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ENVIRONMENTAL POLICY

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Environmental policy is a fairly recent phenomenon. The environment was first identified as a focus for public policy in 1963, but it was only during the late 1960s and early 1970s that many Western governments started to introduce legislation and agencies with the adjective 'environmental' attached to them.

This is not to say that environmental *policies* did not exist prior to the 1960s. Measures designed to improve the management of resources, to control the adverse effects of productive activities, or to enhance the quality of the human environment are as old as civilization itself. In the nineteenth century, beginning in Britain, governments introduced policies and legislation to control the effects of unbridled industrial and urban development. They included measures to abate pollution and to protect human health.

In New Zealand, prior to the 1960s, environmental policies were introduced on an *ad hoc* basis, and only in response to the most pressing problems. During the 1960s, however, the term '*environmental* policy' was coined to express the need for a comprehensive and integrated government response to environmental problems, given their interdependence.[1] Pollution, the degradation or depletion of resources, the decline of flora and fauna, population pressures, and the deterioration of the quality of life in many areas of the world came to be seen as an 'environmental problematique' that was bigger than the sum of its parts.

This 'problematique' is said to have had a number of causes, including economic growth, capitalism, human greed, social injustice, male chauvinism, ignorance, Western culture, hierarchy and domination, patriarchy, and scientific and technological development. There is a corresponding diversity of opinion over what should lie at the core of environmental policy. Governments have continued to develop a range of environmental *policies* (pollution policy, land use policy, pesticides policy, energy policy, and so on), each largely independent from

the other, but nominally combined under the rubric 'environmental policy'. Thus the idea of an overarching environmental policy has remained a formidable and uncertain challenge.

This chapter discusses the evolution of environmental policies in New Zealand, and the extent to which a more comprehensive environmental policy has evolved. Of all the environmental changes introduced since 1984, at least three stand out: the shift of resource management decision-making towards the corporate sector; the allocation of environmental powers and responsibilities within the bureaucracy; and the Resource Management Act of 1991. Finally, it reflects on the possible directions environmental policy might take under MMP.

The evolution of environmental policy in New Zealand

A starting and defining point of the New Zealand environmental movement was the Lake Manapouri campaign in the late 1950s and early 1960s.[2] Not only was the campaign a success, with the (Labour) government being forced to abandon plans to raise the level of the lake for hydro power generation purposes, it also led to the establishment in 1962 of the Nature Conservation Council, a quasi non-governmental organisation (quango) with the task of advising the government on the environmental effects of development proposals.

However, it was not until the Physical Environment Conference in 1970 that environmental issues began to be treated in any systematic or comprehensive way. The conference was attended primarily by government officials and 'concerned experts' and it resulted in the establishment of the Environmental Council, with a view to advising the government on a range of environmental issues and policies. Despite this initiative, the conference failed to recognise that effective protection of the environment would require major institutional and policy changes.[3]

The first watershed in the development of environmental policy occurred in 1972. In that year, the first global conference on environmental issues was convened in Stockholm. Within New Zealand, the world's first nationwide green party (Values) was formed, the National government appointed a Minister for the Environment, and a new central government agency, the Commission for the Environment, was given the task of coordinating advice to the government on environmental policy. For the first time environmental policy was recognised as a policy area in its own right, and given representation within the government's institutional framework.[4]

Apart from being responsible for advising the government, the Commission was given the task of administering the Environmental Protection and Enhancement Procedures. These procedures, based on the notion of environmental impact assessment first developed in the United States several years earlier, provided for the environmental assessment of development proposals initiated or financially sponsored by the government. Although the procedures

did not have statutory backing, and the Commission had only advisory powers, the assessment process did become the most important aspect of the Commission's work.[5]

