

TAX DISCUSSION SERIES: PAPER 1

# Governing for the Good: What does it really mean?

by Steve Thomas

maxim<sup>+</sup>institute

First published in August 2008 by Maxim Institute  
PO Box 49 074, Roskill South, Auckland 1445, New Zealand  
Ph (0064) 9 627 3261 | Fax (0064) 9 627 3264 | [www.maxim.org.nz](http://www.maxim.org.nz)

Copyright © 2008 Maxim Institute  
ISBN 978-0-9582976-0-8

This publication is copyright. Except for the purpose of fair review, no part may be stored or transmitted in any form or by any means, electronic or mechanical, including recording or storage in any information retrieval system, without permission in writing from the publisher. No reproduction may be made, whether by photocopying or by any other means, unless a license has been obtained from the publisher or its agent.

Design and typography by Maxim Institute  
Printed in New Zealand by Ideal Print

# TABLE OF CONTENTS

---

EXECUTIVE SUMMARY	v
PREAMBLE - The Social Fabric of New Zealand	ix
SECTION 1 - Introduction: Taxation and understanding the role of government and the community in society	1
SECTION 2 - Tax and Spend: Binge, bloat and ever-expanding government	5
SECTION 3 - Governing with a View to the Common Good	25
SECTION 4 - The Responsibilities of the Government	51
SECTION 5 - The Role and Responsibilities of the Community	63
SECTION 6 - Conclusion and Implications	71
APPENDIX - John Finnis' Seven Basic Goods	75
ABOUT THE AUTHOR/ACKNOWLEDGEMENTS	77



# EXECUTIVE SUMMARY

---

New Zealand is one of the highest taxing countries in the developed world, with a tax to GDP ratio of approximately 36 percent.<sup>1</sup> Treasury figures also show that Crown revenue was \$58 billion in 2007,<sup>2</sup> and is forecast to rise to over \$69 billion by 2012.<sup>3</sup> On the other side of the ledger, between 2007 and 2012, the Treasury expects that core Crown expenses are likely to increase from \$54 billion to \$69.9 billion.<sup>4</sup> It is important to question just what this money is being used for. Are they things the government really should be responsible for? As a rule, the government should only tax people so that it has enough money to carry out its proper tasks, and there is a strong case that local communities should take more responsibility for attending to needs which the government either cannot or should not meet.

For example, among the increased spending, redistributive programmes like KiwiSaver and Working for Families will consume billions of tax dollars over the next five years. These programmes also displace personal spending to the future and reduce incentives for people to generate wealth as they become dependent on the government. While the Minister of Finance, Dr Michael Cullen, has promised New Zealanders tax cuts from October 2008, they will not be associated with a reduction in government social spending.<sup>5</sup> In spite of all of this spending, social indicators are not much better,<sup>6</sup> and government seems to be intervening more in various areas of life, including the family and private enterprise.

This discussion paper presents a conservative framework which outlines the tasks which the government should take responsibility for, and argues that the associative communities of civil society should take more responsibility for caring for the people who live in them. The discussion paper

forms the first in a series which considers the basis for a just, fair and compassionate taxation system for New Zealand and what that system might look like in practice. It stems from a very basic question: "What is tax, and what is it for?" The answer is that tax is what we pay to fund government to do what it should. This discussion paper therefore focuses on defining what the government and the community should respectively do.

This discussion paper also considers other important secondary issues that help to define the boundary between government and community responsibility, such as an ethic for government intervention and the kind of activities which government should properly fund. It proposes that the associative communities and institutions of civil society should take responsibility for many of the matters that are currently a concern of central government, and suggests that when government steps back it allows them to flourish on their own terms.

There are several key elements of the framework, which are briefly described below.

## THE SOCIAL FABRIC EXISTS PRIOR TO THE GOVERNMENT

The associative communities and institutions of civil society—the family, neighbourhoods, churches, schools, voluntary organisations and so on—exist prior to the state. They represent a tapestry of communities and civil institutions which have developed organically. Being the product of habits and practices which have continuity with the past, they bear witness to the social arrangements which are good for people, such as sustaining relationships and mutual obligation. As such, the relationships

within and among them are complex. For example, the family is an organic community which is intimately involved in all facets of life, such as education and providing protection for people. It also performs a range of functions in a way that no other community can, such as displaying compassion and caring for children. In short, associative communities and civil institutions are unique—they are different and stand apart from the state. The good which communities and civil institutions bring can easily be undermined, however, if they are controlled by government.

## **GOVERNMENT PREVENTS HARM TO THE COMMON GOOD**

Proper government should only intervene when this is necessary to protect the common good from harm. The common good is indicated by what proper custom and tradition shows is right and good for a community. Harm is defined by what would cause injury or wrong to the common good. This means that harm should be interpreted in a broader sense, as not only the wrong which people do to one another, but also as actions which could be detrimental to the whole of society. When the government limits its intervention to responding to identifiable harm it reduces the opportunity for it to over-step its proper authority by steering society towards a particular end.

