

EMBARGOED UNTIL 7.30 P.M. TUESDAY 22 JUNE 1993

VISION 2020 : DIRECTIONS FOR NEW ZEALAND

REFLECTIONS ON ELECTORAL REFORM

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**AUCKLAND
22 JUNE 1993**

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My starting point for some personal reflections on electoral reform is the work of Sir Karl Popper on the nature of democracy. Popper, who worked for a time in New Zealand, first set out his thinking in extended form in one of the 20th century's most important books, *The Open Society and its Enemies*, published in 1945. He revisited the issues in a 1988 article in *The Economist* which should be required reading for anyone interested in the fundamentals of the electoral reform debate.

For Popper, the fundamental issue is the proper concept of democracy. He contrasts two very different theories of democratic government.

One school of thought reflects the classical view of how a system based on the rule of the people should operate. Popper points out that from Plato to Karl Marx, the fundamental problem was always: who should rule the state? For Plato, the answer was simple and naive: 'the best' should rule. If possible, 'the best of all' alone; next choice, the best few, the aristocrats, but certainly not the many, the rabble, the demos. For the Athenians, the question 'who should rule?' was the same, but the answer was the opposite: the people, the demos should rule. And for Karl Marx the question had not changed. "Who should rule," he asked, "the good or the bad - the workers or the capitalists?"

Popper explained that the concept of democratic rule by the people leads naturally to a proportional representation system of government:

"The old theory and the belief that the rule of the people, by the people, and for the people constitutes a natural right, or a divine right, form the background of the usual argument in favour of proportional representation. For if people rule through their representatives, and by majority votes, then it is essential that the numerical distribution of opinion among the representatives mirrors as closely as possible that which prevails among those who are the real source of legitimate power: the people themselves. Everything else will be not only grossly unfair but against all the principles of justice."

Popper contrasts this view with what he regards as a more realistic theory of democracy. He argues that a different problem should be recognised as the fundamental problem of rational political theory:

"The new problem, as distinct from the old 'who should rule?', can be formulated as follows: how is the state to be constituted so that bad rulers can be got rid of without bloodshed, without violence?"

The Westminster systems of government, Popper points out, adopt what is the simplest solution to the new problem - that is, the principle that the government can be dismissed by a majority vote. For some issues, for example the amendment of constitutional provisions, a 'qualified' majority of two thirds or more may be required, but the point remains that change occurs by majority decision. The essence of this view is that election day is:

"... a Day of Judgment; ... a day when a responsible government stands to account for its deeds and omissions, for its successes and failures, and a responsible opposition criticises this record and explains what steps the government ought to have taken, and why."

Let me restate Popper's argument in a slightly different way. Westminster or first-past-the-post systems start with the notions of accountability and clear demarcation of power. Voters are offered a forcing decision which is likely to place parliament and the cabinet in the hands of one party or the other; the victorious party is then directly accountable to the voters. The electoral mechanism defines a demarcation of power and a form of representation follows as a secondary consequence.

Proportional representation, on the other hand, builds representation into the fundamentals of the system. The electoral mechanism first ensures that different opinions are represented in parliament. A demarcation of power (e.g. a coalition government) follows as a secondary consequence from this distribution of representation.

Which electoral mechanism is more 'representative' depends on our definition of this slippery concept. Much is made of the point that, under first-past-the-post, governments are frequently elected with less than 50 percent of the vote. The contrary point, however, is that in the coalition governments that usually result from proportional representation, minority parties can exercise quite disproportionate power over all decisions. A party

supported by, say, 40 percent of the voters may decide some matters and one supported by 10 percent or fewer may effectively decide others. Business is often done by trading particular policies, not by moderating views on policy in general.

Under proportional representation, it is therefore likely that actual policy outcomes will be less representative, precisely because the decision-making process represents minority opinion to a greater degree. By contrast, outcomes of Westminster systems are more likely to reflect the preferences of the average or median voter. Arguably, the case for a representative outcome is stronger than the case for a representative process. Put simply, with Westminster systems you have a greater chance of knowing what you are buying, and you are better placed to reject it next time round if you don't like what you've bought. The Royal Commission simply assumed that a proportional allocation of legislative seats is a more representative concept, but this conclusion is quite unwarranted.

Popper goes on to emphasise two further practical consequences of a system of democracy based on proportional representation.

