4,611,140	$4,923,795	$5,030,293	$4,998,192

Table 4: Political party spending limits in recent elections

Party	2004	2006	2008
BQ	$4,591,747.38	$4,676,676.52	$5,066,811.35
Con.	$17,593,925.32	$18,278,278.64	$19,999,230.62
Lib.	$17,593,925.32	$18,278,278.64	$20,014,302.76
NDP	$17,593,925.32	$18,278,278.64	$20,063,430.10

Spending limits

Spending outside election periods

Canadian political parties have always spent some money in the days and weeks immediately prior to the election period. Until recently, however, parties did not have enough money to engage in significant pre-writ electioneering. As discussed in the previous part of this article, all of this changed in 2004. Since then, the Conservative Party has had the financial resources to engage in extensive pre-writ electioneering. This is demonstrated by a comparison of Conservative Party income from contributions and allowances set out in Tables 2 and 3 with spending limits in recent elections set out in Table 4. When comparing the tables, it should be noted that political parties are reimbursed 50% of their election expenditures.

The competitive partisan dynamic created by three successive minority governments, together with the financial disparity between the parties has resulted in expanded use of political advertising. The Conservative Party has not been content to merely ramp up its election campaign in the weeks and months immediately prior to the election period; it has also engaged in strategic advertising campaigns when no election campaign was imminent. The most famous examples were the negative advertisements aimed at Stephane Dion when he became leader of the Liberal Party in 2006 and at Michael Ignatieff after he became leader of the Liberal Party in late 2008.

The Conservative Party's use of advertising to influence political images and debates outside election periods and increased use of pre-writ election advertising has forced the other political parties to respond in kind. Despite their comparatively weak financial positions, both the Liberal Party and NDP have engaged in advertising to compete with and respond to the Conservative Party. The inability of the Liberal Party to compete in an advertising arms race provoked Dennis Dawson, a Liberal senator, to introduce a bill in the Senate to control some pre-writ election spending by political parties. The bill would include within the definition of 'election expense' any cost 'incurred in the three month period prior to the election period'. The bill, being a private member's bill originating in the Senate, stands little chance of becoming law and is best understood as a protest against the effects of Conservative Party financial dominance.

An interesting twist on pre-writ regulation of expenditures is found in British Columbia's Election Act. The 2005 provincial election in British Columbia was marked by increases in third-party spending. As a result, BC adopted third-party spending limits which mirrored the federal limits but extended into the 60-day period before the call of an election. The third-party limits were challenged by the BC Teachers Federation.[19] The BC government attempted to justify the extension of the third-party limits into the pre-writ period on the grounds that it was necessary to stop third parties from circumventing spending limits that apply to the election period. The BC Supreme Court did not find this position compelling. The court held that regulation of third-party spending outside the election period could not be justified as it was not proximate enough to an election and, as a result, did not pose as great a threat to the integrity of an election. The court further held that the extension of third-party limits outside the election period was problematic because it prevented full participation in public debate while the legislature was in session.

Advertisements that promote a political party necessarily provide a benefit to a candidate affiliated with that political party whether or not the candidate's name is used.

Expenditure limit arbitrage

A second way in which the Conservative Party has used its financial advantage is what I have termed 'expenditure limit arbitrage'. Under the Canadian political finance system, political party spending limits are separate from candidate spending limits. The major political parties typically spend close to the maximum permitted. However, candidates of the major political parties in uncompetitive districts often do not spend the maximum allowed. The unused spending capacity of candidates represents an opportunity for a political party with more funds than it can use under its spending limits because there are no limits on transfers of funds between political parties and affiliated candidates.

The method devised by the Conservative Party to exploit the unused spending capacity of candidates was described by the Federal Court in *Campbell v. Canada (Chief Electoral Officer)* in the following terms:

> The evidence shows that the Party did in fact finance candidates' contributions using the following scheme: first, the Fund issued an invoice to the official agent. Simultaneously, the official agent completed a wire transfer form instructing the same amount indicated in the invoice to be transferred from the campaign to the Fund. This wire transfer form was signed and sent back to the Fund, who filled in any missing information. The Fund then prepared a second wire transfer, directing the same amount of money to be transferred from the Fund to the candidate. Finally, after the transfer from the Fund was completed, the wire transfer form completed by the official agent was sent to the bank to have the money paid right back. Indeed, during the 2006 election, the Fund transferred some 1.2 million dollars to the 67 local campaigns participating in the RMB program. The totality of this amount was returned to the Fund by way of these 'in and out' transfers with each participating candidates.[20]

An investigation as to whether the Conservative Party exceeded its spending limit is ongoing, but no charges have been laid. The 'in and out' transactions, however, came under judicial scrutiny in *Campbell* as a result of Elections Canada's denial of election expense reimbursement claims submitted by candidates who participated in the 'in and out' transactions. Despite these concerns, it is hard to conclude that arbitrage between political party and candidate spending limits is illegal. Advertisements that promote a political party necessarily provide a benefit to a candidate affiliated with that political party whether or not the candidate's name is used. Indeed, to insist upon the direct promotion of a candidate would be inconsistent with the broad approach used to defining 'election advertising' in the CEA.

The Federal Court in *Campbell* was not asked to determine whether the

Conservative Party exceeded its spending limits. Moreover, the court overturned the chief electoral officer's decision to deny candidates' election expense reimbursement claims. Based on this decision, it appears that if Elections Canada concludes that 'in and out' transactions should be stopped, an amendment to the CEA will be required.

Conclusion

Political finance has become increasingly important to the practice of politics in Canada in recent years. More money is available to participants in the political process as a result of increased public funding and it is being deployed in more aggressive and creative ways than in the past. At the same time, political finance has become increasingly subject to judicial scrutiny. Small political parties and third parties have launched repeated constitutional challenges to the political finance regime and Elections Canada has taken more enforcement actions. The Canadian political finance landscape, though more contested and dynamic than that found in Australia, the United Kingdom or New Zealand, remains quiescent compared to the United States.

The Canadian experience is a cautionary tale for New Zealand as it embarks on reform of its political finance regime. The Canadian reforms of 2003 and 2006 show that ostensibly neutral changes to a political finance regime can have a significant impact on the practice of politics and the balance between political parties. Canadian politics today exist in a state of persistent quasi-campaign. This condition is a result of recurring minority governments, but it is also facilitated and exacerbated by increased public funding and the imbalance in funding amongst the major political parties. New Zealand should be cautious before adopting any changes to its political finance legislation. In particular, even in the absence of any constitutional standards, the differential impact of legislation on political parties should be considered.

1 Parts of this section are adapted from Feasby, 2010. For a more detailed discussion, see Feasby, 2007.
2 An Act to amend the CEA and the Income Tax Act (political financing), SC 2003, c.19.
3 SC 2006, c.9.
4 The reservation and allocation of free and discounted time for political broadcasts is akin to political funding. However, political broadcasting is beyond the scope of this article. For a discussion of the history of the regulation of political broadcasting in Canada see LaCalamita, 1984. For a discussion of constitutional issues related to the regulation of political broadcasting, see Feasby, 2006.
5 Part I of the Constitution Act 1982, being schedule B to the Canada Act 1982 (UK), 1982, c.11 (the 'Charter').
6 This aspect of the charter resembles the European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950), 213 UNTS 221. The New Zealand Bill of Rights Act 1990, s.5 also contains a justified limitations provision that was explicitly modeled on the Canadian charter.
7 *R. v Oakes*, [1986] 1 SCR 153 and *Dagenais v Canadian Broadcasting Corporation*, [1994] 3 SCR 835.
8 *Harper v Canada (Attorney General)*, [2004] 1 SCR 827 at [35] per McLachlin CJ.
9 *British Columbia Teachers' Federation v British Columbia (Attorney General)*, 2009 BCSC 436.
10 The data for 2000 is compromised by the fact that mid-campaign an injunction was issued by the Alberta Court of Queen's Bench suspending the rules applicable to third parties and then reinstated by the Supreme Court of Canada. 'Average expenditure' figures do not include third parties with no return filed.
11 *Figueroa v Canada (Attorney General)*, [2003] 1 SCR 912.
12 Ibid. at [29].
13 Ibid. at [39].
14 Ibid. at [54].
15 *Longley v Canada (Attorney General)* (2007), 288 D.L.R. (4th) 599 (Ont. C.A.).
16 *DeJong v Ontario (Attorney General)* (2007), 287 D.L.R. (4th) 90 (Ont. Sup. Ct.).
17 Ibid. at [79].
18 2009 data based on quarterly returns as not all annual returns have been posted by Elections Canada.
19 *British Columbia Teachers' Federation v. British Columbia (Attorney General)*, 2009 BCSC 436.
20 *Campbell v Canada (Chief Electoral Officer)*, 2010 FC 43 at[38]-[39].

References

Feasby, C. (2005) 'Freedom of expression and the law of the democratic process', Supreme Court Law Review (2d), 29

Feasby, C. (2006) 'The Supreme Court of Canada's political theory and the constitutionality of the political finance regime', in K. Ewing and S. Issacharoff (eds), *Party Funding and Campaign Financing in International Perspective,* Oxford: Hart Publishing

Feasby, C. (2007) 'Constitutional questions about Canada's new political finance regime', *Osgoode Hall Law Journal,* 45 (513), pp.519-21

Feasby, C. (2010) 'Canadian political finance regulation and jurisprudence', in K. Ewing, J. Tham and J. Rowbottom (eds), *The Funding of Political Parties*, London: Routledge (forthcoming)

Flanagan, T. and D. Coletto (2010) 'Replacing allowances for Canada's political parties?', University of Calgary SPP briefing papers, pp.3-4, http://www.policyschool.ucalgary.ca/publications

Geddis, A. (2004) 'Liberté, egalité, argent: third party election spending and the charter', *Alberta Law Review*, 42

Gray, J. (2006) 'Reality check', CBC News Online, 13 June

LaCalamita, J. (1984) 'The equitable campaign: party political broadcasting regulation in Canada', *Osgoode Hall Law Journal*, 22

Graeme Orr

PUBLIC MONEY AND ELECTIONEERING
A View from Across the Tasman

Introduction

This article compares some key aspects of political finance regulation in Australia and New Zealand. It centres on public money and electioneering expenditure. These are treated in three sections: expenditure limits; incumbency benefits, such as government advertising and parliamentary entitlements; and direct public funding of electioneering. A comparison paper by Joo-Cheong Tham explores private money in politics, in particular donations and their disclosure.

With one significant exception – public funding – Australia's approach to political finance has been decidedly laissez-faire (see Orr, 2010; Tham, 2010). This is clear by comparison with New Zealand, Canada and the United Kingdom. Australia and New Zealand may be separated by just 2,000 kilometres of the Tasman Sea but, in regulatory terms, New Zealand lies close to Britain and Australia lies closer to the United States.

Graeme Orr is an Associate Professor at the University of Queensland Law School, Brisbane, Australia.

That said, Australia might be catching up on international developments. For the past couple of years, concerns with accountability, corruptibility and the cost of electoral politics have driven several inquiries and elicited cross-party support for significant reform. There is some bipartisan support for both contribution and expenditure limits. The trajectory of Australian debate is thus towards more regulation, at a time when New Zealand is turning the other way, particularly as regards third parties. At the time of writing, however (May 2010), Australia is yet to see any comprehensive reform bills.

Expenditure limits

New Zealand has, for some time imposed limits on election year expenditure. Only in the last two years has Australia begun to seriously consider capping expenditure. The only jurisdiction in Australia that caps campaign expenditure currently is Tasmania's upper house (in practice a cap on candidate spending, as the house is the only Westminster-style chamber to remain dominated by independents).

The belated emergence of interest in expenditure caps in Australia is born of a widespread and multi-partisan feeling that Australian political finance needs significant reform. The feeling is strongest in New South Wales, where local and state-level corruption and undue donor influence are particularly pronounced. In March a multi-party committee recommended:

- capping expenditure by parties and candidates, the party cap to be based on seats contested. The cap might apply from the beginning of each election year. In comparison, New Zealand is proposing to reduce its regulated period to a maximum of 90 days prior to the poll.
- capping third-party expenditure, at a figure 'significantly lower' than the party cap. In comparison, New Zealand is abolishing its cap on third-party or 'parallel' campaigns. (NSW Parliament, 2010, recommendations 19–22)

The New South Wales committee did not suggest a figure for the expenditure caps, or define their scope except to give two principles:

- electioneering, but not administration costs, should be covered;
- public funding levels, government advertising and third-party activities should be taken into account.

The New South Wales Electoral Commission stuck out its neck and proposed more detail, in particular that third-party, or lobby, groups be capped at the equivalent of NZ$260,000 per election year, with only New South Wales electors or New South Wales organisations being entitled to electioneer.

These caps were proposed in tandem with a tight annual limit on donations, of about NZ$2,600 per annum from any elector to any party or its candidates. Corporations and organisations would not be permitted to donate; but they could (a) join parties or (b) affiliate, like trade unions, but with their fees corralled for administrative and not electioneering purposes. The committee recommended increasing public funding to compensate, but opposed any move to 'full public funding' (NSW Parliament, 2010, recommendations 28–29).

The recommendations were heavily influenced by the Canadian system, discussed by Colin Feasby in this issue. Attention to New Zealand experience was less apparent. Whilst the sensitivity of restricting third-party restrictions was acknowledged in a recommendation for wide-ranging consultation prior to legislative drafting, the New South Wales committee nonetheless recommended consideration of mandatory registration, auditing and disclosure for third-party campaigns. In contrast, having repealed the Election Finance Act 2007 as too heavy-handed, the New Zealand Cabinet decided to favour 'lighter touch' regulation of third-party (or 'parallel campaigner') campaigns (New Zealand Cabinet, 2009, p.2). Under its Electoral (Finance Reform and Advance Voting) Bill, electioneering campaigns of over NZ$12,000 would still require registration. Unlike parties and candidates, however, third parties will no longer face expenditure caps, let alone an obligation to submit expenditure or donation returns (New Zealand Cabinet, 2009).

Notoriously, in 2005 the New Zealand auditor-general identified 'widespread' electioneering abuses of MP support, leadership and party funds. All but one party was implicated, and over NZ$1.17m was involved.

Nor has Australia confronted the question of what to include in an expenditure cap. At present, Australian definitions of 'electoral matter' or 'political expenditure' are quite broad. They cover anything 'intended or likely to affect voting in an election', or 'the public expression of views on an issue in an election'.[1] But these were designed to trigger disclosure of the authors and funders of political speech. Narrower definitions may be required for restrictions on expenditure on – and hence the quantum of – such speech. Indeed, even the 2007 Act sought to avoid capturing pure issue advertising in its net (Geddis, 2008, pp.220-1). Of course, the distinction between issue advertising and advertising promoting or denigrating a particular party is a slippery one. It may be cleaner to simply bite the bullet and restrict all political campaigning during the election period.

Designing expenditure caps in Australia will be bedevilled by two factors. One is constitutional. The High Court, in the ACTV case in 1992,[2] discovered an implied freedom of political communication. At the suit of a television company, it used that implied freedom to strike down a United Kingdom/New Zealand-style system of banning campaign broadcasts in favour of free air-time. Expenditure limits need not be unconstitutional, however, provided they are proportionate to legitimate ends such as electoral equality and political integrity.

A second complication, which New Zealand legislators do not face, is Australia's federal system. It is one thing for a state or national parliament to legislate caps, but political issues and money are fluid and cross-jurisdictional. Legislators can force their parties to keep separate campaign accounts, but once regulation extends beyond the narrow and formal election campaign period the problem of regulating political money in a federation becomes more complex, and ideally requires uniform laws.

Incumbency benefits: parliamentary allowances and government advertising

Parliamentary entitlements are numerous, intricate,[3] and subject to perennial tinkering. Concern in Australia lies chiefly in two types: electorate allowances, and printing and communication allowances. Electorate allowances of between NZ$40,000 and $60,000pa are paid without strings attached. Federal MPs can use them to top up their base salary and defray expenses. Or, like salary, they are free to plough them into electioneering. There are calls for separate accounting of electorate allowances and to ensure that they are not used for electioneering.[4]

Other, non-salary allowances are sizeable: amounting to about NZ$210.6m in 2008–09 (or just over NZ$930,000 per federal MP). Of these, printing and communication entitlements permit MPs to address their electorates through direct mail and newsletters. There has been an ongoing tug of war over their quantum and use. Formerly uncapped, these allowances drew the ire of the auditor-general in 2001. A choice example of the problem involved Bob Horne, a Labor MHR in a marginal seat, spending about NZ$284,000 on printing allowance alone, six times the average of other MPs. Dubbed 'Bob-the-Printer', he still lost his seat (Tham and Young, 2006, p.55).