Despite these reforms, environmental policy development in New Zealand remained largely *ad hoc*, reactive and fragmented. During the 1970s and early 1980s, the government's resistance to environmental demands, on the one hand, and the burgeoning popularity of the environmental movement, on the other, was the source of growing friction. In the area of forestry, for example, government policies allowing or supporting the logging of native forests clashed with demands for their conservation. Although the government promised a gradual phasing out of such logging, it failed to satisfy an increasingly vocal conservation movement, which demanded an immediate and total ban on all logging of remaining indigenous forests.[6]

The perceived indifference, if not open hostility, of Muldoon's National government towards environmental demands was exploited by Labour in the run-up to the 1984 election. Labour promised significant changes in environmental policy, as well as the reform of institutional arrangements with a view to providing a more effective voice for environmental interests within the sphere of government. In preparing its environmental agenda, Labour relied heavily on the views of key activists within the environmental movement, thereby binding itself to an environmental constituency that had become deeply alienated under National.

Between 1984 and 1990, virtually the whole institutional fabric associated with environmental policy was changed. Initially, the focus of Labour's reforms was on the role of environmental agencies within the government itself (the principal outcomes of which will be discussed later). In its second term Labour subjected virtually all environmental legislation to a 'zero-based' review (the 'Resource Management Law Reform' or RMLR). It resulted in the Resource Management Act (1991), one of the most comprehensive pieces of environmental legislation ever introduced in New Zealand,[7] with the 'sustainable management of natural and physical resources' as its single stated purpose, New Zealand is thus one of the few countries in the world to have the concept of 'sustainability' ingrained in legislation. The Act also provides one of the most comprehensive approaches to environmental assessment, covering projects, plans, regulatory measures and policies, and potentially, all kinds of environmental effects and risks. On paper, if not in practice, it is an impressively integrated approach to environmental management.[8]

In 1995 the National government released a document entitled 'Environment 2010 Strategy', which it hailed as a first step in the direction of the development of a comprehensive, long-term environmental policy. The document goes a long way towards inventorising New Zealand's environmental problems. The government has expressed its intention to have this inventory of environmental problems subjected to a form of systematic risk assessment, as a preliminary step

towards setting priorities. It also emphasises that the formulation of an environment strategy should not be seen as a stand-alone exercise, but rather as an integral part of its broader efforts in strategic policy development.[9]

These initiatives seem to suggest that a more comprehensive and integrated approach to environmental policy development is on its way. However, to what extent this will go beyond rhetoric and symbolism remains to be seen. In the broader scheme of the government's strategic moves, including the formulation of priorities, the 'Environment 2010 Strategy' can be seen as a subservient document, even to the extent of facilitating further growth.[10] This illustrates the point that the 'integration' of environmental values across policy areas does not necessarily imply that these values are given any greater weight than prior to their integration, let alone guarantee that substantive policy development has become 'ecologically rational'.[11]

But it may be possible to gauge the environmental effects of these reforms in a less direct manner, namely, by looking at how they have affected the principal actors, public and private, in environmental management. Given the predominantly institutional nature of the reforms, and the emphasis on changing the 'rules of the game' and the 'playing field' rather than policy itself, the question arises of how these changes have affected the (relative) roles and positions of the main players, and their chances of influencing environmental policy and decision making.

Shifting resource management towards the corporate sector

One of the principal planks of the reforms since 1984 has been to 'roll back the state' and to get 'less government in business and more business in government'.[12] These 'New Right' ideas have led to the selling off of a range of state-owned enterprises, the corporatisation of others, and a general withdrawal of the government from processes of decision-making involving the allocation and management of resources, such as land, water, minerals, and energy resources. Whereas, prior to 1984, the government was directly involved in the management of these resources (for instance, for hydropower generation and the development of other energy resources under the 'Think Big' programme), increasingly it has left decision-making to the 'market'. Coal and gas resources have been privatised, public land put up for sale, and the electricity sector corporatised and split into various branches to create a (quasi-) market situation.

