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

POLICY Quarterly

Volume 6 – Number 2 – May 2010

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ISSN: 1176 - 8797 (Print)
ISSN: 1176 - 4325 (Online)
Volume 6, Number 2 – May 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

Nearly 2,400 years ago Plato in *The Republic* grappled with the dilemma of how a society could secure good government and avoid the evils of military dictatorship, oligarchic rent-seeking, mob rule, and tyranny. His solution was to develop a class of Guardians, philosophically trained to identify and pursue the good, from amongst whom rulers, or a philosopher king, would be selected. From philosophy should come the fundamental guiding principles of good government, and the Guardians' role was to prevent political power from being misused in breach of those principles.

Down the centuries since, two questions have recurred: who, in a platonic ideal state, might guard the guardians and certify the correctness of philosophy itself; and how far can democracy (which Plato mistrusted because of the tendency for populist hysteria to overwhelm sound philosophy) be made compatible with pursuit of the good for society?

The quest for good government is therefore nothing new, and history has sparked a wide range of institutional answers to the challenge outlined in David Caygill's contribution to this issue of Policy Quarterly, namely, how to 'identify the key principles that governments should honour and examine actions openly against them'.

Modern democratic constitutions generally address this issue by installing checks and balances, so that each of the institutions of government is held to account in some way, and at least some non-elected repositories of philosophical wisdom are preserved. The legislature, executive, Crown, judiciary, media, and the wider voting public interact under constitutional rules and conventions that have evolved into a distinctive mix in each democratic polity.

One familiar device for holding government to account is to have two chambers in the legislature, either elected on different franchises as with the US and Australian Senates, or with one chamber (largely) appointed as in the British House of Lords and the New Zealand Legislative Council which was abolished in 1951. Another approach is to give an independent judiciary the role of interpreting the meaning and implications of legislation passed by the legislature. Yet another is to enshrine the independence and integrity of separate institutions such as the news media, and the role of the university as 'critic and conscience of society' – as specified in Section 162 of the Education Act (1989).

According to Caygill, 'governments and parliament ignore fundamental principle' on 'too many occasions' in New Zealand. If so, can this deficiency be remedied by establishing, as he puts it, 'a set of processes that will help invigilate our parliamentary system without undermining its authority'?

The Regulatory Responsibility Taskforce, which reported to the government in September 2009 and of which Caygill was a member, recommended adoption of a Regulatory Responsibility Bill that would allocate to the judiciary the task of evaluating legislation and regulations against pre-specified 'principles of good legislation', and require government officials to subject legislative and regulatory proposals to a new set of political and economic tests.

The papers in this issue of *Policy Quarterly* provide a range of responses to the Taskforce's recommendations. All but two – those by David Caygill and Graham Scott (who chaired the Taskforce) – were presented at a one-day symposium organized by the Institute of Policy Studies in February 2010. The majority of the papers are critical of the core proposals advanced by the Taskforce. In particular, concerns are raised about the content of the suggested principles of responsible regulation, the risk of conflict and overlaps with existing statutes such as the Bill of Rights Act (1989), the costs of adding yet more procedural layers to the legislative process, and the notion that the proposals could be effective without undermining the authority of Parliament.

Some of the papers also suggest other, potentially less contentious, ways of achieving the main goals of the Taskforce – such as greater adherence to the Legislation Advisory Committee's guidelines on the process and content of legislation, and amendments to the Bill of Rights Act to strengthen the protection of property rights. Other papers suggest alternative ways of approaching the whole question of what good government requires, and how to pursue it. Brian Easton advocates applying a standard 'Murphy test' to all policies to establish what is to happen if a policy fails. Jane Kelsey argues for a much wider range of views than those represented on the Taskforce to be brought to bear in order to build a wide consensus before undertaking major constitutional changes. Several papers oppose bringing the notion of 'takings' into New Zealand law, especially in the unusually strong form ('takings or impairment') advocated by the Taskforce, and point towards a more pragmatic, case-by-case approach to the issue of when the state should or should not limit the rights attached to private property. Further options might equally be worth considering, including a possible extra-parliamentary legislative Ombudsman; a re-thinking of the role of the Governor-General in relation to legislation; a revival of high-quality, non-commercial, public-interest-focused media and independent non-partisan think-tanks; and the recurrent question of whether New Zealand should return to a two-chamber Parliament.

The Minister of Local Government and Regulatory Reform, Hon Rodney Hide, has expressed his hope that Parliament will make early progress on the Regulatory Reform Bill. But the proposed legislative reforms are highly controversial and raise issues of major constitutional and political significance; they deserve the widest possible informed public debate. The Institute of Policy Studies presents this issue of *Policy Quarterly* as a contribution to that debate.

Geoff Bertram and Jonathan Boston