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The Palmer Series collects the papers of the Right Honourable Sir Geoffrey Palmer QC, Distinguished Fellow of the Victoria University of Wellington Law Faculty. The series is sponsored by an anonymous donation, which the Faculty gratefully acknowledges.

Table of Contents

Directions for State Enterprise

Sir Geoffrey Palmer QC, Victoria University of Wellington

The New Public Law: Its Province and Function

Sir Geoffrey Palmer QC, Victoria University of Wellington

The Cabinet, the Prime Minister and the Constitution

Sir Geoffrey Palmer QC, Victoria University of Wellington

What is Parliament for?

Sir Geoffrey Palmer QC, Victoria University of Wellington

[^top](#)

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Directions for State Enterprise"

M. Clark and E. Sinclair (eds.) *'Purpose, Performance and Profit: Redefining the Public Sector'*, 1986
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 17

SIR GEOFFREY PALMER QC, Victoria University of Wellington
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This paper discusses the commercialisation of state trading activities and, in particular, the Government's view for future directions for state enterprises. New Zealand over the years has developed many different enterprises owned by the state and which are essentially of a commercial or trading nature. What we have failed to develop is a set of principles which should guide their management. The state owned enterprises policy aims to occupy that policy vacuum.

Spending on state owned enterprises is often more than estimated at the beginning of projects and can wind up being

redundant at the completion of a project. Many state owned enterprises require more and more administrative expenditure while production and market share is falling. These performances cannot be swept under the carpet. This poor record had meant that the economy as a whole has experienced lower growth and we are all worse off as a result. These organisations have soaked up resources that could have been used more profitably elsewhere. The taxpayer has, over the last 20 years, poured the equivalent of 10 percent of New Zealand's income in 1986 into five major state trading organisations. These are commercial investments made by the Government on behalf of taxpayers. The taxpayer is entitled, as of right, to a return on his or her investment.

The problem behind such massive economic waste is largely to do with decisions made by policy makers – the Ministers – which reflect political considerations. Other unfortunate influences at work are: inappropriate and unnecessary bureaucratic controls; lack of managerial autonomy; unclear and conflicting objectives; a lack of proper accountability; and the organisational structure of state trading activities. These factors all focus on the environment within which public servants are expected to work. The reasons for poor performance are not a result of the quality of state servants. They result from the decision making environment. In view of the need for change, it is not too difficult to conclude that we need to alter the environment surrounding state trading enterprises.

The paper sets out and explains a set of key principles created to alter this environment and improve state owned enterprise efficiency. It also discusses how the Government aims to cushion any adverse effects or social impacts of the policy. The Government will focus on two fundamental questions: are SOEs meeting customer needs in a profitable manner; and are SOEs operating as efficiently as possible?

The paper finishes with a set of questions regarding the above, put forward to the author from various commenters, and the author's response.

"The New Public Law: Its Province and Function"

22 *Victoria University of Wellington Law Review* 1, 1992

Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 18

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This article is the first of a series of lectures given to public law students at the University of Otago. This lecture ranges widely over themes and developments in public law, emphasising the practical importance for lawyers of studying and appreciating the political and parliamentary process. The author is highly critical of the narrow and traditional view of public law propounded by Dicey and the undue emphasis on the courts at the expense of Parliament, Cabinet, caucus and governmental decision-making. He draws attention to the global nature of public law, the need to be familiar with the constitutional framework of other countries, and New Zealand's international treaty obligations.

The law enterprise in New Zealand universities needs to develop a more ambitious approach, more interdisciplinary, more expansive and more policy oriented. In all the writing from both the stables of political science and law, there is little consensus. There is an emerging incoherence in the political process which is beginning to bring us to a new era of public law in New Zealand. There is a need for strong public institutions based on clear and ascertainable principles, but the structure of New Zealand's constitutional arrangements is conducive to a drift toward constitutional deconstructionism. What is public law? In the traditional understanding it is about the distribution and exercise of power in the state, or public power. Public law in contemporary New Zealand parlance is both constitutional law and administrative law. It is the mainspring from which all the other law flows. It sets out the ground rules on which the whole of the society and the whole of the legal system works. Public law is, from a practical point of view, extremely important. It is about the legislative process and involves international obligations which play an increasingly important part in shaping our domestic legislation.