In effect the government no longer has either an energy policy or a land use or water management policy, apart, that is, from their efficient allocation via the market. What happens to these resources is left to the forces of the (increasingly global) market, to supply and demand, and to those with sufficient financial clout (mainly financial institutions and multinational organisations) to exploit resources for profit. In other words, the 'playing field' for resource management policy-making, and energy policy in particular, has become even less 'level' than in the

past (even though the predominant role of the state in the past did not in fact allow for much public input).[13] Increasingly, environmental advocates find it difficult to obtain information about, let alone participate in, resource decisions.[14]

Environmental responsibilities on the bureaucratic 'playing field'

The second major element of the reforms relevant to environmental policy has been the reallocation of responsibilities across central government agencies. Three new environmental agencies have been established: the Ministry for the Environment (1986); the Parliamentary Officer for the Environment (1986); and the Department of Conservation (1987). Together, these three agencies represent a significant advance in the representation of environmental interests. With two ministers (for Environment and Conservation) at the cabinet table, and an independent agency (the Parliamentary Commissioner for the Environment) watching over the performance of the system of environmental management, 'the environment' has now a much better chance of being considered at the top level of decision making.

But a strengthening in representation and numbers does not necessarily imply greater control or influence over policy. The influence and effectiveness of all three agencies in influencing policy development are severely hampered. Constraints on the Ministry for the Environment and the Department of Conservation include structural obstacles to policy coordination, growing demands in the face of static or declining resources, and a lack of influence relative to other government departments. Similarly, the effectiveness of the office of the Parliamentary Commissioner for the Environment is hampered by extremely meagre resources, rising demands, a low public profile and vague constituency, and some ambivalence with regard to what its role should be.

For all three agencies, their effectiveness is also governed by an enduring political climate in which economic goals are given precedence over environmental values, the role of government (and budgets) is kept very tight, and the legitimacy of government 'intervention' continues to be challenged. Perhaps even more deleterious is the extent to which the commitment and performance of the public service has been undermined by persistent claims that government officials and agencies are 'self-serving' and cannot be trusted. Other factors include an increasing reliance on outside consultants, goal displacement associated with the emphasis on quantifiable outputs, and contractual appointments for shorter periods. Together these factors have resulted in a decline in the 'public service ethic' and morale, and a rise in the turnover of personnel.

The Resource Management Act

A third important component of the reform process is the Resource Management Act (RMA). A feature of the Act has been a broadening of public participation in the process of environmental decision-making. Virtually anyone who has a

self-defined interest in a proposal can now make submissions, attend hearings, and appeal decisions. Pre-hearings provide an opportunity for a less formal discussion of concerns and for resolving conflict. Areas of resource management in which public involvement is encouraged include waste and sewage disposal, pest control, land management, and cycling paths. The extent and frequency of public consultation, and the demands on the various parties associated with it, have helped create 'consultation fatigue', a malady which may make the process unsustainable in the long term.

However, the extent of public consultation under the new environmental legislation provides a very limited, and perhaps, misleading, guide to the extent to which the environmental playing field has been levelled. More public participation does not necessarily mean greater public influence. Access to resources, for example, may become a crucial factor when consultation breaks down, and solutions are sought via legal means. Although, in theory, equal before the law, in practice people's powers of persuasion vary according to their ability to retain lawyers and expert witnesses. Recourse to legal action is often prohibitively expensive for community and environmental groups, let alone for individuals on low or modest incomes. The imposition of significant legal damages on such groups is proving to be a further deterrent to court action.[15] Obviously, the very limited availability of legal aid to individuals, and the absence of legal aid to (community and environmental) groups, tilts the playing field in favour of entities such as large companies and other organisations with substantial development interests.[16]

Yet it would be misleading to suggest that the courts always find in favour of developers, and that the RMA serves only their interests. In many cases, the conditions imposed on developments are environmentally meaningful and incur significant costs for proponents. Dissatisfaction with the RMA exists not only among environmentalists and citizens' groups, but also among farmers and developers. Whereas environmentalists and citizens' groups question the way the principle of sustainability is interpreted by consent authorities and appeal bodies, it appears that farmers and developers are dissatisfied with the time-frames for processing applications and with the absence of effects-based planning. Those most satisfied with the Act's implementation are local authorities and government departments.[17]

