

Book Review: Bridled power: New Zealand government under MMP

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Title: Bridled power: New Zealand government under MMP

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August 1998 was a month of turmoil in New Zealand (NZ) politics. The 22-month old National Party – New Zealand First Party coalition, always an unlikely pairing of political enemies, dissolved. The Prime Minister and leader of the National Party, Mrs Shipley, dismissed her Deputy Prime Minister, Mr Winston Peters, the leader of New Zealand First, which then itself disintegrated into two factions. This domestic crisis made it impossible for the Prime Minister to attend the 1998 South Pacific Forum which was held in Kiribati. With just 44 seats in the 120 seat legislature, the National Party needed the support of independent members and other small parties to continue in office. As this review is being written, on the 8th September 1998, I have one ear tuned to Radio New Zealand, and Mrs Shipley's minority government has just received a 62-58 confidence vote in Parliament.

Such unheard of turmoil is fallout from major changes to the parliamentary electoral system voted for in a 1993 referendum, with 54% of a somewhat undecided populace in favour (p. 11). The new system, implemented in the 1996 general election, is a mixed-member proportional (MMP) system: 60 of the 120 seats in Parliament are for general constituency members, 5 seats are for Maori constituency members, and the remaining seats are shared between the parties such that the total number of seats a party has is in proportion to its share of each voter's second party vote. The political implications of this electoral reform are matched by significant changes in the way Parliament and government will operate to create law and to administer the country.

Bridled Power is a first-class handbook detailing these developments. Although published in 1997, the book was written before the first MMP government of 1996, so it necessarily adopts a prospective outlook. It admits to being speculative in places (p. 16), even somewhat premature: "*How far MMP will change the system can be judged only after we have had some experience with it*" (p. 308), but it is still an excellent contribution. It is introductory yet comprehensive, detailed and technical yet full of interest. The authors are clearly well-placed to write about NZ government and politics: Geoffrey Palmer is a former NZ Prime Minister and long-time legal academic and practitioner, and Matthew Palmer is a lawyer in the highest ranks of the public service. A hint that they make up a father-and-son team is given on p. vii.

The authors consider that "*the dominant theme of this book has been the changes ... wrought by the introduction of the new electoral system, MMP*" (p. 308). Certainly, the impact of MMP is assessed wherever relevant, but the strength and value of the book also lies in it being a highly readable overview of the total system of government and administration of NZ. The reader is guided through all levels of the government of the country, especially in the context of the major changes in the NZ public and private sectors of recent times. MMP is more recent, but during the 1980s the Treaty of Waitangi found new status, and widespread reforms of the state sector involved the corporatisation and often, subsequent privatisation, of what used to be essential public services and state assets. This book helps the reader locate the role of government and

the law within the paradigm of new administrative structures like SOEs (state-owned enterprises) and CHes (Crown health enterprises).

The NZ citizen is in mind, and non-specialist readers who want to learn about law and political power in NZ will find the book very accessible. Indeed, some sections could be very useful in educational contexts, such as Chapter 13 which deals with avenues of complaint available beyond the courts. It gives a survey of the role of the Ombudsmen, Police Complaints Authority, Human Rights Commission, Race Relations Conciliator, Privacy Commissioner, and other independent bodies dealing with health and disability, the environment, and children.

No doubt this book, which appeared in earlier editions as *Unbridled Power?*, is already an important resource for students of constitutional law and political science, as well as the wider political and legal community. It now appears in substantial revision with the new title, and will gain an enhanced role as a key text on the polity and governance of NZ. Students of political systems will appreciate the way the book highlights important distinctives of NZ's version of Westminster government, e.g. with regard to the extensive role of parliamentary select committees (p. 138). How the select committee system evolves in the new parliamentary environment is one of the fascinating issues raised by MMP (p. 141).

The book evidences a wider philosophical theme as well. With experience at the highest levels, the authors are widely concerned about *"the coercive power of the state in a civilised society"* (p. 276). Before MMP, *"parliamentary sovereignty was effectively wielded by the Cabinet-the executive"* (p. 128), and NZ had a *"combative adversary style of politics in which...effort [was] wasted in perpetual party conflict and constant electioneering"* (p. 130). Also, the Westminster system as it existed was deficient in some regards: it had *"a systematic bias in favour of a single party obtaining a majority of parliamentary seats"* (p. 7), and towards having a single party only in opposition (p. 24). Since 1954, every government in NZ was actually voted for by fewer than half of all voters, and some had less voter support than the party in opposition (p. 11). No-confidence motions had no prospect of success, and *"the governing party and its Cabinet directly dominated the executive and legislature, and could overrule...the judiciary"*. NZ had the *"most streamlined executive decision-making machine in the democratic world"* (p. 3), which led to a *"dangerous concentration of powers in the central government"* (pp. 9-10).

The authors now champion MMP as bringing this era to an end. MMP will produce a system *"more encouraging of democratic representation and dialogue"* (p. viii) with a government that *"will be more democratic and more accountable than before"* (p. 3). The constitutional power of Parliament will be *"revitalised by MMP"* (p. 128), and *"MMP will usher in a new approach in which bargaining and co-operation replaces confrontation"* (p. 130). MMP means that a single party is now unlikely to control Cabinet and the Parliament, bills will require much more consensus before being approved as law (p. 151), and there will be enormous changes in the filtering down of power (p. 13). A compulsory review of MMP is mandated for June 2002, but the authors believe that NZ will not reverse MMP at that time. The most compelling factor is the greater democracy it provides, redressing the previous imbalance which sacrificed representativeness for efficiency (p. 309).