Custom and tradition are also vital for determining the proper limits of government action. This is because the common good is informed and revealed by the custom and tradition of the community which a government represents. Custom and tradition reveal the conventions and social arrangements which have value and warrant protection, and where government activity could cause harm to the common good if it were to intervene.

The principle of subsidiarity is also important for illustrating when a government may intervene. In the interests of justice, it grants government the authority to come to the aid of local communities if they cannot protect themselves from harm. Subsidiarity also stipulates that the state should not be responsible for everything, as the communities of civil society have responsibilities that should be respected, and not interfered with or absorbed. Further, if each civil institution is considered to have primary responsibility for people's welfare within a

particular area of life, this relationship also acts as a barrier against the government interfering in affairs which are outside of its capacity as a public-legal institution.

If a government observes the limitations which custom and tradition and subsidiarity impose on its power, the implication is that it would only intervene to *protect* the common good, not to *promote* it. This distinction is vital for protecting the social fabric. For when government steps in, it can erode the complex relationships and loyalties of the associative communities and civil institutions which are prior to the state.

When the government intervenes to protect the common good from the threat of harm it should only do so for a limited time. This is important so that associative communities and civil institutions retain responsibility for their sphere of life as much as possible. It is also important because the government should not take over the functions and responsibilities of the community.

The role of the government is therefore to protect people and the social order from undue harm, and to ensure that people may pursue basic goods which allow them to be free, like friendship and sociability. The government should only assist with creating the conditions that allow the associative communities of civil society to tend to the people in their midst, as the more vibrant civil association is the less need there should be for a government to step in to resolve conflict or problems of material deprivation. Government has a number of responsibilities following from this role, some of which are discussed below.

## **GOVERNMENT IS RESPONSIBLE FOR PUBLIC JUSTICE AND FOR PROVIDING CERTAIN PUBLIC GOODS**

The institution of government is necessary to protect the peace and security of the wider community, and to provide basic public goods, such as national security, and a basic level of welfare for those who are most in need and have no other means of support. For instance, injustice and conflict can occur among people in society, and so a public-legal institution should exist that can adjudicate between the claims of various groups of people to enact justice under the law. The government therefore has jural authority, which limits its proper tasks to making judgements,

and being responsible for public justice.

When government is oriented to public justice, this does not mean that it should be reduced to the smallest possible size. Instead it means that the government should only perform functions which protect the common good of a community from harm.

Even though a government might fund the provision of public goods like schools and hospitals, which perform vital public functions like educating children and keeping people healthy, these institutions do not perform the same task as government. Each institution should be free to function according to its leading role to avoid it being absorbed by government. Arguments that these institutions should be exclusively run by the government are therefore weak.

### **GOVERNMENT IS RESPONSIBLE FOR FOSTERING ASSOCIATION AND COMMUNITY**

In tending to harm, the government should be socially-minded. It has responsibility for ensuring that there is a public space in which people can engage in free exchange, and in which the role of the entrepreneur and private initiative is valued. Government best protects the common good by standing back, and letting individuals and communities do what they do best. For individuals, this means they should be responsible for matters such as the personal decisions they make, having ownership of private property and generating wealth. For communities, it means, among other things, that they should be able to provide care and compassion for people, and help people to learn such habits as trust and mutual obligation. Nevertheless, the government should have concern for the integrity of the social fabric, understood by the basic human goods and what custom and tradition indicate is good. This may justify a measure of limited temporary government intervention, if the common good is under threat from harm.

For example, this means that the government may set minimum standards for quality in public and private services, and it might also provide a certain level of public health, education and social welfare services if these will protect the common good from being eroded. To prevent the government from changing its role from protecting the common good to promoting it, the government should also be

mindful of the principle of subsidiarity, and moderate the depth of its intervention if it encroaches upon the liberty of the associative communities of civil society. When the government intervenes, it should not become involved in the affairs of communities or civil institutions indefinitely, but look to exit as soon as there is no longer a threat to the common good. This would help to limit government power and protect the social fabric.

### **COMMUNITY IS RESPONSIBLE FOR HUMAN FLOURISHING**

Finally, the community rather than the government is responsible for a broad range of activities which contribute to human flourishing. Among these, but not limited to them, are sustaining the conditions of life that help people to lead fulfilling lives, fostering virtue, cultivating the habits of civil association and being responsible for public liberty. The government should not be responsible for everything, as the communities of civil society have responsibilities that should be respected, not interfered with or absorbed. When the government steps back, communities can supply what people need, since they are closer to the needs of the people in their midst. For example, communities can provide tangible relationships, compassion and care in a way that government handouts, agencies and welfare programmes cannot. This might take the form of local communities assuming more responsibility for the provision of education or social welfare services to meet the needs of their members.