The Howard government subsequently introduced caps. But these were generous in size and scope. The printing allowance still exceeded NZ$195,000 per annum in 2006.[5] Close to half could be squirrelled away and rolled over, say into an election year, and special ministers of state ruled that it could be used for pure electioneering in the form of how-to-vote and postal vote material. Unlike in New Zealand, there has not even been an explicit rule against such moneys being used for 'electioneering'. Unsurprisingly, the auditor-general recently found that nearly three-quarters of MPs' communications were likely to be outside the notional purpose of 'constituency service' (Auditor-General for Australia, 2009–10, p.17).

This is not to say that New Zealand has had best practice. Notoriously, in 2005 the New Zealand auditor-general identified 'widespread' electioneering abuses of MP support, leadership and party funds. All but one party was implicated, and over NZ$1.17m was involved. The Parliamentary Service Act 2000 definition currently only forbids parliamentary funds being used to explicitly seek voter support. This creates a loophole for both negative and issue advertising using parliamentary entitlements. The Electoral Act 1993 definition of 'election advertising', capping private expenditure, is broader. The New Zealand Cabinet has endorsed a proposal to harmonise the definitions by adopting the broader definition for parliamentary material, but only during the regulated election campaign period (New Zealand Cabinet, 2009, appendix 2). This restriction is only a partial solution. Yet it is tighter than anything yet proposed in Australia. Australia in many regards is in catch-up mode with New Zealand. It took until mid-2009 to adopt the New Zealand practice of pre-screening MPs' material.

In both countries, the department overseeing parliamentary entitlements (New Zealand Parliamentary Services and the Australian Department of Finance) has faced criticism for a lack of rigorous scrutiny.[6] Parliamentarians argue that they act in good faith, on conventional beliefs about proper usage. In other words, everyone makes hay when the system lacks clear rules and accountability. The convention is one of a double effect: electoral benefit is fine, provided it is incidental to material that is otherwise directed to constituency business. But in Australia particularly, the convention is belied around election time by a 'surge' in use of allowances leading up to each election; and by leaflets that mirror party (especially attack) advertising.[7] Rules have even had to be devised to prevent MPs in safe seats – and senators who do little personal campaigning – from using their allowances to prop up other campaigns. While New Zealand lacks an upper house, a similar problem must arise if party-list MP allowances are used in a targeted way to assist colleagues in marginal constituencies.

An Australian special minister of state independent committee is due to report on parliamentary entitlements. This should build on decisions made in mid-2009 to rein in crasser aspects of system – by confining printing allowances to 'parliamentary or electorate business' and not 'party business or electioneering', including capping postal vote applications to 50% of the electorate and not allowing incumbents to print how-to-vote material with parliamentary funds. The problem, as with government advertising, is how to restrain incumbency benefit without strangling legitimate information and communication. Government advertising is the bigger concern in Australia, however, for two reasons (Orr, 2006). One is the sheer size of the campaigns: the High Court effectively ruled that the size is up to the executive and campaigns can even promote government bills prior to parliamentary consideration.[8] Around NZ$195m was spent on media costs alone for the WorkChoices industrial relations campaign, in which the conservative government dramatically outbid its trade union opponents. The other is that government advertising benefits only the governing party.[9] (Governments already benefit from a lion's share of corporate donations, especially under an uncapped donations system, since big donations tend to favour the party in power (at least until the writing is on the wall – see McMenamin, 2008).) At least parliamentary entitlements are capped and spread across all parliamentary parties.

[Australian] Federal parties receive money for votes received, paid in a lump sum after each election. Each vote, in 2010, will be worth about NZ$3, or NZ$6 per elector given the twin House and Senate ballots. Small parties miss out in races where they don't meet a 4% threshold.

A repeated refrain about both government advertising and parliamentary entitlements in Australia is the absence of principles-based legislation defining and restricting their use. Instead, loose guidelines and bureaucratic discretion govern both types of expenditure. Any real oversight is falling, periodically and post-hoc, to the auditor-general. Since 2007, for instance, the Australian auditor-general has been involved in both vetting government advertising campaigns prior to their approval and auditing select campaigns after the event (Hawke, 2010). Yet that vetting role is being taken away.

Public electoral funding

Since the early 1980s, Australia has had public funding of elections.[10] Federal parties receive money for votes received, paid in a lump sum after each election. Each vote, in 2010, will be worth about NZ$3, or NZ$6 per elector given the twin House and Senate ballots. Small parties

miss out in races where they don't meet a 4% threshold. The payments come without strings attached, and although they rarely cover the full cost of electioneering in an uncapped 'arms race' they are predictable and significant. The 2007 Australian election generated the equivalent of about $NZ60m in public funding. In contrast, the 2008 New Zealand electoral broadcasting allocation (the only direct electioneering funding) was just $NZ3.2m.

New Zealand – like the United Kingdom – lacks either a neat or a developed approach to public funding. There may be good reasons for this, such as the belief that parties are private associations, not quasi-state actors. This belief has two pragmatic manifestations. There is a fear that public funding might incite taxpayer cynicism, and a longer-term concern that parties might lose sight of their grassroots.

Certainly, party membership is parlous in Australia, but that trend is common internationally. But unrestrained corporate donations are the greatest danger to parties' responsiveness to their bases. Any taxpayer opposition to public funding appears to be short-term, and counterbalanced by the fact that the money comes without strings attached.

The New Zealand Royal Commission on the Electoral System recommended Australian-style public funding. Its benefit is its simplicity. A single payment is made per electoral cycle, and democratic principle underlies paying per vote received. The 4% threshold may need lowering to take MMP into account. Whilst parties can use the funding for whatever purpose they wish, the effect is electoral reimbursement. Such public funding explicitly recognises that electioneering is a public necessity or good, and accepts that elections are party-centred. It bypasses the problem with parliamentary entitlements of separating legitimate from illegitimate types of communication and advertising.

But that problem is far from eliminated. Public funding, far from being a magic bullet, has not restrained demand for political money in Australia. On the contrary, the arms-race in the absence of expenditure limits has created a 'have your cake and eat it too' mentality. Generous parliamentary allowances were misused and needlessly expanded. The current Labor government's more chaste approach to government advertising and printing allowances has helped. But such tempering is likely to be temporary, unless legislation is introduced to reinforce it.

... [the] Australian experience shows that tight, even legislated controls and vetting of materials is needed to prevent MPs misusing parliamentary allowances for partisan purposes. In this and other egalitarian measures ... Australia lags behind New Zealand in retaining a laissez-faire bias.

Conclusion

A common lament is that we get the best democracy money can buy. That is cynical, given there is no guaranteed, let alone linear, relationship between money spent and political outcomes. Even large-scale political expenditure can be of little avail: witness the WorkChoices government advertising and the fate of 'Bob the Printer'. Nonetheless, all else being equal, money matters. And the more the merrier: no political campaign would prefer fewer resources to more. As politics becomes even more leader-centred, it is now common for new leaders to be introduced with an advertising blitz – an example of the 'permanent campaign' where parties spend money on a daily basis on confidential market research.

In the United States, a perennial problem is the size of the war chests needed to unseat an incumbent. This contributes to a sense that politics is closed to all but insiders and the individually wealthy and well-connected. Perversely, the old mechanism to wrestle power away from insiders in the form of party bosses – the primary election – only magnifies the war-chest problem.

In Westminster systems the war-chest problem may be less acute, but only by a matter of degree. It is also manifested differently. Unlike in the United States, the problem is not one of candidate finances, but party finances. And the problem is not just of private money leveraging and entrenching power, but also of public moneys reinforcing incumbency.

Australian politicians currently appear keen on increasing public funding and limiting donations, two measures not on the New Zealand radar. Cynics will note that enthusiasm for this has coincided with a decline in corporate donations during the global financial crisis; but a general weariness with fund-raising and carpet-bagging predates that crisis. While Australian campaign finance law has been less interventionist than in its common law-cousins, when Australia regulates it tends to do so with a statist bias. In particular, parties will have little stomach for imposing expenditure caps on themselves but not third parties. Libertarians in New Zealand would look askance at this approach: third-party expenditure caps in Australia could indeed be dangerous without governments accepting real restrictions on government advertising, especially in election years.

In the meantime, public funding is the only area where Australian practice is more developed than New Zealand's. Direct public funding to defray election expenses may be a cleaner and more honest method than what Geddis has labelled 'backdoor' support through a convoluted set of parliamentary service funds (Geddis, 2008, p.218). However, Australian experience shows that tight, even legislated controls and vetting of materials is needed to prevent MPs misusing parliamentary allowances for partisan purposes. In this

and other egalitarian measures – notably capping party expenditures – Australia lags behind New Zealand in retaining a laissez-faire bias. That libertarian bias is eroding, however, and there is momentum, across the Australian spectrum, for stronger regulation, possibly on the Canadian model of limiting donations and expenditures. Australians are considering this trajectory at the same time as New Zealand is pulling back from its high point of interventionism, under the short-lived Election Finance Act 2007.

1 Commonwealth Electoral Act 1918, s4 ('electoral matter'), s314AEB ('political expenditure').
2 *Australian Capital Television v Commonwealth* (1992), 177 CLR 106.
3 Recently described as 'difficult to understand and manage' and 'complex and overdue for reform': see Auditor-General for Australia, 2009–10, pp.15, 17.
4 For example, former Senator Murray's submission to the Committee for the Review of Parliamentary entitlements, p.11, http://www.finance.gov.au/parliamentary-services.docs/Mr_Andrew_Murray.pdf.
5 Australian MPs currently serve electorates with over twice the enrolment of those represented by New Zealand constituency MPs.
6 The Australian auditor-general described the Department of Finance as adopting 'a relatively gentle approach to entitlements administration' (Auditor-General for Australia, 2009–10, p.16).
7 The Australian auditor-general shows expenditure increasing from two to five times in election years over non-election years, as war chests are squirrelled away then spent. (Auditor-General for Australia, 2009–10, p.30; appendix 4.)
8 *Combet v Commonwealth* (2005), 221 ALR 621.
9 This need not necessarily be the case. Queensland now allows the Opposition leader to access funds for policy advertising (Department of Premier and Cabinet, 2002, section 4.5).
10 First for New South Wales elections (1981), then national elections (1983). Four smaller jurisdictions still lack public funding (Western Australia, South Australia, Tasmania and the Northern Territory).

References

Auditor-General for Australia (2009–10) *Administration of Parliamentarians' Entitlements by the Department of Finance and Deregulation*, report 3, Canberra: ANAO

Department of Premier and Cabinet (2002) *The Queensland Opposition Handbook*, 2nd edition

Geddis, A. (2008) 'New Zealand's Electoral Finance Act 2007 and its discontents', *Public Law Review*, 19, pp.215-35

Hawke, A. (2010) *Independent Review of Government Advertising Arrangements*, report to special minister of state, 26 February

McMenamin, I. (2008) 'Business, politics and money in Australia: testing economic, political and ideological explanations', *Australian Journal of Political Science*, 43, pp.377-405

New South Wales Parliament, Joint Standing Committee on Electoral Matters (2010) *Public Funding of Election Campaigns*, report 2/54, Sydney: The Committee

New Zealand Cabinet (2009) CAB Min (09) 45/10

Orr, G. (2006) 'Government advertising: Parliament and political equality', *Papers on Parliament*, 46, pp.1-16

Orr, G. (2010) *The Law of Politics*, Annandale: Federation Press

Tham, J. (2010) *Money and Politics: the democracy we can't afford*, Sydney: University of New South Wales Press

Tham, J. and S. Young (2006) *Political Finance in Australia: a skewed and secret system*, Canberra: Democratic Audit of Australia

The influence of foreign assets and liabilities on real interest rates

by Dennis Rose

(IPS WP 10/09 June 2010)

"Essential" workers in the dairy industry

by Paul Callister and Rupert Tipples

(IPS WP 10/10 July 2010)

The impact on te reo Māori of trans-Tasman migration

by Paul Hamer

(IPS WP 10/11 July 2010)

To download these and other IPS working papers go to http://ips.ac.nz/publications/publications/list/7

Joo-Cheong Tham

Regulating Political Contributions
Another View from Across the Tasman

This article compares the Australian and New Zealand electoral finance regimes, with a particular focus on political contributions. Three specific areas are examined: disclosure of contributions; limits on contributions; and regulating the sale of access and influence. This examination is underpinned by what I see as the key purposes of democratic political finance regimes (Tham, 2010, ch.1):

- protecting the integrity of representative government, an aim which encompasses the prevention of corruption;
- promoting fairness in politics, especially in elections;
- supporting parties to discharge their functions;
- respecting political freedoms, in particular freedom of political expression and freedom of political association.

Dr Joo-Cheong Tham is a Senior Lecturer at Melbourne Law School, Melbourne, Australia.

Disclosure of contributions

The key principle underlying disclosure schemes is transparency of electoral financing. Such transparency is required to protect the integrity of representative government in three ways. It aids informed voting, thereby buttressing the integrity of electoral processes. Moreover, it is a crucial tool for preventing corruption. Further, such transparency is in itself necessary to protect public confidence in representative government. Besides these broader rationales, transparency of political funding is also necessary to ensure the effectiveness of specific regulatory measures. For instance, contribution limits can only work effectively if accompanied by adequate disclosure of political contributions.

In Australia, a mix of federal, state and territory schemes governs the disclosure of political contributions. Here I will focus on the federal scheme, which is found in the Commonwealth Electoral Act 1918 (Cth). Under this Act, registered political parties and their 'associated entities'[1] are obliged to submit annual disclosure returns. Virtually identical disclosure requirements apply to each. The returns are required to be in a form approved by the Australian Electoral Commission (AEC) and must disclose the total amount received, paid or owed by, or on behalf of, the registered political party or associated entity for the financial year. In addition to disclosing these totals, registered political parties and associated entities are required to make further disclosure if they have received from, or owe, a particular person or organisation a sum exceeding an indexed threshold. In 2009–10 the indexed threshold stood at AUD$11,200 (or around NZ$13,250). In calculating whether this sum has been reached for payments made to the party (or associated entity), amounts below the indexed threshold can be disregarded. Consequently, cumulative donations that exceed the threshold can be disregarded unless one or more of these donations

exceed the threshold. Once the indexed threshold has been reached, however, registered political parties and associated entities must disclose certain particulars, namely the amount of the sum or debt and the name and address of the person (or organisation) who paid or is owed the sum.

Persons who donate to a registered political party an amount exceeding the indexed threshold in any particular year are also subject to annual disclosure obligations in that they must lodge a statement disclosing all such gifts to the AEC and itemise those exceeding the indexed threshold; they are also obliged to itemise gifts exceeding the indexed threshold that were used to make the gifts to the political party. Further, third parties that have spent more than the indexed threshold in a financial year on political expenditure must disclose to the AEC details of gifts received exceeding the indexed threshold that were used for such spending.

Candidates and groups of candidates are required, after every election, to provide to the AEC a statement disclosing details of gifts received during the period between elections if they exceeded the indexed threshold. Persons who have donated amounts exceeding the indexed threshold to candidates (and groups of candidates) must also disclose details of such gifts to the AEC after the relevant election.

This scheme is, as Graeme Orr characterised it, 'lackadaisical' (Orr, 2007). First, there is the high disclosure threshold of AUD$11,200 (in New Zealand, the threshold is NZ$10,000). This has the effect of shrouding considerable portions of the parties' income in secrecy. According to Commonwealth Parliamentary Library research, the previous disclosure threshold of $1,500 or more resulted in nearly three-quarters – 74.7% – of declared total receipts being itemised over the period spanning from the 1998–99 financial year to the 2004–05 financial year. A threshold of $10,000 applied to the same data lowers this figure to 64.1% (Miskin and Barber, 2006). Updating the research of the Commonwealth Parliamentary Library, the Joint Standing Committee on Electoral Matters found that under the $10,300 threshold (which applied in 2006–07), only 52.6% of the income of the Australian Labor (ALP) and Coalition parties was itemised for that year (Joint Standing Committee on Electoral Matters, 2008, p.33) On these calculations, we have a remarkable situation where the source of nearly half of the income of the major parties is unknown.

Lack of transparency in relation to the funding of third parties (and their parallel campaigns) corrupts the electoral processes as it undermines informed voting decisions.