The way the Act has been interpreted by members of the Planning Tribunal (now Environment Court) has been criticised by one of its principal architects. He argues that some judges have 'lost the plot', and that, in hindsight, it might have been better to abolish the Planning Tribunal altogether.[18] This argument highlights the limitations in resolving environmental issues through the legal system. Many environmental issues are highly complex and science-intensive, as well as strongly value-laden. Their management, let alone resolution, is far from straightforward, and it can be strongly questioned whether legal avenues of

conflict resolution are at all appropriate. The political, socio-cultural, economic, and scientific nature of such issues suggests that they involve much more than the interpretation and implementation of laws and rules, and that their resolution requires alternative (and probably new) ways of collective decision making and conflict resolution.[19]

Despite its shortcomings, it seems that the RMA is here to stay, at least for the foreseeable future. Although some people feel that there is scope for improving and strengthening the legislation, there is very little demand for any significant amendment, and apparently no support for its repeal and a return to the previous highly fragmented legal framework.

Environmental policy under MMP

The introduction of MMP may not be as significant for the future of environmental policy as the growing intensity of the environmental problematique itself, with its ecological, social, and economic (resource) dimensions. Countries with proportional electoral systems are not necessarily doing any better or worse in their environmental policy performance. Some of these, such as the Netherlands and, until recently, Japan, may now seem to lead the way in addressing environmental problems, but only after these problems rose to tremendous heights.

Only in as much as proportional representation allows a stronger articulation of interests than is found in first-past-the-post (FPP) voting systems, or in authoritarian regimes, can it be expected to provide a greater opportunity for environmental interests to be heard. Where the diversity of interests allowed to influence policy-making is relatively small, as in authoritarian regimes, it is more likely that environmental interests will be ignored. By contrast, environmental problems are more readily recognised and addressed in democratic systems of government. Obviously, green parties and environmental interests have a greater chance to be represented in Parliament under MMP than under FPP (although not as great as under proportional systems with no threshold). But the degree of influence which goes with that representation depends very much on the extent of political support (translated in the number of seats) that such a party is able to command, as well as on other political factors (such as whether it occupies a strategic position in Parliament).

Even with significant green representation in Parliament, the implications for substantive environmental policy development are hard to predict. Green Party views need to pass through the Alliance, as well as other parties, to become part of a government programme.

Whatever the composition of future New Zealand governments, however, it seems likely that environmental policy will continue to evolve on the basis of growing demands and pressures, including the catalytic influence exerted by green parties and the green movement as a whole. As a result, mainstream par-

ties may gradually become greener themselves, adopting many of the views and ideas now promoted by the greens.

Ironically, although MMP may allow environmental interests to be better represented in Parliament and government, environmental demands will not necessarily be met more readily or rapidly. Under MMP, environmental demands will normally have to be directed at more than one party to find their way into government policy. The more parties a coalition government is based on, the longer and more troublesome the process of policy formation is likely to become, as a greater diversity of interests will have to be involved and satisfied. To be effective, environmental lobbyists will have to work through a larger number of people, and be even more politically skilful, than at present. The more complex the issues, the more difficult their task will be.

Given these obstacles, environmental (and other) policy development is prone to become even more incremental than in the past. Large-scale institutional reforms, as seen during the last decade, will become more difficult to achieve. New Zealand still has a long way to go for environmental policy to become truly comprehensive, integrated, *and* ecologically rational.