Public law in New Zealand has to deal with the sprawling mass of reality about how public decisions are made in New Zealand. Who makes them? What rules must be followed? How can decision-makers be influenced in the content of those decisions? At its broadest, public law in New Zealand is about policy outcomes. The subject needs a new angle of approach – one which is relevant to the law practitioner in the real world. The new focus for lawyers and public law should be on policy outcomes. It comprises the making of carefully crafted arguments which can alter policies while they are in the gestation period, adding to the effectiveness of parliamentary scrutiny of those policies, altering the application of the policies to specific cases within the executive branch of government, providing input to the legislative process to increase the quality of legislation and ensuring client's interests are fully taken into account within the process.

We have a simple, but at the same time, subtle and complex system of government. It is not merely in respect of New Zealand that our conception of public law fails. It fails also if that conception is restricted to New Zealand. Public law is not immune from globalisation. We cannot restrict ourselves anymore to the content of the law in New Zealand because that is not the way that law practice is evolving.

"The Cabinet, the Prime Minister and the Constitution"

4 *New Zealand Journal of Public and International Law* 1, 2006

Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 19

SIR GEOFFREY PALMER QC, Victoria University of Wellington

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Although the mixed member proportional (MMP) electoral system in New Zealand has changed the context in which Cabinet operates, the Cabinet system has adapted to meet the challenges of diverse parties within government. Techniques developed to deal with coalition and confidence and supply agreements, and changes in management style,

have not diminished Cabinet's coordinating and control role to any appreciable degree. The prime minister is the key manager in the process because the prime minister must manage the agreements that keep the government in office. The essential feature of MMP New Zealand is that power has to be shared, and it is the role of the prime minister to decide under what conditions. The relative fluidity of New Zealand's constitutional arrangements coupled with their inherently political character means that the prime minister is the most important actor in the New Zealand constitution. It is the prime minister who is the major player within the executive government and who has within his or her range of responsibilities making the constitution work. This paper explains how Cabinet government works including constitutional conventions, both written and unwritten, such as the Cabinet Manual 2001.

"What is Parliament for?"

[2011] *New Zealand Law Journal* 378

Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 20

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Seldom do we stop to ask what is the purpose of Parliament? What are its functions and how does it carry them out? If we do not try and answer these basic questions, Parliament is at risk of failing to focus on its fundamental purposes and functions. The Review of Standing Orders has made numerous recommended changes for Standing Orders, some important and which will improve Parliamentary function. What is lacking, however, is any analysis of what the purposes and functions of the Parliament are and how it can best go about achieving them. The response of the Standing Orders Committee is inadequate to meet the needs faced by the House.

Thanks to the mixed member proportional system, diversity of representation in Parliament is greater than was previously the case. One would have thought that this wider representation would have enhanced the respect in which Parliament is held in the community. But the behaviour of MPs and the performance of Parliament do not engender feelings of widespread respect. But while relentless criticism of public institutions can be helpful in improving their performance, it can be damaging as well, by exaggerating problems without bringing to public attention good work that is done. Unless there is adequate communication between the governors and the governed, democratic accountabilities break down. The lack of job descriptions for MPs creates further difficulty. The classical function of representing one's electorate has become masked in recent years. MPs can easily fall into the trap of being spread too thinly over a range of functions so that none can be performed adequately.

Parliament's first function is to provide the government, determine its identity and provide it with confidence and supply. Parliament must be able to produce stable government. Nothing in New Zealand constitutional arrangements indicates that Parliament is a forum for party political contest, but increasingly, that is what it has become. Political jostling is a poor substitute for real efforts to hold government to account. Not enough attention is given to the tasks of government and serious probing of policy, and too much media attention is focused on political sensation and trivia.

The core purposes of Parliament making law by passing legislation, approving the levying of taxes and deciding upon government expenditure are vast tasks. Parliament must take its constitutional responsibility as supreme lawmaker much more seriously in order to protect the fundamental values of the rule of law. We are in the midst of a massive legislative logjam; the inescapable conclusion is that the New Zealand House does not sit enough for the work it is being asked to do. While the changes to Standing Orders go some way in repairing these issues, more radical measures are called for. In blunt terms, the Parliament has to work harder. Constitutional and parliamentary fundamentals must be upheld.

[^top](#)

About this eJournal

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Judicial Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the **Law School** has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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