First, he points out that proportional representation confers on political parties a status that they would not otherwise attain. Instead of a member of parliament being personally responsible to voters, she or he must show prime loyalty to a party. Party bosses come to wield great power, and parties occupy centre stage in the system of government.

Second, proportional representation performs weakly on the decisive issue of how to get rid of a government by voting it out of office. With coalition governments, there is reduced responsibility for all the parties in the coalition. On election day, as Popper puts it, "none of the parties is dismissed, none is convicted." A loss of votes is seen as a temporary fluctuation in popularity and in time "people become used to the idea that none of the political parties or their leaders can really be made accountable for their decisions."

Popper acknowledges that under a system which normally throws up two main political parties, the formation of other parties is more difficult. But it is not impossible and, more importantly, opinion within the main parties is continuously changing in response to shifts in electoral opinion. A party is

liable to take an election defeat seriously, and after two or three defeats the search for new ideas may become frantic. By contrast, parties in a proportional representation system tend to be more ideologically rigid, responsibilities are more blurred, and there is less self-criticism after an election defeat.

"In practice, then," Popper says, "a two-party system is likely to be more flexible than a multi-party system, contrary to first impressions."

Another charge laid against systems of proportional representation is their complexity. Even in Germany, a well-educated country where the system has been used for many years, the workings of the mixed-member system are not well understood.

We have seen evidence of this problem recently in the electoral reform debate. There has been much confusion over the key properties of alternative systems.

One case in point is a contribution by Donal Curtin who criticised the first-past-the-post system on the grounds that it provided few checks on executive power and was prone to chronic policy lurches. His preferred version of proportional representation was the single transferable vote system, but he also argued that MMP would be superior to our current system.

I shall deal with the specific criticism later, but the point I want to make here is that the essential properties of STV and MMP are as different as chalk and cheese. STV focuses attention on local issues and weakens the role of political parties. Its incentives are to serve local constituents rather than to check the executive. MMP transfers power away from the local level to the centre, and strengthens political parties. Arthur Scargill, the leader of Britain's National Union of Mineworkers, has highlighted the centralist character of proportional representation by describing it as "a fundamental socialist concept which I have supported for over 35 years." Simultaneous support for STV and MMP is an intellectual contortion of some magnitude.

A more striking example of confusion was the uproar that followed Peter Shirtcliffe's advertisement following the referendum in Italy on a proposal to abandon that country's relatively 'pure' form of proportional

representation in the upper house. He was lambasted for describing the Italian vote as a move to first-past-the-post. No less an authority than Sir Kenneth Keith, a member of the Royal Commission on the Electoral System, said that in fact Italy appeared to be moving toward an MMP system, "so it makes me wonder whether Mr Shirtcliffe got it totally back to front." Colin Clark of the Coalition for Electoral Reform climbed on the same bandwagon.

My purpose here is not to debate the precise wording of Mr Shirtcliffe's advertisement but to examine what the lawyers would call the materiality of the issue. The key point to focus on is that MMP is a genuine proportional representation system. The fact that 50 percent of the seats (in the Royal Commission's proposal) are constituency seats does not alter its essential properties. The vote for the party list is the one which determines the composition of parliament. If, for example, a party obtains 30 percent of the constituency seats and 40 percent of the list vote it is awarded enough seats to bring its total seats up to 40 percent. MMP is not a hybrid system comprising a category of constituency seats and a category of party list seats elected independently. Therefore its properties can rightly be contrasted with those of a first-past-the-post system.

Now consider Italy. The referendum proposal which succeeded was that three quarters of the seats in the Italian senate should be filled under first-past-the-post rules, with the remaining quarter being elected by the current proportional system. The fact that all the wire service reports summarised the decision as a vote for first-past-the-post should have been enough to prevent Sir Kenneth and others from jumping to the conclusion that Italians had voted for MMP. They were confused by the fact that the new system will introduce constituency seats, where previously these did not exist. But the crucial point, which the Italian Embassy has confirmed, is that the outcome of the vote for the party list seats will not determine the total composition of the senate if the referendum outcome is passed into law. The results of the constituency seats and the list seats will be determined independently. This is emphatically not an MMP system.