Second, there is the high threshold for anonymous contributions: AUD$11,200 (in New Zealand, it is NZ$1,000). This is the result of the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 (Cth), which lifted the cap on allowable individual anonymous donations from $1,000 to $10,000 (and indexed this cap to inflation). Such a high threshold seriously risks compromising transparency. It is less about public disclosure of donations and loans and more about records kept by parties: it will mean that parties can legally accept larger sums without recording details of the donor. This potentially renders the whole notion of disclosure thresholds meaningless.

A further limitation of the federal disclosure scheme is the lack of timeliness. The AEC has observed in relation to federal annual returns that '[t]his form of … reporting and release can result in delays that can discount the relevance of making the information public' (Australian Electoral Commission, 2000, para 2.10). Specifically, the dated nature of the returns means that voters do not have access to the relevant information when determining their voting choices. For example, in late September 2004 British Lord Michael Ashcroft donated $1 million to the federal Liberal Party, barely a fortnight before the October 2004 federal election. Citizens casting their votes in that election were completely unaware of this contribution and only found out more than 15 months later, on 1 February 2005 when the AEC released the disclosure returns. Here, there is much to be said for the New Zealand requirement to disclose any donation exceeding NZ$20,000 within 10 working days of its receipt.[2]

Are there elements of the Australian federal disclosure scheme that might provide lessons for New Zealand? One area is perhaps worth mentioning. This concerns the disclosure obligations of third parties. All four principles of a democratic political finance regime are implicated here. Lack of transparency in relation to the funding of third parties (and their parallel campaigns) corrupts the electoral processes as it undermines informed voting decisions. There is also a question of fairness in politics, specifically fairness between political parties and third parties: subjecting political parties to disclosure obligations while leaving third parties exempt potentially provides the latter with an unfair advantage. This unfair advantage further risks undermining the ability of political parties to discharge their functions, in particular their electoral function of providing choice and competition to voters. The danger here is that political parties focus more on fending off the attacks of third parties than on competing amongst themselves. And, finally, the principle of respect for political freedoms clearly applies as disclosure obligations on third parties will mean greater regulation of political campaigning.

Presently, the federal scheme provides for greater transparency in relation to the financing of third parties by subjecting these groups to disclosure obligations, a measure that is not contained in the current New Zealand Electoral (Finance

Reform and Advance Voting) Amendment Bill. On the other hand, the Australian scheme does not require third parties which spend beyond a certain amount to register with the AEC, a measure that is in the bill. In my view, both registration and disclosure obligations should apply. Concerns about the impact on political freedoms can be addressed through properly tailored provisions.

Limits on contributions

Here the position in Australia is very similar to New Zealand in that there are very few limits on contributions to candidates, their parties or other electoral actors. Indeed, there are fewer limits than in New Zealand. Whereas New Zealand bans foreign donations exceeding NZ$1,000,[3] there is no such ban in Australia except in Queensland. The only other source restriction is a New South Wales ban on political donations from property developers. The only restriction as to the amount of political funding is that which applies under the Victoria's Electoral Act. This legislation prohibits holders of casino and gambling licences and their related companies from making political donations exceeding $50,000 in a financial year to each registered political party.

In Australia, greater restrictions on political contributions have growing support across the political spectrum. Former New South Wales premier Morris Iemma has even advanced the radical proposal of completely banning political contributions in favour of a system of complete public funding. Following closely, his predecessor Bob Carr has advocated banning political contributions from organisations like trade unions and companies and allowing only those made by individuals. Former leader of the federal opposition Malcolm Turnbull and the New South Wales Greens have similar positions. Queensland premier Anna Bligh has also called for a national cap of political donations exceeding $1,000 and has signalled that Queensland will act to implement such a cap by July 2010 if there is no movement on the federal front. In a bipartisan report, the New South Wales Legislative Council Select Committee on Electoral and Political Party Funding (NSW Select Committee) recommended that there be a ban on all political donations except those by individuals. Contributions by individuals are further to be limited to $1,000 for each political party per annum (and $1,000 for each independent candidate per electoral cycle) (NSW Select Committee, 2008, p.105).

There are compelling arguments for a limit on contributions such as those recommended by the NSW Select Committee. Such limits will clearly act as a preventive measure in relation to corruption: as the amount of money contributed by an individual increases, so does the risk of corruption. Therefore, bans on large contributions can directly deter corruption (and also obviate the need for selective bans on property developers and holders of gambling licences). On a related point, such limits will promote fairness in politics as they prevent the wealthy from using their money to secure a disproportionate influence on the political process. The result is to promote the fair value of political freedoms despite limiting the formal freedom to contribute.[4] Further, by requiring parties to secure the support of a large base of small contributors, such limits are likely to enhance their participatory function.

... contribution limits are likely to mean that parties will spend more time fundraising; they will need to persuade more individuals to part with their money, a development that is likely to detract from the performance of their democratic functions ...

Significant objections to contribution limits do, however, need to be addressed (Ewing, 2007, pp.227-30). First and foremost, instituting such limits by themselves will leave the parties seriously underfunded given that the major Australian political parties are presently heavily reliant on large contributions. In the context of party government, jeopardising the existence of the parties must mean placing the system of government at risk. It is also unclear what impact the contribution limits will have on fairness amongst the parties. Further, contribution limits are likely to mean that parties will spend more time fundraising; they will need to persuade more individuals to part with their money, a development that is likely to detract from the performance of their democratic functions (apart from the participatory function). This will intensify especially if the 'arms race' between the major Australian parties continues.

These objections are, however, not insurmountable. It is, firstly, imperative that contribution limits be adopted as part of a broader package of reform. One of the central difficulties with the position of those who advocate contribution limits as the principal, or even the only, reform measure is that they do not fully deal with the potential adverse impact of such limits. To ameliorate such impact, there needs to be a reconfiguration of public funding of parties and candidates, including a significant increase in such funding to make up for the shortfall resulting from limits on contributions. Such funding should provide for sustainable parties, redress any inequities that arise from contribution limits and also lessen the risk of parties devoting an undue amount of time to fundraising. Further, contribution limits must be accompanied by election spending limits. The latter limits will staunch the demand that fuels the parties' aggressive fundraising activities.

A vexed issue concerns the impact of such limits on trade union affiliation fees. My view is that membership fees (within limits) should be exempted from any contribution limits. As the NSW Select Committee correctly recognised, 'membership of political parties is an important means for individuals to participate in the political process' (NSW Select Committee, 2008, p.113). Specifically,

it involves participation within political parties, thereby directly enhancing the participatory function of parties. Whilst contribution limits permit membership fees below the limits, an exemption goes beyond such permissiveness by encouraging party membership. Second, the exemption for membership fees should extend to organisational membership fees, including trade union affiliation fees. A ban on organisational membership fees will give rise to anomalies, is misdirected at 'trade union bosses' and constitutes an unjustified limitation on freedom of party association (Tham, 2010, ch.4).

Dealing with the sale of access and influence

The sale of access and influence is endemic amongst the major Australian parties. Here are some examples. The Victorian ALP's Progressive Business has been described as 'one of the most efficient money-making operations in the country' (Bachelard, 2007). Its website states that its 'express purpose [is] building dialogue and understanding between the business community and government'. It currently offers to two types of membership, corporate and small business, priced at $1,550 and $990 per annum respectively, entitling the company to a set number of breakfast and twilight ministerial briefings. The 2009 annual Progressive Business dinner, for example, witnessed Latrobe Fertilisers, a company vigorously advocating the use of Gippsland coal mines for the production of fertiliser, paying $10,000 to the ALP so that its chairman, Allan Blood, could sit at the side of Victorian premier John Brumby and, in Blood's words, 'ben[d] his ear'(Millar and Austin, 2009). The Liberal Party has a fundraising organisation that goes by the name of the 500 Club. According to its website, membership of the 500 Club will provide 'a tailored series of informal, more personally styled, early evening events', thus 'adding a new level of value for … Club members'.

Party meetings are also a favoured venue for selling influence. At the 2007 federal ALP conference, major companies, including NAB, Westpac and Telstra, engaged a high-price escort service: at $7,000 per person, their representatives were accompanied by federal ALP frontbenchers for the span of the conference. Tables at the conference dinner were also sold for up to $15,000 for the privilege of sitting next to shadow ministers (Grattan and Murphy, 2007). At the 2007 Liberal Party federal council, federal ministers auctioned off their time to the tune of thousands of dollars: a harbour cruise with Tony Abbott, then health minister, fetched $10,000, while a night at the opera with Helen Coonan, then minister for communications, information technology and the arts, picked up a princely sum of $12,000. This activity took place under the council theme of 'Doing what's right for Australia' (Schubert, 2007).

... the experience of other countries can often cast light on how the role of money in politics is variously addressed and regulated.

These practices are emphatic instances of what Michael Walzer characterises as a 'blocked exchange', where money is used to buy political power (Walzer, 1983, p.100). They constitute a form of corruption. It is uncontroversial that public officials including elected officials are to act in the public interest. A central part of this duty is to decide matters on their merits. The purchase of access and influence, however, creates a conflict between the public duty of deciding matters on merits and the financial interests of the party or candidate, resulting in some public officials giving undue weight to the interests of their financiers. This is corruption through undue influence (Lowenstein, 1989, pp.323-29).

That the bargains struck in the sale of access and influence are not overt or explicit makes little difference to the question of corruption through undue influence: the structure of incentives facing parties and their leaders once a contribution is received remains the same, with their judgment improperly skewed towards the interests of their financiers (Beitz, 1984, p.137). With these incentives, there is a double injury to the democratic process: wealthy donors are unfairly privileged, while the interests of ordinary citizens become sidelined. Such injury highlights how the sale of access and influence is not only corrupt because it undermines merit-based decision making but is also unfair: contributors are illegitimately empowered in the political process, while others are illegitimately disempowered.

What, then, should be done as a matter of regulation? Limits on contributions, of course, provide one way forward. There are also other measures that could be more effective. For example, there could be a ban on ministers and parliamentarians attending fundraising events, a measure that has been adopted by Queensland premier Anna Bligh. The sale of access and influence can also be tackled through greater transparency in relation to lobbying (which is what these occasions amount to). There should an obligation to publish, at regular intervals, specific information on the meetings between lobbyists and government representatives, including the name of the lobbyist/s, dates of contact, meeting attendees and a summary of issues discussed. This has been the recommendation of a New South Wales parliamentary committee and the New South Wales Independent Commission Against Corruption, as well as by various British committees on standards in public life (New South Wales Legislative Council General Purpose Standing Committee, p.60; NSW ICAC, p.101; Committee on Standards in Public Life, 2000, p.36, 2008, p.4; Committee on Standards in Public Life, 2000, p.36, 2008, p.4).

Conclusion

Ewing and Issacharoff have identified a (non-exhaustive) list of factors that determine the choice of regulatory method

in the area of political finance. These factors relate to history, geography, class structures, constitutional systems, party systems, electoral systems and ideological traditions (Ewing and Issacharoff, 2006, pp.6-7). If we take such complexity seriously – and we should – it is obvious that questions as to whether any country, including New Zealand, should adopt particular regulatory measures are only properly answered by an in-depth inquiry into its specific circumstances and cannot (and should not) be read off comparisons (including the one essayed in this article). We should abandon the misconceived notion that there is an international 'best practice', or that there is a continuum on which we can locate regulatory models as 'strong' or 'weak'.

To make these points is not, however, to advocate a parochial stance closed off to overseas example; the experience of other countries can often cast light on how the role of money in politics is variously addressed and regulated. The aim is not to deprecate the importance of comparative analysis but rather to point to its limits: it broadens our horizons by gesturing to what is possible, but often says very little as to what is desirable.

1 'Associated entities' of political parties are defined in the Commonwealth Electoral Act 1918, s.287. Essentially the terms covers individuals or groups controlled by or operating for the benefit of a political party, as well as individual members of or those with voting rights in a party.

2 Queensland recently has adopted a similar requirement that political parties disclose gifts of $100,000 or more within 14 days.

3 The Electoral (Finance Reform and Advance Voting) Amendment Bill proposes amending this cap to make it clear it applies to each foreign donor, not to each particular donation.

4 John Rawls has referred to restrictions on contributions as a possible means for ensuring fair value of political liberties: see Rawls, 1996, pp.357-8 and 2001, p.149.

References

Australian Electoral Commission (2000), *Submission to the Joint Standing Committee on Electoral Matters Inquiry into Electoral Funding and Disclosure,* http://www.aph.gov.au/house/committee/em/f_d/subseven.pdf

Bachelard, M. (2007) 'Taking their toll', *The Age*, 14 May, p.9

Beitz, C. (1984) 'Political Finance in the United States: a survey of research', *Ethics*, 95 (1)

Committee on Standards in Public Life (2000), *Standards in Public Life: first report of the Committee on Standards in Public Life: volume 1*

Committee on Standards in Public Life (2008), *Reinforcing Standards: sixth report of the Committee on Standards in Public Life*

Ewing, K. and S. Issacharoff (2006) 'Introduction', in K. Ewing and S. Issacharoff (eds), *Party Funding and Campaign Financing in International Perspective*, Oxford: Hart Publishing

Ewing, K. (2007) *The Cost of Democracy: party funding in modern British politics*, Oxford: Hart Publishing

Grattan, M. and K. Murphy (2007) 'Hope in the hearts of Labor faithful', *The Age*, 27 April, p.1

Joint Standing Committee on Electoral Matters (2008) *Advisory Report on the Commonwealth Electoral Amendment (Political Donations and Other Measures)* Bill 2008

Lowenstein, D. (1989) 'On campaign finance reform: the root of all evil is deeply rooted', *Hofstra Law Review*, 18

Millar, R. and P. Austin (2009) '$10 000 to sit next to Brumby', *The Age*, 3 November, p.1

Miskin, S. and Barber, G. (2006) *Political Finance Disclosure under Current and Proposed Thresholds*, Parliamentary Library Research Note No 27/2006

New South Wales Independent Committee against Corruption (NSW ICAC), *Report on Investigation into Planning Decisions Relating to the Orange Grove Centre*

New South Wales Legislative Council General Purpose Standing Committee, *Badgerys Creek Land Dealings and Planning Decisions*

New South Wales Select Committee on Electoral and Political Party Funding (2008), *Electoral and Political Party Funding in New South Wales*, http://parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/1CA6D5A89FABD975CA25746D00063640

Orr, G. (2007) 'Political disclosure regulation in Australia: lackadaisical law', *Election Law Journal*, 6 (1)

Rawls, J. (1996) *Political Liberalism*, New York: Columbia University Press

Rawls, J. (2001) in E. Kelly (ed.) *Justice as Fairness: a restatement*, Cambridge, MA: Belknap Press

Schubert, M. (2007) 'Party hopes party won't end so soon', *The Age*, 4 June, p.6

Tham, J. (2010) *Money and Politics: the democracy we can't afford*, Sydney: University of New South Wales Press

Walzer, M. (1983) *Spheres of Justice: a defense of pluralism and equality*, New York: Basic Books

Derek Gill, Stephanie Pride,
Helen Gilbert, Richard Norman
and Alec Mladenovic

The Future State Project

Meeting the Challenges of the 21st Century

The world we have made, as a result of the level of thinking we have done thus far, creates problems we cannot solve at the same level of thinking at which we created them.

Albert Einstein

Introduction

Powerful global forces will reshape the context for New Zealand over the next few decades. They include increasing international connectedness, geopolitical power shifts, rapid technological developments, demographic changes, climate change, growing resource scarcity and changing values. Some of these changes have been in train for several decades; others have come to the fore more recently. Together they are creating a world that is fast-paced, heterogeneous, complex and unpredictable. Within this context, New Zealand also faces some policy choices that are both unique and significant – for example, concerning the recently extended exclusive economic zone, and the completion of the Treaty of Waitangi claims settlement process.

Derek Gill is a Senior Fellow, Institute of Policy Studies, School of Government, Victoria University of Wellington.

Stephanie Pride is a Strategic Foresight consultant.

Helen Gilbert is an independent consultant.

Richard Norman is Senior Lecturer, HR Management and Industrial Relations at the Victoria Management School, Victoria University of Wellington.

Alec Mladenovic is a Research Assistant at the Institute of Policy Studies, School of Government, Victoria University of Wellington.

While New Zealand was well served by its public management system in the latter part of the 20th century, the evidence suggests that the system is less well designed for the challenges of the 21st century.