Many of the practical implications of MMP are noted. For example, it is unlikely that a party will receive the 48% of the vote needed to form a majority government. Consequently, *"one of the Prime Minister's greatest tasks will be forming and maintaining a coalition or gathering support for a minority government and keeping it together"* (p. 54). This certainly reflects the experience of the current Prime Minister, the first to form a government under MMP.

This book deserves attention because of the authors' ability to read the political scene. Previous editions proposed both an alternative electoral system like MMP and the introduction of a Bill of Rights, and both eventuated. So what is ahead now? Developments will occur in local government, Privy Council appeal will be dispensed with, and republicanism will get onto the agenda. Treaty of Waitangi issues will continue to be important. However, above all, and encompassing some of these other factors, the most pressing need is for a *"new constitutional settlement in New Zealand"* (p. 312). A sample constitution for NZ was prepared in 1977 by Don Paterson (now at the School of Law, University of the South Pacific; p. 312), but NZ still has never had a single foundational document as a form of higher law. For *"illustrative purposes"* (p. 314) the authors include a document that represents their idea of a NZ constitution. It includes the Maori and English texts of the Treaty of Waitangi as a schedule.

Non-technical readers will encounter a few dry patches, such as lengthy material dealing with what is a legitimate refusal to supply information as requested under the Official Information Act 1982 (pp. 187-193), as well as some legal sophistry about questions such as when is a meeting not a meeting (p. 215), but generally the text is full of interest. The book reflects the NZ experience, alluding to many turning points in the country's political and legal history. There is reference to the *Rainbow Warrior* incident and subsequent cases heard at the International Court of Justice (p. 293), and the Cave Creek tragedy is referred to in the context of discussion about ministerial responsibility (p. 74). The *Winebox* affair is mentioned several times, particularly with reference to commissions of inquiry (p. 247), and further back in time, events like the 1951 Waterfront dispute are noted for their legal implications. Contemporary matters include reference to modern Maori land claims (e.g. p. 283). There are many other homely Kiwi references such as mention of the *"Toheroa Regulations 1955"* (p. 181) and a 1994 regulation changing the whitebait season on the West Coast of the South Island (p. 179).

Inclusion of other somewhat incidental material, resulting from one author having sat at the seat of power himself, adds colour: *"Cabinet meetings start at 10:30am on a Monday"* (p. 66), *"ministers sit around an egg-shaped table"* (p. 67), and *"the Parliamentary library expects to respond to around 14,200 enquiries in the 1995-6 year"* (p. 126). More importantly, familiarity with the institutions and committees involved in the law-making process and with the provisions of the *Cabinet Office Manual* and the *Standing Orders* of Parliament greatly enriches the book.

Also, the book is much more than a descriptive survey, as many interesting issues in the exercise of power in NZ are noted. For example, is the law protecting the freedom of speech of MPs inside the House through parliamentary privilege not itself in breach of the provisions of the Bill of Rights (p. 142)? Or, concerning the appointment of judges: does their being appointed by the executive, as at present, go against separation of powers? But a recent proposal whereby the judiciary should itself appoint its judges doesn't sound right either (p. 249ff.).

These issues, and many other matters of governance discussed in this book, are of interest in other modern democracies, such as those found throughout the South Pacific. South Pacific readers will want to relate the New Zealand reform of electoral and parliamentary representation to their own context, where there is growing debate about the imported Westminster system. Pacific nations, straddling the double worlds of tradition and modernity, are still not sure how to govern themselves the Pacific Way, and hopefully they will not be mesmerised into too ready emulation of the NZ MMP experiment. In Melanesian politics particularly, multiparty coalitions are already the order of the day, even without MMP, but in recent times they have been so fragile and short-lived that long periods of detrimental instability have resulted.

Contemporary NZ writing allows greater use of Maori language terms in running text, and this book is no exception. However, insofar as it invites a wider readership, a glossary of Maori terms should be included. Without this, some readers will not understand sentences like *"the Kakapo [bird species] is a world taonga [treasure]"* (p. 286). Similarly, legal jargon cannot always be avoided, but using the term *amicus curiae* 'friend of the court' without explanation in the proposed draft constitution (p. 320) is simply not a good idea.

Just a few errors were noted in the text. The previous title of the book, *Unbridled Power?*, was sometimes given as *Unbridled Power* (p. vii and back cover). On p. 108, *"spent"* occurs instead of "be spent", and on p. 137, the reference to revisions of Standing Orders that took place in *"1985"* reads as if it should be the same set of revisions referred to earlier that took place in *"1995"*. On p. 264, an *"an"* should be *"as"*, and on p. 275, a *"has"* should be *"had"*. Two typos which render sentences incomprehensible are *"Parliament any"* for *"Parliamentary"* (p. 71), and a sentence on p. 264 with the phrase *"executive government"* leaves the impression that material has been omitted between these two words.

The index is useful, but not comprehensive. The three items that I had occasion to search for were 'Palmer', 'Paterson', and 'Standing Orders', and none of these have entries. Full bibliographical references are in footnotes so the volume lacks a dedicated bibliography.