Notes

1 L.K. Caldwell, 'Environment, a New Focus for Public Policy', *Public Administration Review*, vol. 23, 1963, pp. 132-139. This was the seminal work for this concept.
2 R. Wilson, *From Manapouri to Aramoana. The Battle for New Zealand's Environment*, Earthworks Press, Auckland, 1982, pp. 9-15.
3 T. Bührs, 'Working Within Limits: The Role of the Commission for the Environment in Environmental Policy Development in New Zealand', PhD thesis, University of Auckland, 1991, pp. 56–89.
4 Prior to this, environmental policy development was seen as the responsibility of virtually all ministers and government departments. Even when the Environmental Council was established in 1970, the government maintained that it did not make sense to appoint a separate Minister for the Environment, on the grounds that 'the environment' was the concern of all ministers. Although this argument has a modern and plausible ring to it — see, for example, the recommendations in the Brundtland Report (World Commission on Environment and Development, *Our Common Future*, Oxford University Press, Oxford, 1987) — it can be and has been used by ministers and departments to deny any *specific* responsibility for environmental ills, and has prevented the development of more coherent and comprehensive environmental policy.
5 T. Bührs, 1987, pp. 157–215.
6 P.A. Memon and G.A. Wilson, *Recent Indigenous Forest Policy Issues in New Zealand: An Annotated Bibliogrpahy*, Environmental Policy and Management Research Centre, University of Otago, Dunedin, 1992.
7 Although the Act was formally passed under the National government in 1991, it was in essence put together under the previous Labour government, with relatively minor amendments inserted by National. Geoffrey Palmer, one of the principal architects of the Act, sees this as a reflection of a widespread consensus that had built up during the very extensive consultation process that accompanied its design and introduction (G. Palmer, *Environment: The International Challenge*, Victoria University Press, Wellington, 1995, pp. 157-158).

8 R. V. Bartlett, 'Integrated Impact Assessment as Environmental Policy: The New Zealand Experience', *Policy Studies Review*, vol. 12, nos. 3–4, 1993, pp. 162–77.
9 Ministry for the Environment, *Environment 2010 Strategy. A Statement of the Government's Strategy on the Environment.* Wellington, 1995.
10 T. Bührs and R.V. Bartlett, 'Strategic Thinking on the Environment: Planning the Future in New Zealand?' Paper presented at the Western Social Science Association annual general meeting, 26-29 April 1995.
11 R.V. Bartlett, 'Ecological Rationality: Reason and Environmental Policy', *Environmental Ethics*, vol. 8, 1986, pp. 221-39.
12 T. Buhrs and R.V. Bartlett, *Environmental Policy in New Zealand: The Politics of Clean and Green?*, Oxford University Press, Auckland, 1993, p. 91.
13 The assumption was, of course, that the government and government agencies did represent the public interest in their policies, an assumption which has been challenged quite effectively by the New Right as well as by environmentalists.
14 As the Ministry for Energy was abolished with the abandonment of the notion of an energy policy by the government, environmental advocates are reliant on the goodwill of resource owners for their participation in the decision-making process, or forced to use legal avenues to have an input, with all the concomitant difficulties. See G. Chapple, 'Forest and Bird Prepares to do Battle Over Rivers', *The Press*, 29 June 1993, p. 6.
15 G. Chapple, 'Clean, Green and Expensive', *NZ Listener*, 22 July 1995, pp. 18-20.
16 No progress has been made on the introduction of a legal aid scheme for environmental groups, despite initial moves in that direction.
17 B. Ballantine and B. Milne, 'Satisfaction and Ideology: The Resource Management Act Three Years On', *Environmental Perspectives*, no. 7, 1995, pp. 1–3.
18 G. Palmer, 1995, pp. 146, 170.
19 That the degree to which a society relies on litigation to resolve conflicts is to a large extent a question of cultural preference, and not necessarily associated with the level of development or societal complexity, is apparent from the large differences between the United States and Japan in that respect . See M. Jordan, 'Bar Exams Keep Japan's Lawyers Precious', *The Guardian Weekly*, vol. 154, no. 9, 1996, p. 17.