The current New Zealand public management system, designed for stable and predictable conditions, has served the country well over the last 20 years, but may not provide the optimal platform for the challenges and ways of working demanded by the 21st century. Recognising this imperative, in July 2009 the steering committee of the Emerging Issues Programme (EIP)[1] commissioned the Institute of Policy Studies (IPS) to undertake an exploratory study known as the Future State Project. This project had three primary objectives:

- to identify major public policy issues of relevance to New Zealand over the next two decades;
- to consider the current public management system[2] and its capacity to perform in a much more dynamic world and an increasingly complex policy environment; and
- to identify related research projects which could be pursued by the IPS under the EIP.

As a result of the exploratory study, in December 2009 the EIP steering committee approved five new research projects to be undertaken by the IPS during 2010–12. Three of those projects are related to public management issues. The other two are concerned with specific policy issues: New Zealand's ocean governance, and potential issues for Crown-Māori relations after 2014, when the settlement of historical Treaty of Waitangi claims is expected to be completed.

This article discusses the findings of the Future State Project and outlines the programme of research arising from it.[3] We turn first to the project's methodology.

Methodology

In commissioning the Future State Project, the EIP steering committee asked the IPS to look beyond the immediate issues confronting policy makers (e.g. the consequences of the global financial crisis, including the tightening fiscal position) and identify the next generation of longer-term issues likely to affect New Zealand. The project was to be exploratory: to capture and synthesise existing knowledge and information. Original policy analysis of the public management system of the kind carried out by Schick (1996) or the Advisory Group on the Review of the Centre (2001) was not part of the terms of reference. The scope of the project was also limited to the main institutions of central government (that is, public service departments and other non-trading entities, including statutory Crown entities).[4] Although local government was not part of the project (as the formal management framework under which it operates is different from the public management system in central government), almost all of the issues identified for central government are equally relevant to local government.

In order to identify future policy issues, the IPS commissioned overview papers from various experts on seven areas relevant to policy making and the public sector. These covered New Zealand's evolving social structure and demography, technological developments, the economic context, environmental implications, political and geo-political considerations, and public management issues. The experts were asked to provide a stock-take of the current state of knowledge in their specialist areas on likely global and national developments over the next 20 years, drawing upon recent futures work in New Zealand and overseas. Several structured discussions building on these papers ensured that cross-cutting themes and possibilities were adequately explored. In addition to the expert academic contributions, the project team captured tacit and emergent knowledge from a range of participants, including Māori, business leaders, older people and younger people, migrants, rural dwellers and regional public sector managers.

The public management system: a need for change

The current New Zealand public management system is largely the legacy of major state sector reforms in the mid-1980s. These reforms, bold and ground-breaking at the time, replaced the unified, lifetime career service and monolithic sector-based departments with the apparatus of the 'new public management', including management by objectives. With minor modifications, that public management model is still in place today. Those developments helped to lift the performance of the state sector to a level that consistently earned high international ratings. According to Boston and Eichbaum (2007, p.136), the benefits of the reforms included:

> greater productive efficiency (especially in the commercial parts of the public sector), improvements in the quality of certain services (e.g. the time taken to process applications for passports and welfare benefits has been drastically reduced), better expenditure control, better management of departmental budgets, greater managerial accountability, and major improvements in the quality of information available to policy makers.

While New Zealand was well served by its public management system in the latter part of the 20th century, the evidence suggests that the system is less well designed for the challenges of the 21st century. Globally and locally, populations and their priorities and values are more diverse and issues are more interconnected.

This makes gaining and maintaining consensus on policy directions over the long haul more difficult. For many of the challenges (e.g. water management and governance; growing obesity levels), there are no simple answers or widely agreed and proven solutions and in some areas (e.g. climate change) even problem definitions are contested. At the same time, the public expects increased speed, accessibility, customisation, transparency and user engagement[5] in public services. If the public sector is to respond effectively, the public management system will need to support a broader range of approaches and practices than currently.

Challenges and required responses

The Future State Project identified four key challenges for public policy development over the coming decades:

- affordability, which requires the ability to achieve step change in policy design and delivery;
- more complex problems, involving many players, which require the capability for leadership of issues, co-design and co-production;[6]
- a more diverse and differentiated population which requires the capability for differentiated responses; and
- a world of faster, less-predictable change which requires the capability for constant scanning and learning the way forward.[7]

Affordability

Compounding the immediate fiscal pressures generated by the global recession during 2008–09, New Zealand, like many other countries, faces significant longer-term pressures on both the demand for, and the cost of, publicly-funded services. These will exacerbate the government's fiscal difficulties. The cost pressures will arise because government services are generally labour-intensive and, in particular, are high users of skilled labour, and the cost of which is likely to continue to rise. On the demand side, the ageing population will provide the key driver. Responding to these challenges simply by 'doing more with less' will not be sufficient – the gap is too large for efficiencies alone to bridge.

Step change

The public policy challenge is to develop the step changes in policy design and delivery that change trajectories – e.g. reducing frailty levels in an ageing population, increasing levels of educational success, and stepping up the productivity ladder – so that the underlying drivers of spending are reduced.

Take, for example, spending on law and order (e.g. prisons, police and courts): public expenditure relative to nominal gross domestic product increased from 0.5% in 1971/72 to 1.1% in 1988/89, to 1.6% in 2009/10. The number of people in prison or on probation has relentlessly increased while the overall level of crime has been 'dropping or stable' since 1997. New Zealand now has the fourth highest incarceration rate in the OECD after the United States, Mexico and the Czech Republic. A relatively small percentage of the population generates most criminal activity. Achieving a step change would require responses at two levels. First, breaking out of the cycles of dysfunction among a relatively small number of families will require changes in how services are delivered by a range of government and non-government organisations, both inside and outside the law-and-order sector. Secondly, at the policy level it will require replacing a 'race to the bottom' – political parties competing to be 'tough on crime' – with a more durable policy bargain about a responsible approach to sentencing policy driven less by a focus on punishment.

Complex 'multi-actor' policy problems requiring co-production and leadership

Complex 'multi-actor' policy problems

Many of the policy outcomes that will be front-of-mind for government (e.g. reducing obesity levels in the general population) cannot be achieved with the provision of public services alone but will require the active contribution of citizens, businesses and other actors (co-production). For some complex issues (e.g. breaking cycles of dysfunction mentioned previously), no one actor, including government, has all the knowledge or the ability to effect change independently.

In the past, government doing things *for* or *to* citizens may have been sufficient. Achieving outcomes in the face of 21st-century challenges will depend on the actions of many players and will therefore increasingly require governments to do things *with* citizens (or even enable citizens to do things for themselves). Bourgon et al. (2009, p.11) have described this challenge as follows:

> This context also pushes governments *beyond hierarchy* as a broad dispersion of responsibilities in society and the coordination of complex operations constitute the trademark of government activities. It challenges governments to experiment *beyond direct service delivery* with indirect means of delivery. It pushes governments beyond the provision of services to citizens as an increasing number of public policy issues require the active contribution of citizens in creating common public goods. It pushes governments *beyond borders of the traditional concept of the state* towards a dynamic open system where organizations, services and users interact.

Co-production and co-design

Government will need to go beyond a 'delivery of services' model to an approach that encompasses co-production and

Achieving outcomes in the face of 21st-century challenges will depend on the actions of many players and will therefore increasingly require governments to do things *with* citizens

New technologies are being developed and implemented more quickly than ever, creating what is possible faster than legislative and regulatory processes can respond to.

co-design. Co-design harnesses the knowledge and creativity of citizens and staff in identifying problems and generating and implementing solutions – it offers the opportunity to uncover the real barriers to, and accelerants of, progress.

Leading not controlling

The government currently works with citizens and businesses, but often in very restricted ways. For example, under existing models of consultation, one party (government) often determines the timeframe, ambit of discussion, range of options to be discussed, process to be used and use to which the fruits of consultation are put. If, in the future, the government requires the co-operation and contribution of New Zealanders in order to achieve results, public agencies may need to cede control in some areas (e.g. timeframes, processes used, etc.) in order to harness the contributions needed. If government organisations are to solve problems jointly with communities and business groups, the public sector will need to better understand how different groups experience the world, develop more trusting relationships and take on additional roles (moderator, facilitator, enabler, partner, listener and leader).

Leading but not controlling will increasingly require public employees to engage with the public in different ways. Public employees will need a range of 'soft' skills to build trust and negotiate relationships, help with sense-making, and 'nudge' the way towards solutions. Developing the way forward will often involve constructing shared goals, a shared sense of what performance is and agreed frames for evaluating what works. Trustful behaviour is needed to motivate and maintain this exchange.

Current processes for policy development, service design and service delivery do not necessarily allow for working in these less controlling, more deeply engaged ways with groups, communities and businesses, so they will need to be adjusted or augmented (see the discussion below regarding the upcoming IPS project on reframing the practice of policy).

Diverse society and differentiated responses

Diverse society

As is the case for many other countries, New Zealand's population is changing and becoming more diverse. This diversity is increasing across a variety of dimensions, including ethnicity, family structures, geographical mobility and sexual orientation. At the same time, expectations of public services are increasing as information technology becomes harnessed to real-time, tailored service provision in the private sector (e.g. Amazon's personalised customer recommendations). The 'one size fits all' Fordist state prevalent in the 20th century (Dunleavy et al., 2006) will no longer suffice to meet expectations or necessarily provide the most effective outcomes in the 21st century. Heterogeneity is the new 'normal' and it is demanding differentiated responses.

Differentiated responses

The challenge for public services is to move to differentiated responses as the norm rather than the exception and to work in more diverse ways as a matter of course. Some of the approaches and practices that may be useful are discussed below.

As noted, one approach to dealing with diversity is enabling citizens to engage in co-design and co-production to create initiatives and solutions tailored to the needs of a particular community or sector. Another approach is to recognise and introduce alternative models of service delivery and harness the full range of choices in relation to the funding mechanism, the nature and mix of providers, and client selection and choice to get the best fit for the citizens involved and the outcomes sought.

Other options include making more use of information technology to develop a more profound understanding of the citizenry and its needs. The private sector has developed 'business intelligence systems'. These use sophisticated data-mining and risk-screening techniques to understand user experience and behaviour. The information is then used to match customers' preferences to existing products and shape the development of new products. In the public sector, these technologies could be used to improve both government's understanding of clients at risk of poor life outcomes and the development and design of individualised interventions.

Information and Computer Technology can be harnessed to improve differentiated responses at an individual client or case level as well as at a system and service level. Expert decision tools have the potential to transform policy, service design and service delivery by harnessing the richness of the data that is available and the increasingly powerful tools for interrogating it. These can be used to support professional decisions with real-time, relevant, on-the-spot information. The extent of transformation will depend crucially on how 'professionals' and some professions respond to the use of these tools.

Fast, unpredictable change and scanning, and learning the way forward

The picture of the world that emerged from the Future State scan is one characterised by fast-paced change, growing complexity, and unpredictability. New technologies are being developed and implemented more quickly than ever, creating what is possible faster than

legislative and regulatory processes can respond to. In addition, the challenges already discussed here are increasing the unpredictability and rapidity of change. For example, more diverse populations and denser global interconnections are contributing to a more unpredictable world.

In the midst of this speed, complexity, uncertainty and unpredictability, governments still need to make decisions and act. However, the public management system that supports those decision-making processes has been predicated on relatively stable, predictable conditions. Existing processes, therefore, need to be supplemented by approaches more suited to sense-making under uncertainty, for example via scanning and learning the way forward.

Figure 1: Sense-making

Source: Kurtz and Snowden, 2003, pp.462-83

Scanning

Working under uncertainty requires constant attention to what is emergent, scanning widely, noticing nascent change and imagining how it could unfold. In particular, it means listening to the 'noise' in order to pick out the important signals. Organisations can use the insights that arise from scanning to detect adverse conditions, guide policy, shape strategy and explore the need for new products and services. Scanning helps to provide a greater ability to anticipate future changes. To quote Bourgon (2009, p.9):

> Countries with the best ability to anticipate and to take corrective actions will have significant comparative advantage. They will best be able to innovate, adapt and prosper in unforeseen circumstances and they will be better able to shift the course of events in their favour.

Some countries, such as Singapore, Britain and Finland, have established entities or programmes dedicated to scanning the future.

Learning the way forward

Responding to complex problems, where the exact problem and the solution are not known in advance, requires different ways of working based on learning the way forward. Current service design is a response to the problem of moving planned policy to the next stage of implementation. This is based on the view that the problem and solution are known in advance. Learning the way forward is required in the 'complex' (top left) quadrant in Figure 1 above, which involves acting, sensing and learning and then responding.

The private sector has developed techniques that involve learning the way forward which go beyond 'agile development'. This approach was developed for situations where the problem is known but the solution is not. The 'build to learn' approach (Ries, 2009) starts with small batches of 'minimum viable product' and then works iteratively with real user experience. This requires systems that are set up to allow fast iterations and minimise the total time through each micro-development loop. It also requires quick response times to fix problems for customers, as well as monitoring the metrics that stakeholders care about. This in turn creates an ability to tell 'good' change from 'bad' change and to reverse 'bad' change early.

21st-century public management approaches

The previous section has surveyed the additional responses required in the face of 21st-century challenges for government. They include the capacity to:

- generate step change;
- engage in co-production and co-design;
- work in trustful ways;
- cede control and provide leadership;
- use multiple approaches;
- provide differentiated responses;
- scan; and
- learn the way forward.

A public management system fit for the 21st-century needs to support all these approaches whilst preserving existing system strengths.

The public management system: supporting 21st-century responses – key areas for change

New Zealand has a first-class public management system but one that was designed for the conditions of the late 20th century. The preceding section outlined some major 21st-century challenges and the the responses needed. The Future State Project identified two overarching system adjustments that will be required if the public sector is to respond appropriately:

- a move towards greater system coherence to support a whole-of-government focus; and
- a move towards applying and integrating a wider range of system values in order to support a broader range of responses.

Moving towards a whole-of-government focus

From a focus on public organisations ...

A major formula of the New Zealand public management reforms in the late 1980s was to subdivide conglomerate departments into single-purpose organisations with clear roles

New Zealand's public management system was historically based on clan and hierarchy, as were most traditional, career-for-life public services. The reforms of the 1980s and 1990s used market values to reshape structures and systems and increase freedom to innovate.

and accountabilities and to shift the locus of control for output delivery to chief executives and boards of public organisations. This principle achieved strong focus on known and knowable problems.

Recent initiatives by central agencies have focused on further improving the performance of individual public organisations. Good reasons exist for this emphasis on improving the efficiency of public organisations. There is no direct counterpart in the non-market or core public sector to the signals of competitive product markets or the discipline provided by the market for corporate control through the threat of takeovers in private sector organisations. The core public sector needs comparable mechanisms to identify poor performers and raise performance, and the central agencies' initiatives, such as the State Services Commission-led Performance Improvement Framework (State Services Comission, 2010), can make a useful contribution by helping to lift bottom-line organisational performance and realise additional efficiency gains. A focus on organisational performance alone, however, is unlikely to generate the step change in capability required. Challenges such as achieving trajectory changes in law-and-order spending described earlier need systems that support and drive holistic, all-of-government responses.

... to a focus on organisations and system performance

One of the drawbacks of single-purpose organisations with clear roles and accountabilities has been the development of tunnel vision by them and the establishment of barriers to tackling complex problems that require cross-cutting solutions.

A model that has emphasised specialisation and pre-specified accountabilities struggles to respond to new issues that demand systems thinking, interconnected responses and innovation. The challenge is to both continue to focus on bottom-line organisational efficiency and increase the focus on the top line, thereby harnessing the components of the public sector to act coherently to address identified problems. In this rebalancing, a greater focus will be needed on understanding, managing and assessing whole-of-system performance.

The boundaries in the New Zealand system start at the top, with a remarkably fragmented structure of ministerial portfolios. Fewer and wider ministerial portfolios would simplify accountabilities and reduce the barriers to collaboration on cross-cutting issues. Similarly, requiring ministers to be formally accountable to the public for articulated desired outcomes for their portfolio, in the same way that bureaucrats are accountable for delivering outputs, would strike a better balance between outputs and outcomes. Other possibilities are to strengthen a collective senior leadership cadre as a counterbalance to the vertical accountabilities and dominance of individual chief executives, and a re-launching of efforts to use circuit-breaker methods.[8]

Other jurisdictions have systems that promote greater shared accountability in relation to negotiated outcomes and measure system progress in terms of movement towards outcomes. For instance, in Western Australia, senior leaders in public organisations are assigned responsibility for integrating the value chains around particular outcome areas. This could be augmented by the Canadian approach where senior staff members are assigned a 'champion role' for cross-cutting functions such as evaluation and learning.