Technically, what Italy has voted for is a supplementary member system, which was one of the options considered by the Royal Commission and included in last year's referendum. Political scientist Alan McRobie has described SM as:

" ... a hybrid electoral system - predominantly majoritarian (first-past-the-post) but with a dash of proportionality grafted on through the addition of a small number of seats filled from a list of candidates prepared by political parties. ... It is *not* (McRobie's emphasis) a proportional representation system"

The Royal Commission in fact considered a system identical to that proposed in Italy under which three quarters of the parliament would be elected from single-member electorates and one quarter from party lists. It rejected the option on grounds which are supported by other commentators, namely that it would do little to change the present system. As McRobie puts it:

"Although SM would help minor parties to gain meagre representation in parliament it would not really alter the way parliament works in any significant way because, except in the most exceptional of circumstances, the party winning most constituency seats would still have a clear parliamentary majority."

I conclude that if the Advertising Standards Complaints Board finds against Mr Shirtcliffe, it will be a triumph of technicality over substance. It is, in fact, his critics who have scored a spectacular own goal, and who have highlighted in the process the daunting problems of understanding a complicated system like MMP.

The Italian decision also indicates, incidentally, how an important argument in the electoral reform debate should be disposed of. If an unqualified first-past-the-post system is regarded as 'unfair' on the grounds that governments are often elected with majorities of less than 50 percent, the logical response is to advocate a variant such as SM or preferential voting. The criticism does not provide a logical basis for advocating a fully-fledged proportional representation system.

A convenient source of the arguments for MMP is a recent address by Sir Geoffrey Palmer. One is the 'fair representation' argument which I have already dealt with. The key responses are that a system which allows parties reflecting minority opinions to hold pivotal positions in a government is more unfair, given that the emphasis should be placed on representative outcomes, and that the criticism does not logically point to a move to MMP. But MMP is unfair in other ways as well. For example, it disenfranchises

independent candidates for the half of the parliament that is reserved for party list seats. Moreover, it can produce curious results. To take an extreme case, if a party won all the constituency seats and 50 percent of the vote for the list seats, it would gain no additional seats under the party list allocation which determines the overall composition of the parliament. This is hardly a fair outcome.

Sir Geoffrey puts forward four other arguments.

- *Executive government in New Zealand is too strong*

Sir Geoffrey's charge of unbridled power undoubtedly had force when it was first laid in the 1970s, but its repetition today fails to recognise the enormous changes since that time which, in my view, have significantly weakened it. While some of these have been of a constitutional nature such as the Official Information Act and the Bill of Rights, the much more important ones, which constitutional lawyers perhaps overlook, have been measures such as the repeal of the Economic Stabilisation Act, the removal of exchange controls and the floating of the exchange rate, the Reserve Bank Act, the State Sector Act, the Public Finance Act and the general opening up of the economy. All these impose strict disciplines on political decision making which were simply not there a decade ago. There are obvious ways of going further to reduce executive power, such as a reduction in the size of the cabinet, further parliamentary reform, and moves towards a fiscal constitution. But we do not need proportional representation to protect us from the kind of policy swings that Donal Curtin fears, such as a return to Muldoonism. The move from closed to open economies has occurred regardless of political systems, as Eastern European experience shows, and it is safe to predict that far more powerful influences than voting systems will determine future policy trends.

- *MMP would reduce confrontation and improve politicians' behaviour*

Anyone with even a nodding acquaintance with the fractious nature of European politics will find it hard to take this claim seriously. In Italy's case there have been fist fights in the chamber. It is a standard

analysis that, under proportional representation, parties are more ideological, less compelled to have regard to median voter opinion, and driven to more extreme positions in the political spectrum. This tendency is abundantly clear in much of continental Europe today. At home, one of the most prominent supporters of MMP, Michael Laws, uses language like "mad monetarists," "lunatic right" and "free market yobbos" to label opponents like those pressing to remove the monopoly on apple marketing. He also leaks memoranda from his colleagues. Dreams that MMP will usher in an era of warm fuzzy political cooperation are just that - dreams. We have to look elsewhere for solutions to these problems.

- *Manifestos would not need to be followed*

Sir Geoffrey writes: "under MMP manifestos would be a starting point for negotiation and not a prescription for action, and that is the way it should be." This claim at least honestly accepts the criticism that proportional representation institutionalises deal making and promise breaking after elections, but it is a rather breathtaking response to public concerns about such behaviour. Sir Geoffrey points out that manifestos tend to be drawn up by party activists and contain wish lists which are unable to be financed and create unrealistic expectations. Yet the public's concern is surely to restore integrity to the relationship between voters and politicians, not to weaken it further. People want political parties to mean what they say in manifestos, and to hold governments accountable to them. This imposes disciplines on what is promised - as we can observe in Mike Moore's current claim to be New Zealand's "least promising politician" - and routine promise breaking is unlikely to be a sustainable political strategy. Allowing manifestos under MMP to become "a starting point for negotiation" would be a recipe for heightening public concerns about political arrogance and lack of accountability, in my view.