Formal changes to the system alone will not, however, be sufficient to generate the step change in system coherence needed. Working across organisational boundaries, for example, is not currently precluded by the current New Zealand public management model, but nor is it enabled or encouraged by the system settings. Earlier IPS research under the EIP (i.e. the 2008 project Better Connected Services for Kiwis) found that working collaboratively across the public sector requires a specific set of skills and dispositions. Hard-system factors, such as structures, appropriations, differences in pay terms and conditions, and formal mandates, were less important than soft-system factors, such as a sense of urgency (a burning platform), leadership (public entrepreneurs, guardian angels and fellow travellers), learning by doing, and working from an outside-in client perspective. Respecting and valuing the world views, competencies, knowledge and contribution of those from different teams, agencies and sectors is a baseline setting for learning together about what will work. It is linked to a whole-of-system and solutions-focused approach, where the agendas and interests of individual contributors are subsumed within the endeavour of problem solving. This suggests that the nature of the changes to the public management system to support 21st-century public services may need to be different from the changes of the late 1980s. Rather than major alterations to the 'hardware' of the architecture of government (e.g. organisational structures), the majority of the changes will need to be subtle and multifaceted modifications to the 'software' of the mental models used in the public sector.

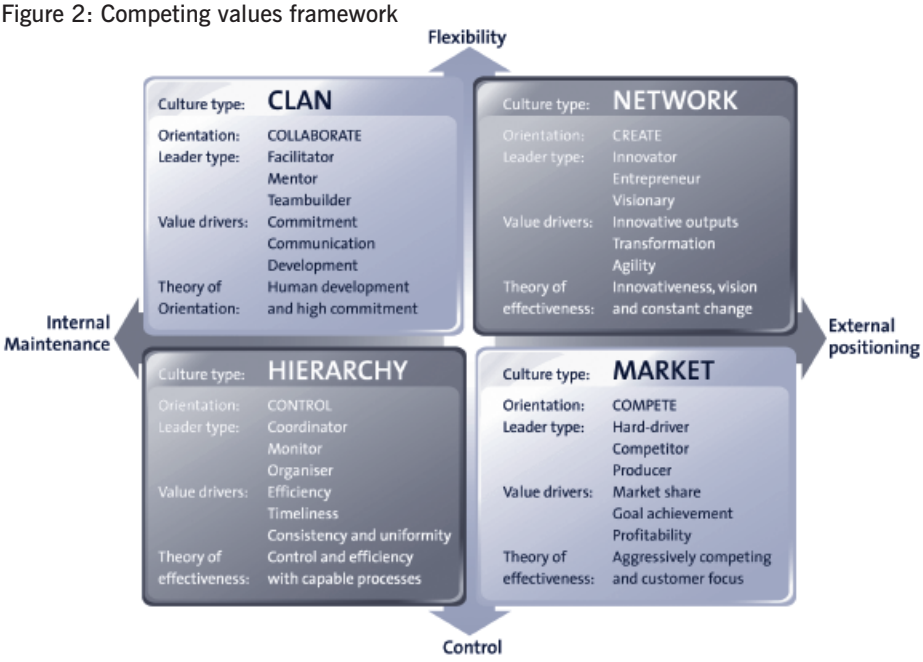
Supporting a broader range of responses

From a few default modes ...

New Zealand's public management system was historically based on clan and hierarchy, as were most traditional,

career-for-life public services (Figure 2 below). The reforms of the 1980s and 1990s used market values to reshape structures and systems and increase freedom to innovate. During the past decade this has been overlaid with a different form of hierarchical control, driven by the desire to minimise risk. As a result, the current system relies heavily on a limited range of values associated with market and hierarchical quadrants. Yet these limits are not readily apparent to those who work with or in the systems on a day-to-day basis. Instead, these 'default' modes merely appear as the normal and natural way of conducting the business of the public service. If New Zealand's public management system is considered in terms of the competing values framework developed by Cameron et al. (2006), it becomes apparent that it is predicated on and supports values in the bottom two quadrants (see Figure 2).

Figure 2: Competing values framework



Source: Cameron et al., 2006, p.66

The Future State Project indicates that effective responses to 21st-century challenges will require collaboration, trust, agility, creativity and innovation: values associated with 'clan' and 'network' quadrants. The skills needed to operate in these ways are currently underdeveloped compared to the skills needed to operate in 'hierarchy' and 'market' modes, and will thus need to be augmented. What is not required is a simple shift from an operating style based on the values of the 'hierarchy' and 'market' quadrants to one based on those of the 'clan' and 'network' quadrants. Rather, the challenge is to build new strengths and capabilities so that a more integrated approach can be applied.

The work of the public sector is already multifaceted, and an increasingly diverse population and more complex challenges will call for increasingly differentiated responses to achieving outcomes. Hence, the public management system will need to support multiple modes and approaches, drawing on values from all four quadrants of the competing values framework.

... to matching style to context

Looking ahead, agencies collectively will need to apply a range of models and approaches to issues and have the knowledge and skills to adopt the best combination in each case to generate productive solutions. This will be a more sophisticated response, involving a conscious choice of modes, taking into account the underlying values they embody. Command and control approaches are not likely to be a good choice, especially where achieving desired outcomes depends on co-production. In the future, no one standard operating procedure will be fit for purpose, and the capacity to make the right choices will be central to the overall performance of the public sector.

Current approaches to policy development, for example, have mainly been developed to respond to 'technical' problems solvable by 'expert' solutions. While suitable for simple or technical problems, that approach to policy making will not be sufficient for emerging challenges that require not just a technical fix but engagement, behaviour change or other kinds of co-contribution. In short, this 'normal' default mode for policy development needs to be augmented by a wider range of approaches. For example, where solutions to problems are not known and new responses will need to be developed, the role of a policy analyst would be transformed from top-down analysis and prescription to acting as a broker and facilitator for bottom-up learning. The public sector of the future will need to adopt new and multiple approaches to service design and policy. Policy practices need to be reframed to accommodate explicit choices about a wider range of approaches to policy, service design and service delivery.

As with the changes needed to generate a step change in system coherence, formal changes to support a broader range of responses will need be made in tandem with significant shifts in the 'software' of the mental models used in and about the public sector.

Some responses to these challenges require greater shared understandings among politicians, public servants and the public as a basis for more durable policy bargains. These ways of working should enrich rather than undermine democracy, although it may require subtle adjustment in the nature of the interactions between ministers and public officials. It will require public officials to take a strong leadership role in articulating a shared vision, but this must be done in a constitutionally appropriate way. This in turn may trigger a refinement of the role of ministers.

Future research

The findings from the Future State Project led the EIP steering committee to endorse five new research projects. These projects will be carried out by the IPS during 2010–12. Three of the projects relate to public management matters: directions for reforming the New Zealand public management model; reframing the

practice of policy; and citizen-centred alternative service delivery.[9] The other two projects are policy specific, dealing with New Zealand's ocean governance, and issues for Māori–Crown relations after 2014, when all historical claims against the Crown by Māori are expected to have been settled.[10] While these two projects will concentrate on policy, they are also 'live' examples of challenges demanding new types of responses from the public management system because of their complex nature, the unknown territory, the number of stakeholders and diversity of interests involved.

Direction for reforming the New Zealand public management model

The aim of this 15-month project is to explore more deeply some of the specific challenges identified in the Future State Project and consider the concrete implications for the public management system. The project will seek to examine issues such as:

- the need to redefine the role of government departments from that of isolated vertical silos to that of hubs responsible for co-ordinating large networks of public and non-state sector entities;
- the need to redirect the focus of central agencies away from controlling individual department performance to ensuring co-ordination and coherency in a new, whole-of-government mode of working; and
- the consequential demand on the public management system for a workable approach to whole-of-system performance accountability.

Ocean governance

Ocean governance provides a clear illustration of an extremely complex policy area where a large number of public sector and non-state actors have substantial conflicting interests and different political agendas, and where new, systems-based ways of organising, working and monitoring within the public management system will be essential if a successful integrative approach to policy development and implementation is to be formed (see Box 1).

Reframing the practice of policy

This project, which is scheduled to start in 2011 and conclude in 2012, will examine the challenges for policy development in fast-paced, complex and unpredictable environments. Current approaches to policy development are primarily designed to respond to 'technical' problems that are solvable by 'expert' solutions. That approach on its own will not be sufficient for emerging challenges that require not just a technical fix but engagement, behaviour change or other sorts of co-contribution. Are techniques such as co-design and co-production viable responses to better engagement and more effective outcomes? If policy practices need to be reframed to include these modes, what are the changes that need to be made to policy processes, conventions and ways of working to enable this?

Post-Treaty settlements

In addition to the ocean governance project, the post-Treaty settlements project provides examples of the kinds of

Box 1. Ocean governance: the New Zealand dimension

The focus of this two-year project starting in 2010 is to explore the policies and institutional arrangements New Zealand needs to put in place to protect, manage and harness the resources of its marine environment. Overall, marine governance remains sector-based and fragmented among a range of policies, programmes and agencies with marine responsibilities. There are 18 main statutes, 14 agencies and six government strategies for marine management and planning (Vince and Hayward, 2009). New Zealand has also signed over 13 international conventions with marine implications, including the 1992 Convention on Biological Diversity and the United Nations Convention on the Law of the Sea (Foster, 2003). Effective ocean governance is difficult for a range of reasons, including the dynamic and complex relationships and connections that exist in coastal marine ecosystems, and the increasing human demand on these ecosystems. Governance, however, is made more complicated by the fractured framework of laws, regulations and practices that exist at different government levels. The mandates of various agencies that implement and enforce existing systems often conflict with each other. No institutional framework exists for establishing a common vision and a common set of objectives. What is needed is a systems perspective that facilitates thinking about interactions among multiple biophysical and human drivers and directs management attention that can reflect these interactions.

Box 2. Post-Treaty settlements issues

This IPS-led project is being undertaken as a joint venture with Te Kawa a Māui (Māori Studies) at Victoria University of Wellington, beginning in 2010 and lasting for up to two years. It aims to provide the policy community and the wider public with a better understanding of emerging Crown–Māori relations, and help inform the design of institutions and policies that support the continuing development of a prosperous, cohesive and fair society for Māori and non-Māori. In particular, the project seeks to bring together a diverse set of high-quality analyses which focus on a small set of topics that are considered of importance in the emerging Crown–Māori relationship, and stimulate informed public debate around these issues. The project will be forward-looking in the sense that its focus is not on the resolution of past grievances but on issues such as social service delivery, resource management and constitutional arrangements, including the status of ongoing Māori parliamentary representation and the Treaty of Waitangi. The issues that will continue to arise in the Crown–Māori relationship are all large, complex and often very difficult conceptually and politically. In relation to many of them there are strongly entrenched viewpoints, and in some cases there will be major difficulties in finding consensus.

complex issues where a reframing of the current policy practice could benefit the outcomes achieved (see Box 2).

Citizen-centred alternative service delivery

This 12-month project, commencing later in 2010, will consider the impact of population diversity on the effective delivery and implementation of public services. It will investigate the extent to which customisation of services, such as in the health and welfare sectors, is needed to meet different needs, and alternative options for service delivery. Customisation options may include the use of co-design and co-production approaches, alternative funding mechanisms, various modes of production, and tailoring the nature and mix of providers.

Conclusion

New Zealand is part of an increasingly fast-paced, heterogeneous, complex and unpredictable global environment. How this country responds will determine its future prosperity and the well-being of its citizens. The capability and capacity of New Zealand's public sector will have a significant bearing on our ability to adapt and flourish.

The current public management system, designed for relatively stable and predictable conditions, has served New Zealand well over the last 20 years. The evidence suggests, however, that it will not provide the optimal platform for addressing the challenges of the 21st century. The Future State Project identified the need for a rebalancing of public management settings to strengthen overall system coherence. At the same time, there is a need to broaden the range of policy and delivery approaches supported, whilst retaining current system strengths. In approving five new research projects, the EIP is seeking to contribute to a deeper understanding of how the public management system needs to change in order to support a step change in performance.

1 The EIP is an initiative established in 2006 between public service chief executives and the School of Government at Victoria University of Wellington to carry out research into significant policy and management issues relevant across a range of public service agencies.

2 For the purposes of this article, the public management system comprises the arrangements for governing a country, including the means by which policies are developed and implemented by public sector organisations and the processes for funding, managing and monitoring those organisations.

3 A more detailed account of the Future State Project is contained in Gill et al. (2010).

4 This recognises that New Zealand's democracy is highly centralised, with over 90% of public expenditure being allocated through central government.

5 'User engagement' or 'user generation' refers to the active involvement of users in defining and generating products and services.

6 'Co-design' harnesses the knowledge of citizens and staff in creating solutions. Co-production occurs where both public organisations and citizens/clients must perform tasks if results are to be achieved, such as revenue collection.

7 Learning the way forward, discussed below in more detail, is a response to complex problems involving acting learning and then responding.

8 Circuit-breaker teams were developed in response to the Review of the Centre to address complex cross-cutting issues (see Minister of State Services, 2004). Although the approach showed initial promise, efforts were not sustained and the initiative withered and died.

9 These public management projects are being led by Derek Gill, a senior fellow of the IPS. Any enquiries relating to these projects can be directed to him at: derek.gill@vuw.ac.nz.

10 The project leader for the ocean governance project is Dr Mike McGinnis, a senior fellow of the IPS. For information and other enquiries about the project, he can be contacted by email at: mike.mcginnis@vuw.ac.nz. The post-Treaty settlements project is being led by Associate Professor Paul Callister, who is Deputy-Director of the IPS. Enquiries about the project can be sent to: paul.callister@vuw.ac.nz.

References

Advisory Group on the Review of the Centre (2001) *Report of the Advisory Group on the Review of the Centre*, Wellington: State Services Commission

Boston, J. and C. Eichbaum (2007) 'State sector reform and renewal in New Zealand: lessons for governance', in G.E. Caiden and T. Su (eds), *The Repositioning of Public Governance: global experience and challenges*, Taipei: Best-Wise Publishing

Bourgon, J. (2009) 'New governance and public administration: towards a dynamic synthesis', public lecture hosted by the Australian Department of the Prime Minister and Cabinet, Canberra, Australia, 24 February

Bourgon, J. et al. (2009) *Literature Scan # 1: On the Need for a New Synthesis of Public Administration*, from A New Synthesis of Public Administration project, available at: http://www.ns6newsynthesis.com/documents

Cameron K.S., R.E. Quinn, J. Degraff and A.V. Thakor (2006) *Competing Values Leadership: creating value in organizations*, Cheltenham, UK: Edward Elgar Publishing

Drucker, P. (1964) *Managing for Results*, New York: Harper

Dunleavy, P., H. Margetts, S. Bastow and J. Tinkler (2006) 'New public management is dead: long live digital-era governance', *Journal of Public Administration Research and Theory*, 16 (3), pp.467–94

Eppel, E., D. Gill ,M. Lipps and B. Ryan (2008) *Better Connected Services for Kiwis,* Wellington: Institute of Policy Studies, Victoria University of Wellington

Foster, A. (2003) 'New Zealand's ocean policy', *Victoria University of Wellington Law Review*, 34, pp.469–96

Gill, D., S. Pride, H. Gilbert and R. Norman (2010) *The Future State*, working paper 10/08, Wellington: Institute of Policy Studies, Victoria University of Wellington

Kurtz, C.F. and D.J. Snowden (2003) 'The dynamics of strategy: sense making in a complex and complicated world', *IBM Systems Journal*, 42 (3), pp.462–83

Maxwell, G. (2009) 'Understanding and responding to criminal offending', in G. Maxwell (ed.), Addressing the Causes of Offending: what is the evidence?, Wellington: Institute of Policy Studies, Victoria University of Wellington

Minister of State Services (T. Mallard) (2004) 'Practical guide to attacking problems released', media release, http://www.beehive.govt.nz/node/20364

Ries, E. (2009) 'Pivot, don't jump to a new vision', http://www.startuplessonslearned.com/2009/06/pivot-dont-jump-to-new-vision.html, accessed 28 April 2010

Schick, A. (1996) *The Spirit of Reform: managing the New Zealand state sector in a time of change*, Wellington: State Services Commission

State Services Commission (2010) *Performance Improvement Framework,* http://www.ssc.govt.nz/display/document.asp?docid=7700, accessed 2 July

Vince, J. and M. Hayward (2009) 'New Zealand oceans governance: calming turbulent waters?', *Marine Policy*, 33 (2), pp.412–18

David Bromell

Income Inequality and the Economy of Ideas

Growing unequal

Among OECD countries, New Zealand has moved from having relatively low income inequality in the early 1980s to having above average inequality by the mid-2000s (OECD, 2008). Research conducted by Bryan Perry (2009) at the Ministry of Social Development shows that in New Zealand in 2008 the percentile ratio of income inequality (equivalised disposable household income before deducting housing costs) for P90 (top decile) to P10 (bottom decile) was 4.0, compared to 3.3 in 1984. The ratio for P80 (top quintile) to P20 (bottom quintile) for before-housing costs in 2008 was 2.6, compared to 2.3 in 1984.

Those ratios are calculated for household incomes and over the population as a whole, in order to assess trends over time and to provide internationally comparable data. Of course, there are much greater inequalities at the level of individual income. The ratio for P80 to P20 for individual incomes in New Zealand's working-age population (aged 18 to 64) in 2009 was around 5.5.

In the state sector the salary bands of chief executives and the vice-chancellors of universities are a matter of public record (State Services Commission, 2009). The ratio of the mid-point of bottom to top salary bands in public service organisations is not 2.6 or 5.5 but, on average, approximately 11.0. Things are marginally less equal in the university sector, where the ratio is, on average, approximately 13.0. In the private sector, I estimate that the ratio between the mid-point of the average salary of a call centre operator in New Zealand ($37,500) and the value of the 'compensation' package paid to Paul Reynolds as chief executive of Telecom in the year to 30 June 2009 (an estimated $7.2 million according to the *National Business Review* (2009)) is 191.0.[1]

Even the least sceptical may wonder whether one employee is capable of providing, on average, value for money for one hour of work that is 11, 13 or 191 times greater than that provided by a fellow employee.[2]

I am personally inclined, moreover, to the idea that inequality damages democracy. For New Zealand to be viable in a global economy, we need effective democracy as well as efficient markets. As John Myles (2007, p.18) puts it: 'Markets need democracy to make

David Bromell is a principal advisor in the Ministry of Social Development and a senior associate of the Institute of Policy Studies. This article is based on notes prepared for a symposium on economic inequality hosted by the University of Otago on 9 June 2010.

market economies viable for people.' Marked income inequality risks damaging democracy to the extent that it creates two publics: one preoccupied with making ends meet, the other with keeping and growing its wealth; whereas effective democracy depends on a common public in which citizens see themselves as 'all in the same boat' (Cunningham, 2007; Dewey, 1927).

'Equality is better for everyone'?

Richard Wilkinson and Kate Pickett in *The Spirit Level: why equality is better for everyone* (2010) present a significant body of evidence that there is a strong association between social stratification, and specifically economic inequality, and health and social problems in developed nations. The evidence they present suggests that 'we are affected very differently by the income differences *within* our own society from the way we are affected by the differences in average income between one rich society and another' (Wilkinson and Pickett, 2010, p.11, italics theirs). In fact, 'when we make comparisons between different societies, we find that these social problems have little or no relation to levels of *average* incomes in a society' (ibid.). They acknowledge that association does not prove causality, and that even if there is a causal relationship, this does not tell us what is cause and what is effect (pp.190–6). Their book 'simply points out that if you increase the income and status differences related to these [health and social] problems, then – unsurprisingly – the problems all become more common' (p.196).

They assert, moreover, that the ill health and social problems associated with income and status differences affect all members of an unequal society, not just those at the bottom, although it may disproportionately affect those who are relatively least well off.[3] The solution they propose (ibid., pp.238–9) to persistent and interconnected social problems is neither discrete and siloed interventions, nor 'joined-up' services and programmes to address the symptoms of distress within the health, education, justice and welfare sectors. What is required is a concerted programme to address the *cause* of negative social outcomes by reducing economic inequality and social stratification and improving social mobility at the bottom. As Runciman (2009) puts it, Wilkinson and Pickett invite us to stop trying to join everything up, and to start seeing how it all fits together.

Turning a 'big idea' like that into public policy comes, however, at a price. The cost can be cognitive, economic and political.

Cognitive price

First, ideas come with a cognitive price because claims as to truth, or value, if they mean anything at all, may at least partially exclude other claims to validity.

For example, the late Brian Barry, a self-styled 'democratic socialist', proposed (1998, pp.22-4) that in order to avoid social exclusion, nobody ought to have less than half the median income, and only a few ought to have more than three times the median income. That is, the ratio of the top income to the bottom income in a society ought not to exceed six to one. Median weekly income in New Zealand for all people aged 15 years and over from all sources (including for people with no source of income) in the June 2009 quarter was $538 (Statistics New Zealand, 2009). Barry's proposal implies that no New Zealander should have a gross weekly income of less than $270 ($14,000 per annum) or more than $1,600 ($84,000 per annum).

If we think that Barry, and Wilkinson and Pickett, are right, then we cannot consistently maintain, at the same time, that in the absence of externalities and other sources of market failure a market free of policy intervention will allocate resources efficiently. Nor can we base public policy on the 'trickle down' notion that if only the wealthy are able to earn more and keep more of their wealth, they will have an incentive to work harder, invest more, take more risks and drive economic development, which will eventually benefit those at the bottom. These ideas are mutually exclusive, at least in part. (We would also have to let go of some of our operative thinking about merit, risk, reward, 'do it yourself' and 'free loading'.)

Even if ideas and ways of thinking do not logically exclude one another, partially or completely, they can crowd each other out of thinking space and public discourse. For example, since the late 1980s New Zealand's population has become significantly more ethnically diverse, due to higher Māori and Pacific fertility rates, inter-ethnic partnering and parenting, and changing patterns of migration. New Zealand today has a more ethno-culturally diverse population than many other developed nations (Bromell, 2008, pp.21–57). This diversity, together with the Māori resurgence and Treaty of Waitangi settlements process since the mid-1970s, has meant that public discourse for over 30 years has been dominated by a politics of identity rather than a politics of social stratification, social mobility and economic equality. This 'crowding out' of a politics of equality is regrettable, because, at least in the short run, immigration and ethnic diversity tend to reduce social solidarity and social capital (Putnam, 2007). When public discourse focuses on social group identities, rather than on the common good and the norms of mutual support that underpin redistribution

When public discourse focuses on social group identities, rather than on the common good and the norms of mutual support that underpin redistribution within a welfare state, political will to address economic inequality can be seriously compromised ...

within a welfare state, political will to address economic inequality can be seriously compromised (Bromell, 2008, pp.295–9; 2009; cf. Banting, 2005; Banting and Kymlicka, 2006).

The cognitive, or at least rhetorical, price of a politics of equality is that we may have to focus less on our differences than on what we have in common; less on social group identities and special rights than on our common identity, our common needs, our common good.

Economic price

Secondly, ideas come with an economic price. This takes us to the core business of public policy: the definition and analysis of problems; the identification of options; evidence-gathering about correlation, causation and 'what works'; and the calculation of cost-benefit and trade-offs, who pays, risks and their mitigation, and contingency for unintended consequences.

Wilkinson and Pickett emphasise that what matters is the level of inequality we finish up with, not the particular route that gets us there (Wilkinson and Pickett, 2010, pp.245–7). They nevertheless outline two broad strategies: one using taxes and benefits to redistribute income; the other achieving narrower differences in gross market incomes before any redistribution. Both strategies come at a price.

New Zealand is a small, geographically isolated country with an open economy, a highly mobile population and a limited talent pool, operating within a competitive international labour market. Redistribution through tax and transfers, or a cap on higher salaries, run the risk that a larger number of those with the drive to get ahead will emigrate and take their capital, skills and entrepreneurial attitudes with them. As it is, around one million New Zealanders (about one in five) are currently living overseas.

On the other hand, unless accompanied by greatly improved labour productivity, raising gross incomes at the lower end by increasing minimum wage rates will drive up the price of goods and services and make New Zealand exports and tourism products less competitive. Raising benefit levels would have a fiscal impact on the Crown accounts. It could also create a disincentive to employment and independence, when there is strong evidence that the best route out of poverty, at least for the vast majority, is through paid work. Long-term work absence has, in general, a negative impact on health and well-being (Royal Australasian College of Physicians, 2010).

Reducing inequality within a society in order to address the cause of health and social problems could well be a good idea. But talk is cheap unless practicable proposals are developed to implement this 'big idea', with robust analysis of who will pay and how, and of the price we, as a society, will put on equality, as on our present levels of inequality.

There is, in fact, a range of conceivable options that, in some combination or other, could reduce social stratification and economic inequality:

- public investment in the early years, and in health and education services generally, to enable upwards social mobility at the bottom;
- investment in state housing and income-related rents;
- economic and regulatory reform, immigration policy, and investment in infrastructure, research and development, capital per worker, and education and training (including significantly raising management skills and performance), to improve labour productivity and create a high-wage economy;
- active labour market policies to move people off welfare and into sustainable employment;
- employment law which discourages both under- and over-employment;
- redistributive policies implemented through tax and transfers;
- policies to promote economic democracy and greater equality in gross incomes before taxes and transfers: for example, the setting or raising of a minimum wage, the introduction of a guaranteed minimum income, and/or a ceiling on remuneration at the top, at least in the state sector;
- encouragement of collective bargaining of wages and terms and conditions of employment;
- tax policies and social marketing to encourage volunteering and philanthropy and otherwise support a strong community and voluntary sector; and
- investment in public broadcasting, and in institutions, urban design, public transport and public space, so that citizens of all sorts can rub shoulders, encounter the reality of one another's lives, build social capital and social cohesion and constitute a common public.

All these options come at a price and their cost-benefit needs to be calculated within a fiscal context that determines certain limits to and opportunities for what can be undertaken at any particular point in time. And in fact, none of these has been entirely absent from government policy during the period inequality has grown in New Zealand society. The issue is rather that government has not thought through its policy interventions as a coherent package that is explicitly designed to reduce social stratification and economic inequality and to promote social mobility at the bottom. The focus has been rather on 'baking a bigger cake'

The issue is rather that government has not thought through its policy interventions as a coherent package that is explicitly designed to reduce social stratification and economic inequality and to promote social mobility at the bottom.

and 'the rising tide that lifts all boats', with a great deal of public expenditure on programmes and services (whether ameliorative or merely palliative) to relieve the symptoms of social distress.[4]

Political price

Thirdly, ideas, and especially big ideas, come with a political price.

The job of democratically elected politicians is to develop, promote and vote for policies that express the will of the people they represent in Parliament. The 2005 and 2008 general elections were contested, in significant part, over tax cuts. The National-led government elected in 2008 has delivered these, in a relatively even-handed manner, to general approval.

The prime minister has made much of the 2010 tax changes as being 'fairer' (Key, 2010a). They are fair, if fairness is construed as a roughly proportional impact across all income bands, rather than as a narrowing of the gap between rich and poor. The Treasury has estimated the impact of the tax changes as a percentage of average disposable household income across all income bands as between 0.4 and 0.7% (English, 2010b, p.9). The tax measures announced in the 2010 Budget will probably make no measurable difference to income inequality in New Zealand. Indeed, in a pre-Budget warm-up the prime minister urged Kiwis not to be jealous if the rich get more – 'because the rich are crucial to the economy' (Key, 2010b).

If Wilkinson and Pickett's 'big idea' is to get any political traction in New Zealand, then the electorate will have to want, and demand, a different kind of fairness, a different kind of future New Zealand.

The *New Zealand Listener* recently highlighted some findings of Massey University's Department of Marketing's International Social Survey Programme (*New Zealand Listener*, 2010).[5] When the respondents were asked 'Are income differences in New Zealand too large?', 62% said yes, compared to 75% in 1999 and 72% in 1992. When asked 'Should people on higher incomes pay a larger share of their income in taxes than those on lower incomes?', 53% said yes, compared to 60% in 1999 and 71% in 1992. When asked 'Should the Government reduce income differences between people?', 40% said yes compared to 52% in 1992.

A similar shift in values was evidenced in a 2010 UMR Research survey of 750 people (ibid., p.15).6 To the statement 'Inequality continues because it benefits the rich and powerful', 44% agreed, compared to 60% in 1992. To the statement 'Large income differences are necessary for New Zealand's economic prosperity', 32% disagreed, compared to 60% in 1992. These findings are consistent with those of the New Zealand Election Study (http://www.nzes.org/) and give little hope that the electorate will demand a reduction in income inequalities any time soon.

A democratically-elected government, if it wishes to retain power, will implement policies that reflect its manifesto commitments and electoral mandate. To do otherwise, even from the highest of ethical motives, courts failure in the polls. Wilkinson and Pickett concede that, in fact, 'governments have usually not pursued more egalitarian policies until they thought their survival depended on it' (Wilkinson and Pickett, 2010, p.241).

A New Deal for the 21st century?

Wilkinson and Pickett invite 'a historic shift in the sources of human satisfaction from economic growth to a more sociable society' (ibid., p.231). They suggest that developed nations are 'close to the end of what economic growth can do for us' (p.5). They urge developed nations to trade off an economic growth path and material consumption against improvements in quality of life as measured by health, happiness, friendship and community life, and to do so in ways that are environmentally sustainable and that will both mitigate against and adapt to climate change.

There seems to be little political will in New Zealand at present for such a New Deal, and that is unlikely to change unless an alternative vision of society captures the hearts and minds of New Zealanders. Short of a national crisis to shake things up (a major earthquake in the capital? a volcanic eruption in the Auckland region?), building the case for a politics of equality will be a long-term task. Specifically, we need to improve our understanding of:

- when and in which respects inequality is bad for almost everyone, and when poor outcomes exhibit strong social gradation and why;
- whether, in which respects and to what extent the relationship between economic inequality and poor social outcomes is one of causation rather than correlation;
- the relationships that prevail over time between income inequality, skills, labour productivity, social capital and the efficient operation of economic markets;
- social mobility in New Zealand, particularly at the bottom and in terms of urbanisation and the geographical clustering of disadvantage;
- life-course and intergenerational accumulation and transmission of advantage and disadvantage; and
- the dynamic relationships between ethno-cultural homogeneity/diversity, social capital and attitudes to income inequality and redistribution.

... [Wilkinson and Pickett] urge developed nations to trade off an economic growth path and material consumption against improvements in quality of life as measured by health, happiness, friendship and community life,...

Above all, a politics of equality will require a great deal of public debate about the kind of society we want to create here and the price we are willing to pay, now and in the future, to achieve it.

1 See further Wilkinson and Pickett (2010, p.250) on the ratio of CEO pay to average worker pay.
2 New Zealand responses to the International Social Survey Programme on perceived deserved incomes for a company chairperson relative to an unskilled factory worker have scarcely changed since 1992, with median values of 4.0 in 1992 and 4.3 in 2009.
3 Runciman (2009) points out that Wilkinson and Pickett fudge an important distinction between the claim that in more equal societies almost everyone does better, and the claim that everyone does better on average. Compare the sub-titles of various editions of *The Spirit Level*: 'why more equal societies almost always do better'; 'why greater equality makes societies stronger'; 'why equality is better for everyone'.
4 New Zealand currently spends close to $51 billion (72% of core Crown expenditure, or 25% of New Zealand's nominal GDP) on social security and welfare, health, education, and law and order (English, 2010a).
5 The New Zealand survey was conducted in 2009 by a mail survey of around 1,000 responses. Some questions were not asked in 1999. Margin of error of ±3% or less (at the 95% confidence level).
6 Margin of error of ±3.6% (for a 50% figure at the 95% confidence level).