- *"MMP can put the breaks on, slow the system down and require some mature deliberation"*

Sir Geoffrey can rightly point to examples of overly hasty law-making - including his own - but this is hardly a comprehensive analysis of

the problem. Norman Kirk could equally validly complain of "paralysis by analysis." There are obvious direct solutions to the problem of rushed legislation, such as requiring ordinary bills to lie before the house for longer periods. Electoral reform is a crude and indirect solution. The problem with proportional representation is that it is likely to put the breaks on to the point of total inertia in the face of mounting problems. This is the experience in Europe where countries like Germany, Italy, Belgium and Sweden are in deep economic difficulties. It is also the case in Europe that the emergence of an elite of professional politicians with a virtual monopoly on political office has resulted in widespread party-political corruption as well - the system is more easily manipulated by those with power and resources. The charge against proportional representation is only partly one of instability - the frequent rotation of governments. The more telling charge is one of political paralysis, with one look-alike government following another, and none strong enough to confront the problems and purge the system until the lid blows off.

Proportional representation systems are by no means the democratic norm. They are mainly to be found in continental Europe and Latin America. First-past-the-post systems operate in Britain, France, the United States, Canada, Australia, India and many other places as well as New Zealand. For all their faults, they have stood the test of time much longer than proportional representation systems, and they have not delivered an inferior economic performance.

To my knowledge, no country other than New Zealand is seriously considering a move to proportional representation, and the traffic appears to be in the opposite direction. France adopted proportional representation briefly in 1985 and returned to majority rule a year later. Italy's recent referendum on the election of its senate is expected to be followed by a decision to scrap proportional representation in its lower house. There are calls for similar moves in Germany, Sweden and Japan. Overseas observers have been typically surprised and concerned that New Zealand may go down the proportional representation road.

It will be clear from what I have said that the prime issue in the electoral reform debate is not, in my view, the economic policy directions that New Zealand is likely to take. Changes in economic thinking and practical

experience are much more powerful factors than voting systems in determining economic policies. Current directions in New Zealand are in line with worldwide trends and are unlikely to change. In Germany, the free market party, the FDP, has held the balance of power in most of the post war period. In New Zealand, the emergence of a similar party is not beyond the bounds of possibility. However, calculations about economic policy should not drive the debate on electoral reform. While I believe there would be a deterioration in the quality of economic policy under MMP, the prime case I have made against it, following Popper, is that it would be a less fair, less accountable and less democratic system.

By contrast, I consider that our present system has some fundamental strengths, particularly with the opening up of the New Zealand economy. Decision making is now more disciplined by external and internal checks and balances, but is still capable of responding relatively rapidly to the changes and shocks that a small economy is likely to face. Changing the electoral system would increase uncertainty and make the task of adjusting to rapid ongoing changes in the global economy more difficult.

None of this is to argue that MMP has no positive features, nor that a Westminster system, still less our current version of it, is perfect. I would acknowledge, for example, that an MMP system might encourage good people into politics who would not offer themselves as constituency members, although it might also encourage party hacks. The judgment must be made on balance. There are good reasons for dissatisfaction with aspects of our system and the behaviour of those in it. But there are also grounds for optimism that it can be improved in a way that would not be possible with a change to MMP.

For these reasons I am heartened by the fact that Mr Shirtcliffe's campaign is a campaign for better government, and I hope he will put forward a positive agenda for debate. There is a host of possibilities. One which our organisation's study supported, contrary to the position of Sir Geoffrey Palmer and the Royal Commission, is the wider use of referenda, thus giving the lie, incidentally, to accusations of pursuing an elitist or anti-democratic agenda. Other possibilities include parliamentary reform, constitutional initiatives along the lines of the Reserve Bank Act, improvements in the quality and conduct of politicians, and options for removing issues from the political arena and placing them in the arena of

private decision making. The malaise of politics in the 1990s is not unique to New Zealand. We should explore these more promising options which are being pursued in other countries, not go down a path which would compound the problem.