References

Banting, K. (2005) 'The multicultural welfare state: international experience and North American narratives', *Social Policy and Administration*, 39 (2), pp.98–115

Banting, K. and W. Kymlicka (eds) (2006) *Multiculturalism and the Welfare State: recognition and redistribution in contemporary democracies*, Oxford and New York: Oxford University Press

Barry, B. (1998) *Social Exclusion, Social Isolation and the Distribution of Income*, CASE paper 12, Centre for Analysis of Social Exclusion, London School of Economics, http://ideas.repec.org/p/cep/sticas/12.html, accessed May 2010

Bromell, D. (2008) *Ethnicity, Identity and Public Policy: critical perspectives on multiculturalism*, Wellington: Institute of Policy Studies, Victoria University of Wellington

Bromell, D. (2009) 'Recognition, redistribution and democratic inclusion', in R. Openshaw and E. Rata (eds), *The Politics of Conformity in New Zealand*, North Shore City: Pearson

Cunningham, F. (2007) 'What's wrong with inequality?' in *Why Inequality Matters, in 1,000 Words or Less*, Toronto: Canadian Centre for Policy Alternatives, http://www.policyalternatives.ca/publications/reports/why-inequality-matters-1000-words-or-less, accessed May 2010

Dewey, J. (1927) *The Public and its Problems,* New York: H. Holt

English, B. (2010a) *Budget 2010: key facts for taxpayers*, Wellington: New Zealand Government, http://www.treasury.govt.nz/budget/2010/taxpayers/b10-taxpayers.pdf, accessed June 2010

English, B. (2010b) *Budget 2010: minister's executive summary*, Wellington: New Zealand Government, http://www.treasury.govt.nz/budget/2010/execsumm, accessed May

Key, J. (2010a) *Budget 2010 about opportunity for Kiwis*, prime minister's media statement, 20 May 2010, http://www.beehive.govt.nz/release/budget+2010+about+opportunity+kiwis, accessed May

Key, J. (2010b) quoted in 'Budget gifts for the poor', http://www.stuff.co.nz/ national/politics/3707735/Budget-gifts-for-the-rich, 18 May

Myles, J. (2007) 'Income inequality and democracy', in *Why Inequality Matters, in 1,000 Words or Less,* Toronto: Canadian Centre for Policy Alternatives, http://www.policyalternatives.ca/publications/reports/why-inequality-matters-1000-words-or-less, accessed May 2010

National Business Review (2009) 'How Paul Reynolds' pay stacks up against the competition', 26 August, http://www.nbr.co.nz/article/how-paul-reynolds-pay-stacks-against-competition-109069, accessed May 2010

New Zealand Listener (2010) 'All things being equal', 1-7 May, pp.14-21.

OECD (2008), *Growing Unequal? Income distribution and poverty in OECD countries*, country note: New Zealand, http://www.oecd.org/dataoecd/45/43/41527985.pdf, accessed May 2010

Perry, B. (2009) *Household Incomes in New Zealand: trends in indicators of inequality and hardship,* 1982 to 2008, Wellington: Ministry of Social Development, http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/index.html, accessed May 2010

Putnam, R. (2007) '*E Pluribus Unum*: diversity and community in the twenty-first century', the 2006 Johan Skytte Prize Lecture, Scandinavian Political Studies 30(2), pp.137–74

Royal Australasian College of Physicians (2010) *Realising the Health Benefits of Work: A position statement*, Sydney: Royal Australasian College of Physicians, http://www.racp.edu.au/index.cfm?objectid=84C0100F-E554-2865-DFEF6FEE0666A005, accessed June 2010

Runciman, D. (2009) 'How messy it all is', review of *The Spirit Level: why more equal societies almost always do better, London Review of Books*, 31/20, 22 October, pp.3–6, http://www.lrb.co.uk/v31/n20/david-runciman/how-messy-it-all-is, accessed June 2010

State Services Commission (2009), *Annual Report of the State Services Commission for the year ended 30 June 2009*, Wellington: State Services Commission, http://www.ssc.govt.nz/display/document.asp?NavID=272&DocID=7425, accessed May 2010

Statistics New Zealand (2009), *New Zealand Income Survey: June 2009 quarter,* Wellington: Statistics New Zealand, http://www.stats.govt.nz/browse_for_stats/work_income_and_spending/income/nzincomesurvey_hotpjun09qtr.aspx, accessed June 2010

Wilkinson, R. and K. Pickett (2010) *The Spirit Level: why equality is better for everyone*, London: Penguin (first publ. 2009)

Paul Brown, Paul Callister, Kristie Carter and Ralf Engler

Ethnic Mobility
Is it Important for Research and Policy Analysis?

Paul Brown is a Principal Statistician at Statistics New Zealand. He has a long-standing interest in the statistical measurement of ethnicity, having contributed to the development of New Zealand official statistics in this field over the past three decades.

Paul Callister is the Deputy Director of the Institute of Policy Studies. He has had a long interest in ethnic measurement and public policy.

Kristie Carter is Senior Research Fellow at the Department of Public Health, University of Otago, Wellington. Kristie's main research interests are around the ethnic and socio-economic determinants of health and the implications of epidemiological research on policy decision making. She is also interested in psychological outcomes and longitudinal and epidemiological methods.

Ralf Engler has been an analyst with the Ministry of Education for 6½ years, working firstly in the area of early childhood education and teacher supply, and more recently in tertiary education. His current focus is on the progression of students from secondary school to tertiary education.

Introduction

Public policy discussions involving ethnicity often assume that people remain in fixed ethnic categories over their lifecycles. While New Zealand research carried out a decade ago had already identified ethnic mobility in the census in relation to Māori, the dramatic and somewhat unexpected increase in 'New Zealander'-type responses in the 2006 census provided a very high profile example of people changing their responses to ethnicity questions. Research into the growth of New Zealander-type responses in the census has focused primarily on whether these are valid responses, how they should be recorded and reported on, and how these decisions might affect the overall usefulness of ethnicity data. One question in this research has been where these responses came from: that is, what these people recorded in the previous census. Asking this question explicitly recognises that people may not always record the same response in similar surveys over time, or even across a range of surveys at any one point in time. People may be ethnically mobile, or at least appear to be mobile.

Internationally, there is much research interest in ethnic mobility. The literature suggests that there are three possible sources of change in responses about ethnic affiliation: unreliability in measurement; changes due to alterations in ethnicity questions; and conscious changes in ethnic affiliation (Carter et al., 2009). Conscious changes in ethnicity can be over a lifetime, or there could be intergenerational mobility. When more than one ethnic group can be recorded in surveys, as is the case in New Zealand, conscious changes may involve an alteration of ethnic identification (switching from one ethnicity to another), or the addition of an ethnic group to (complexification) or deletion of a group from (simplification) a previous set of identifications. Hence ethnicity at any point in time is a complex social process that needs more understanding.

... there are three possible sources of change in repsonses about ethnic affiliation: unreliability in measurement; changes due to alterations in ethnicity questions; and concious changes in ethnic affiliation.

Switching groups can be the result of changing incentives, both positive and negative. Reflecting a range of positive incentives, the growth of American Irish in the United States was far faster than natural population growth would predict (Hout and Goldstein, 1994), as has the growth of Native Americans (Light and Lee, 1997; Eschbach, 1993). In relation to the Irish, Waters (2000) observes that in the 19th century Irish in the US were seen as a separate race from other Europeans. At this time, the stereotype of the Irish population was of the group having high rates of crime, a lack of education and negative family values. Waters suggests that if population predictions had been made in the early 20th century, the anticipated growth in the Irish population would have been very low. Yet such predictions would not have taken into account the rise in education and income amongst Irish, as well as a growth in the popularity of Irish culture helped by dance and music groups such as *Riverdance* gaining international prominence.

In Canada, Guimond (2006) has explored ethnic mobility in relation to the growth of Aboriginal populations. Between 1986 and 1996 the census count of the population with Aboriginal origin went from 711,000 to 1,102,000, with a large part of this growth occurring between 1986 and 1991. Guimond noted that this fast growth could not be explained by natural and migratory increases alone. He also noted that the exceptional growth of populations of Aboriginal origin seen nationally occurred off Indian reserves and was particularly strong in urban areas. Guimond speculates as to why the growth occurred, and points to a number of important legislative and social changes which improved the profile and status of Aboriginal peoples. He goes on to note that understanding the source of ethnic mobility is important. There was a very strong rise in the number of post-secondary-educated graduates of Aboriginal origin, and he shows that this increase is in part explained by the 'arrival', as a result of ethnic mobility, of more educated individuals, rather than by greater school success among individuals already identified as Aboriginal people in 1986. As another example, Simpson and Akinwale (2007) show that in Trinidad the count of young adult Africans grew rapidly after the successes of the Black Power movement in the 1960s.

Other forms of ethnic mobility can make understanding social change difficult. An example is the effect of intergenerational ethnic mobility on social mobility. In the US, Duncan and Trejo (2005) studied the progress of Mexican Americans. Controlling for other factors, they found that, on average, US-born Mexican Americans who married non-ethnic Mexicans were substantially more educated and proficient in English language than Mexican Americans who married other Mexicans. More importantly, the children of intermarried Mexican Americans were much less likely to be identified as Mexican than were the children of marriages where both partners were Mexican. The researchers concluded that such selective ethnic mobility might bias observed measures of intergenerational progress for Mexican Americans.

Three areas of research show that there is some degree of ethnic mobility in New Zealand. These are the recent census mobility project undertaken by Statistics New Zealand to better understand the growth in the 'New Zealander'-type responses; a University of Otago, Wellington study of three waves of the longitudinal Survey of Family, Income and Employment (SoFIE); and a number of Ministry of Education studies of transitions from school to tertiary education. In this paper we begin by briefly outlining the findings from these three areas of research. On the basis of these findings, as well as the broad international literature, we argue that the mobility taking place in New Zealand is important for both researchers and policy makers. Given this importance, we conclude by considering some emerging ideas for handling ethnic mobility when undertaking policy analysis.

The census and the 'New Zealander' response

Statistics New Zealand has monitored inter-ethnic mobility between censuses over the past three decades. Understanding patterns and trends in inter-ethnic mobility has contributed to the development of the models used to produce demographic

estimates and projections of the size and composition of ethnic populations, as well as aiding understanding of the dynamics of ethnic identity. Inter-ethnic mobility monitoring has been based on research studies which have linked questionnaires of individuals between successive censuses in order to compare and analyse the consistency of individual responses to the ethnicity questions. The most recent study, comparing the 2001 and 2006 censuses, also investigated the impact of the increased New Zealander response at the 2006 census on inter-ethnic mobility (Brown and Gray, 2009).

Over the past three decades, gross inter-ethnic mobility between the major ethnic categories has grown from around 4% in 1976–81 to 9% in 1991–96. Then, in 2001–06 it increased markedly to 20%. The growth trend is associated with an increase in the reporting of multiple ethnic identities over this period, which have increased from around 5% to 10%. However, the elevated result for 2001–06 reflects also the increased level of New Zealander responses at the 2006 census. The 2001–06 study showed that 92% of the growth of New Zealander responses at the 2006 census can be attributed to people who at the 2001 census reported themselves as 'New Zealand European' and not in any other ethnic group. This confirmed what was the major driver of the apparent increase of the New Zealander population at the 2006 census and the associated apparent decrease of the New Zealand European population.

The 2001–06 study also showed that the increased New Zealander response in the 2006 census also exerted an influence on the Māori, Pacific Island Peoples and Asian groups, with net inter-ethnic mobility rates for these groups ranging between –1.0% and –2.0%. That is to say, there were net losses from these groups to the New Zealander group. In contrast, these groups showed net gains from the New Zealand European group, ranging between +0.5% and +4.2%. The New Zealand European influence on these groups was consistent with the previous 1991–96 study (Coope and Piesse, 2000).

While the impact of the 2006 New Zealander response on Māori, Pacific Island Peoples and Asian was relatively small, it was nevertheless significant enough to feature in the government statistician's decision not to change the format of the ethnicity question for the 2011 census (Statistics New Zealand, 2009, p.iii). It should also be noted that the net flows result from considerably larger gross flows, as illustrated in the summary of the four studies reported above.

The strong growth of a 'New Zealander'-type response created challenges for Statistics New Zealand, as well as for researchers, as to how to present historic census time series as well as how to undertake population projections. In terms of the latter challenge, a decision was made to provide an option to combine European and New Zealander responses in a new category called 'European or Other' (Statistics New Zealand, 2009, p.3).

SoFIE and ethnic mobility

In 2009, researchers from the University of Otago, Wellington undertook exploratory research aimed at identifying changes in self-identified ethnicity of individuals over three years of a longitudinal survey, and how this varied by certain demographic factors. The researchers used data from 2002 to 2005 from the longitudinal Survey of Family, Income and Employment run by Statistics New Zealand (N = 17,625) (Carter et al., 2009). Self-defined ethnicity was recorded (independently) every year and participants could record multiple ethnicities. Ethnicity was coded to level 1: NZ European/ Pākehā, Māori, Pacific, Asian and Other. Combinations of ethnicity variables were also created from the perspective of each of the level 1 groups. Thus, from the Pacific perspective a respondent could be sole Pacific, Pacific plus at least one other group, or non-Pacific (any other ethnic group(s) excluding Pacific). A change in ethnicity was defined as any change in the reported ethnic group(s) of an individual over the first three waves of SoFIE (i.e. from wave 1 to 2; from wave 2 to 3).

Overall, 8% of respondents changed ethnicity at least once during the three waves of the survey. In logistic regression analyses the strongest predictor of changing self-identified ethnicity was reporting Māori, Pacific and Asian ethnicity at wave 1, as well as identifying with more than one ethnic group. In multivariable regression analyses it was found that individuals who changed ethnicity were also more likely to be younger, to be born overseas, to live in a family with children, to be in more deprived groups and to have poorer self-rated health.

This exploratory analysis showed some fluidity around the concept of self-identified ethnicity.

The strong growth of 'New Zealander' -type response created challenges for Statistics New Zealand, as well as for researchers, as to how to present historic census time series as well as how to undertake population projections.

Ministry of Education's school–to–tertiary transitions data

There is much interest in the outcomes of students after they leave school. This 'transition period' is of interest both to government policy makers and to tertiary institutions which might enrol these students in their courses. The Ministry of Education has combined several sources of data to compile a 'transitions' data set to study and analyse the outcomes of students before and after this transition period. These sources of data include school achievement data from the New Zealand Qualifications Authority (NZQA), and tertiary enrolment data for students undertaking formal study, industry training and various targeted training schemes, sourced from the ministry's own data or from the Tertiary

Education Commission. In each of these sources of data, information is recorded about a student's ethnicity.

In the school achievement data and in formal tertiary enrolments, up to three ethnic responses are recorded. The data sources are linked using a unique student identification number, referred to as the National Student Number (NSN). Using the NSN, the transitions data set provides student-level information about a student's ethnicity at school and in their tertiary studies. Research reported on in 2008 indicated that students' ethnicity recorded in tertiary education can differ from that recorded at school (Baldwin, 2008). In some exploratory research, Baldwin found that 15% of students changed their ethnicity overall, but this figure was 18% for students who were identified as Māori in school but who identified as Māori/European in the tertiary data. While Baldwin did not speculate on why this was, it was widely assumed that these changes constituted some kind of error in the data or collection process. As this paper makes clear, however, it is just as likely that these changes in ethnic identification represent real changes in people, all the more so considering the time of transition from school to tertiary education.

More investigation of ethnic mobility may be carried out with more waves of SoFIE data, as well as from future data collection and results from the Growing Up in New Zealand study and qualitative research asking people about their ethnic identification.

Other data sources

Any longitudinal study has the potential to record ethnicity at more than one point in time. The long-running Christchurch Health and Development Study has enquired about respondents' ethnic group affiliations more than once and discovered some mobility. However, they do not consider this to be of importance, attributing it more to measurement error than real change (Fergusson, 2009). More recently initiated surveys, particularly the Growing Up in New Zealand study which aims to track a birth cohort to age 20, have the potential to ask about ethnic identification of the parents and child more than once over the life course.

In addition to the Ministry of Education data, there are other administrative data sets which have more than one recording of ethnic responses. One is in the health sector, where, while those engaging with the health system will in theory have a unique National Health Index number (NHI), basic demographic details, including ethnicity, can change as people have various contacts with health providers.

Some possible ways to use ethnicity when there is ethnic mobility

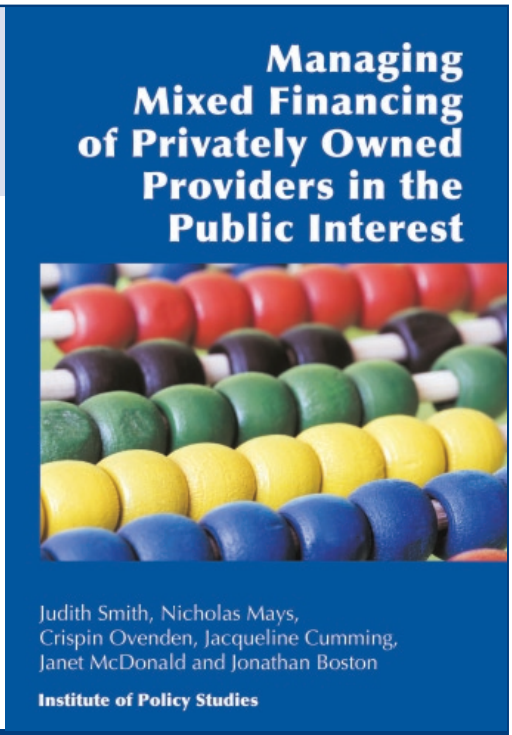
As discussed, ethnic mobility can be inherent in longitudinal data if ethnicity questions are asked at more than one point in the survey, even when asked the same way. One pragmatic response to the 'problem' of changing ethnicity is to ignore any change, choosing instead a single point in time in the data capture series – perhaps the first response – and assuming that this is the 'correct' one. But this seems arbitrary and avoids social explanation. However, there are methods by which ethnic mobility can be reported and used in analysis. Some recent education studies have used a method of reporting ethnicity that is able to incorporate the ethnic mobility seen in longitudinal data. The method, using never, ever and sole ethnic group categories, is described more fully in Engler (2010a). However, using Māori as an example, with this method the 'never' group never has a Māori ethnic response (either as a sole response or as part of dual or multiple ethnicity). The 'ever' group has a Māori response in one or more of the surveys. For the 'sole' Māori, this is the only response in each survey. Like the 'total counts' ethnic measure for cross-sectional ethnic data, there is some overlap between the 'ever' and 'never' groups between different ethnic groups. The never, ever and sole ethnic has previously been used only for the Māori ethnic group, and predominately in health research. While this method enables the reporting and analysis of changing ethnicity, it also allows for the analysis of within-ethnic-group variation.

Education data shows the effect of using such categories. When data on the transition from school to tertiary education is analysed using this method of reporting ethnicity, insights are provided that are not seen with methods that assume ethnic group homogeneity. For example, students with average or above-average academic school results – who achieved NCEA level 3 and met the University Entrance (UE) requirement– and who attended decile 1 or 2 schools are significantly less likely to go on to bachelor-level study than similar students from high- or mid-decile schools; but only if they are students from the sole-Pasifika and Māori ethnic groups (the effect is stronger for sole-Māori) (Engler 2010a). These same students, once they enrol in bachelor-level qualifications at university, show lower likelihood of passing most of their first-year courses if they are sole-Pacific students (Engler, 2010b). In 2008 the overall proportion of Māori school leavers who met the UE requirement was 43%. This, however, is comprised of 54% of ever-Māori students who met this standard, versus 29% of sole-Māori. Also in 2008, 27% of Māori students studied at tertiary level 4 or above within two years of leaving school, compared with 43% of students overall. The figure is 40% for ever-Māori, while for sole-Māori it is 16%.

These findings suggest particular disadvantage faced by a 'core' group of Māori and Pacific people. This supports cross-sectional data that has consistently shown a gradient of disadvantage,

Managing Mixed Financing of Privately Owned Providers in the Public Interest

By Judith Smith, Nicholas Mays, Crispin Ovenden, Jacqueline Cumming, Janet McDonald and Jonathan Boston



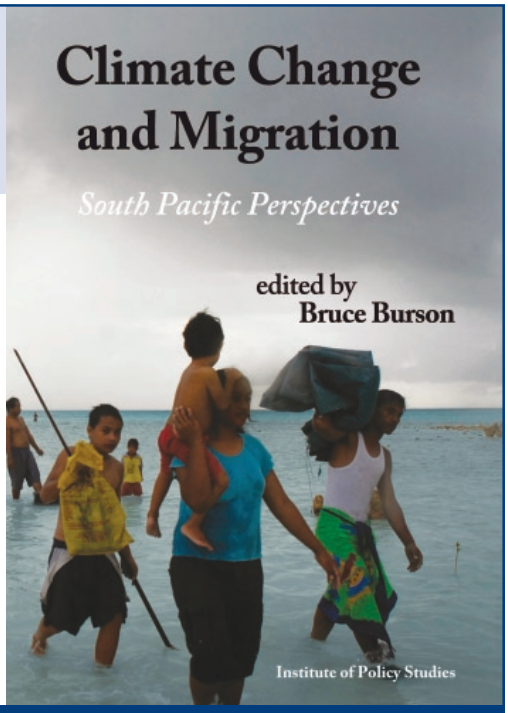
Managing Mixed Financing of Privately Owned Providers in the Public Interest compares the financing of general practice (primary health care), long-term care of older people, legal aid, and early childhood education in New Zealand, Australia, and England. Each service is characterised by a different mix of public and private finance. The authors identify the criteria deemed important when assessing whether a particular mix of public and private finance produces a service that meets public goals. These criteria are then drawn together in an assessment framework that policy makers can use when deciding on their approach to mixed financing. The framework assesses mixed financing from the perspectives of the state, providers, and users.

An Institute of Policy Studies publication by Judith Smith, Nicholas Mays, Crispin Ovenden, Jacqueline Cumming, Janet McDonald and Jonathan Boston
Publication July 2010
Format A5 paperback, pp 116
ISBN 978-1-877347-39-9 Price $27 (including P&P within New Zealand)
Place your order by email, phone, fax or mail to:
Institute of Policy Studies, Victoria University of Wellington
Email: ips@vuw.ac.nz Telephone +64 4 463 5307, Fax + 64 4 463 7413
PO Box 600, Wellington, New Zealand
An invoice will be issued with your order.

Institute of policy studies

CLIMATE CHANGE AND MIGRATION

Edited by Bruce Burson



Many South Pacific island states are vulnerable to the impacts of climate change. Indeed, some are already experiencing population movement due to environmental events and processes likely to be exacerbated by future climate change. Yet others are at risk of disappearing altogether over the coming century and beyond. The potential for climate change to generate population movement over the coming decades, therefore, raises substantial domestic and international policy challenges. This edited volume is the result of a conference held in Wellington in July 2009 that examined these and related issues. Drawing on a range of perspectives, this volume identifies concepts, frameworks, and possible policy responses to deal effectively with what may become one of the greatest humanitarian challenges of the 21st century.

Bruce Burson is a human rights lawyer specialising in refugee and migration law and policy. He was the principal conference organiser on behalf of the Institute of Policy Studies.

An Institute of Policy Studies publication by Bruce Burson
Publication July 2010
Format A5 Paperback, pp 184
ISBN 978-1-877347-40-5 Price - $27 (including P&P within New Zealand)
Place your order by email, phone, fax or mail to
Institute of Policy Studies, Victoria University of Wellington
Email ips@vuw.ac.nz Telephone +64 4 463 5307 Fax +64 4 463 7413
PO Box 600, Wellington, New Zealand
An invoice will be issued with your order

Institute of policy studies

While we still consider current ethnic measures used in official statistics to be sufficiently robust for most of the policy uses made of them in New Zealand, the dynamic nature of ethnic identity poses some problems for consistent statistical measurement of ethnicity.

from sole Māori and Pacific, through combinations of Māori and Pacific, lessening for those who record Māori and/or Pacific and European responses, through to those being, on average, the most advantaged in the sole European group (Gould, 2000; Chapple, 1999, 2000; Chapple and Rea, 1998). However, the reasons for this gradient are not clear and Kukutai (2003) suggests that social policy makers should not put too much weight on such cross-sectional gradients. In terms of Māori outcomes, Kukutai argues that the key differences within the wider Māori ethnic group are between those who identify primarily as non-Māori, when pushed into choosing one group, and all others. This is in contrast to the Chapple (2000) focus on sole Māori as the outlier in social and economic outcomes. While still not telling us the cause of disadvantage, a benefit the longitudinal data have over cross-sectional data is that we have more than one recording of people noting a 'sole' response, suggesting that this may indicate a stronger primary affiliation.

Further research

We are only now beginning to understand the level of ethnic mobility taking place in New Zealand. More longitudinal research is needed to further clarify the fluidity of ethnicity over time. More investigation of ethnic mobility may be carried out with more waves of SoFIE data, as well as from future data collection and results from the Growing Up in New Zealand study and qualitative research asking people about their ethnic identification. Such research is needed to explore a wide range of questions pertaining to how, why and where people change their ethnic identification.

As yet, we remain uncertain as to what types of ethnic mobility are important and why ethnic mobility occurs. We need to know more about what might be considered a major versus a minor ethnic category change. For example, is a shift from a European and Samoan response to just a Samoan response of the same importance as a shift from Samoan only to European only?

We also need to be cautious about adopting new ways of dealing with inconsistent ethnic responses across time. While the 'never', 'ever' and 'sole' categorisation is one potential method, we need to better understand its strengths and weaknesses. As an example, in health data we may have a situation where there are six recordings of ethnicity for a person, with five being 'sole' Māori and one Māori and European. This person would be reported as being 'ever' Māori. But would this 'ever' Māori be similar to a person who had five recordings of European only and one of Māori and European? Is there some potential to weight responses; or is this a throwback to thinking around being 'fractions' of Māori, with imposed notions of 'blood' and 'dilution' by racial/ethnic intermixing and negative or positive connotations depending on who is making the judgment? Or does such a change simply indicate errors in the data? Further research would help clarify some of these issues. This could include research into the benefits and drawbacks of methods of self-prioritisation: that is, ways of allowing respondents themselves to determine a potentially enduring 'main' ethnicity.

With some shifts we also need to be clearer as to whether we are seeing mobility or instead what could be considered a relabelling. The 'New Zealander' response may be an example of this, where the old labels no longer seem appropriate to some respondents. In all this research, it is especially important to understand how young adults develop their own self-identified ethnicity. Therefore, we need to do more research in the younger generations (those aged 15–25). Some overseas research suggests there may be less interest in national or ethnic identity among this age group, especially the so-called majority (Fenton, 2007).

Conclusion

While some within the research community have long been aware of ethnic mobility, the growth of the New Zealander response in the 2006 census demonstrated to the wider public that ethnic responses can change over time. Subsequent New Zealand studies of ethnic mobility highlight that it is important especially for Māori and Pacific people. While we still consider current ethnic measures used in official statistics to be sufficiently robust for most of the policy uses made of them in New Zealand, the dynamic nature of ethnic identity poses some problems for consistent statistical measurement of ethnicity. As such, there needs to be ongoing monitoring, investigation and discussion by researchers to progress understanding of ethnic identity dynamics over lifecycles and over time. This is required not only to ensure measurement quality, but to broadly map the changing cultural fabric of New Zealand society, and in particular to identify more clearly where disadvantage lies.

Acknowledgements

This paper emerged from a March 2010 workshop jointly hosted by the Institute of Policy Studies and the Population Studies Centre at Waikato University. The aim of the forum was to share ideas about processes of ethnic identity construction, identification and change, in order to enhance the usage of ethnic data by policy makers and analysts. The ideas expressed in this paper are those of the authors and do not represent the views of their employers. The paper benefited from some helpful comments by David Pearson.

SoFIE-Health is primarily funded by the Health Research Council of New Zealand as part of the Health Inequalities Research Programme and funding from the Foundation for Research, Science and Technology helped support the running of the workshop.

1 Using census data, Coope and Piesse (2000) found examples of ethnic mobility with, as an example, a 23% inflow and 6% outflow for the Māori ethnic group in 1996 compared to the 1991 group.

2 http://www.growingup.co.nz/.

References

Baldwin, K. (2008) 'Nominated ethnicity changes of students from secondary to tertiary education: secondary to tertiary transitions', paper presented to the 'Who Are We: ethnicity and identity' seminar, Statistics New Zealand, 3 September

Brown, P. and A. Gray (2009) 'Inter-ethnic mobility between the 2001 and 2006 Censuses: the statistical impact of the New Zealander response', in Statistics New Zealand, *Final Report of a Review of the Official Ethnicity Standard 2009*, Wellington: Statistics New Zealand, appendix 2

Carter, K.N., M. Hayward, T. Blakely and C. Shaw (2009) 'How much and for whom does self-identified ethnicity change over time in New Zealand? Results from a longitudinal study', *Social Policy Journal of New Zealand*, 36, pp.32–45

Chapple, S. (1999) 'Explaining patterns of disparity between Māori and non-Māori employment chances', *Labour Market Bulletin*, 1, pp.70–100

Chapple, S. (2000) 'Māori socio-economic disparity', *Political Science*, 52 (2), pp.101–15

Chapple, S. and D. Rea (1998) 'Time series analysis of disparity between Māori and non-Māori labour market outcomes', *Labour Market Bulletin*, 1 and 2, pp.27–144

Coope, P. and A. Piesse (2000) '1991–1996 inter-censal consistency study', unpublished paper, Statistics New Zealand

Duncan, B. and S.J. Trejo (2005) *Ethnic Identification, Intermarriage, and Unmeasured Progress by Mexican Americans*, NBER working paper 11423

Engler, R. (2010a) School Leavers' Progression to Bachelors-level Study, Wellington: Ministry of Education

Engler, R. (2010b) *Academic Performance of First-Year Bachelors Students at University,* Wellington: Ministry of Education

Eschbach, K. (1993) 'Changing identification among American Indians and Alaska Natives', *Demography*, 30 (4), pp.635–52

Fenton, S. (2007) 'Indifference towards national identity: what young adults think about being English in Britain, *Nations and Nationalism*, 13 (2), pp.321–39

Fergusson, D. (2009) personal communication

Gould, J.D. (2000) 'Counting Māori', *New Zealand Population Review*, 26 (2), pp.1–19

Guimond, E. (2006) *Ethnic Mobility and the Demographic Growth of Canada's Aboriginal Populations from 1986 to 1996: report on the demographic situation in Canada 1998–1999*, Statistics Canada, Demography Division

Hout, M. and J.R. Goldstein (1994) 'How 4.5 million Irish immigrants became 40 million Irish Americans: demographic and subjective aspects of the ethnic composition of white Americans', *American Sociological Review*, 59 (1), pp.64–82

Kukutai, T. (2003) *The Dynamics of Ethnicity Reporting: Māori in New Zealand*, discussion paper prepared for Te Puni Kōkiri, Wellington: Te Puni Kōkiri

Light, I. and C. Lee (1997) 'And just who do you think you aren't?', *Society*, 34, pp.28–30

Simpson, L. and B. Akinwale (2007) 'Quantifying stability and change in ethnic group', *Journal of Official Statistics*, 23 (2), pp.185–208

Statistics New Zealand (2009), *Final Report of a Review of the Official Ethnicity Standard 2009*, Wellington: Statistics New Zealand

Waters, M.C. (2000) 'Immigration, intermarriage, and the challenges of measuring racial/ethnic identities', *American Journal of Public Health*, 90 (11), pp.1735–7

Mining in the Conservation Estate
Lasting Lessons from the Schedule Four Debate

Monday 23 August, Government Buildings lecture theatre one

Earlier this year the Government invited public submissions on whether to delete about 7,000 hectares of the conservation estate from Schedule 4 of the Crown Minerals Act, in order to allow mining. Following public submission, the Government announced in July that the suggested deletions would not proceed, but that other parts of the conservation estate would be actively targeted for mining development.

The reopening of political debate on commercial development of conservation lands raises wider issues about the balance of development and conservation values. This one-day symposium will explore these issues.

Programme

8.45 am-10.30 am **Policy, Legislation and Procedures**

Philip Woollaston, Minister of Conservation 1989-90, *Origins of the legislation and policy relating to minerals in conservation areas*

Tom Bennion, Wellington barrister and Victoria University lecturer in Environmental Studies, *Comparing access provisions for mining and other activities*

10.45 am-12.15 pm **Economic analyses**

Carolyn Van Leuven, Ministry of Economic Development, *The analysis behind Government policy*

Geoff Bertram, Institute of Policy Studies, *Mining in the New Zealand Economy*

1.00 pm-2.30 pm **International perspectives: Balancing Environmental Values and 'Development'**

Gundars Rudzitis, University of Idaho, *Mining and development, theory and praxis: The United States experience and beyond*

Viktoria Kahui, University of Otago, *Pressure from coastal oil drilling in Norway: lessons for the debate on mining in New Zealand conservation estate*

2.45 pm-5.00 pm **Lessons from the Schedule 4 Debate: Where Next?**

Chris Baker, Straterra, *Don't let a few facts get in the way of a good protest*

Quentin Duthie, Royal Forest & Bird Protection Society of NZ, *The schedule four debate: valuing, protecting and sustainably managing natural resources*

Ken Piddington, Institute of Policy Studies and former Parliamentary Commissioner for the Environment, *Minerals: Assaying the Minefield*

Institute of policy studies

Registration
Institute of Policy Studies
Victoria University of Wellington
PO Box 600
Wellington

E: ips@vuw.ac.nz

T: +64 4 463 5307

For more details visit www.ips.ac.nz

There is no cost for registration