This discussion paper therefore contends that good government is limited government, and that the common good will be most securely protected when the responsibilities of individuals, associative communities and civil institutions to each other are not absorbed by the state. The government's functions should be strictly limited. Its primary function is a jural one, adjudicating among the various associative communities and civil institutions which exist prior to the state.

In order to protect the common good, however, the government may intervene to prevent harm when the associative communities of civil society and civil institutions cannot protect themselves. This is in accord with the principle of subsidiarity, as it is right for a higher authority to assist a lower one in cases where a lower authority needs protection.

For example, this could occur when essential public goods are not being provided that communities depend on for their well-being. In these sorts of cases, government intervention should only be a temporary measure, to right wrong and remove the threat of harm to the common good. Once this has been accomplished, the associative communities and civil institutions should be given back responsibility so that the state does not permanently absorb the functions and responsibilities of the community. In this way, the government would be socially-minded, as it would pay attention to protecting the social fabric, but it would not have grounds to steer the community towards a particular vision of the common good.

This discussion paper therefore puts forward two major principles to help describe the proper relationship between the government and the community, and what the proper responsibilities of government are with respect to the responsibilities of community.

## TWO PRINCIPLES FOR THE PROPER ROLE OF THE GOVERNMENT AND THE COMMUNITY

### 1. Proper government should be limited.

**It should only intervene as a last resort to protect the common good from harm and secure peace, and the duration of its intervention should be limited to the duration of the threat to the common good. It should govern in accordance with the principle of subsidiarity and with respect for and awareness of the custom and tradition of the community it represents, and foster civil association.**

### 2. The government should be socially-minded.

**It should create an environment in which public justice is secured so that associative communities and civil institutions can be more responsible for people's well-being. It should secure the conditions which allow people to pursue basic goods themselves.**

If these principles were followed, government would respond to threats of harm within the constraints of what custom and tradition and subsidiarity point to as the proper boundaries for government action. This is because together, custom

and tradition and subsidiarity can act as a brake on government activity moving from protecting the common good to promoting it. New Zealand would then enjoy proper limited government, and local associative communities would become stronger. In turn, it would ensure that the taxation which people pay to fund the government's activities is used for just and right purposes; purposes which would truly shore up the communities of civil society, and reduce the opportunity for unwarranted government intervention.

---

## ENDNOTES

- <sup>1</sup> P. Rennie, "Taming New Zealand's Tax Monster," *Issue Analysis*, 87 (St. Leonard's NSW: Centre for Independent Studies, 2007), 2.
- <sup>2</sup> Crown revenue is the government's ordinary tax revenue excluding the superannuation fund.
- <sup>3</sup> Treasury, "Half Year Economic & Fiscal Update 2007" (Wellington: The Treasury, New Zealand, 2007), 37; Treasury, "Budget Economic & Fiscal Update 2008" (Wellington: The Treasury, New Zealand, 2008), 90.
- <sup>4</sup> Treasury, "Budget Economic & Fiscal Update 2008," 96.
- <sup>5</sup> M. Cullen, "Strong, Fair, Sustainable: The prosperity we deserve. Speech to the Auckland Chamber of Commerce, 7 February" (2008).
- <sup>6</sup> P. Rennie, "New Zealand's Spending Binge," *Issue Analysis*, 83 (St. Leonard's NSW: Centre for Independent Studies, 2007).

# PREAMBLE

## The Social Fabric of New Zealand

---

New Zealand is a vibrant society, with a proud history and a rich body of customs and traditions. As a nation brought to life by immigration, New Zealand bears a strong history and tradition inherited from Britain and from Maori culture, which has also been enriched by the cultures of other peoples from across the Pacific and Asia. While each of these groups of people is unique, they have still come together through shared experiences and institutions to shape what it means to be a New Zealander:<sup>1</sup>

- the signing of the Treaty of Waitangi brought Maori and the British Crown together and created the foundation for the nation-state of New Zealand;
- as a settler colony, New Zealanders developed attributes of versatility and mateship, as frontier life bred a society that was not divided by class;
- New Zealand's experience in war in theatres such as Gallipoli, El Alamein and Crete forged a spirit of independence, ingenuity, leadership from the front and unity under the New Zealand flag; and
- New Zealand's prowess at sport, established by the All Blacks' first legendary test series in Britain in 1905, is a central part of our national identity and has promoted New Zealanders' willingness to work as a team.

Besides these features of New Zealand's identity, New Zealanders also have a strong affinity with the land itself, its beaches, lakes and rivers. Further, the common law and the Westminster constitution, which New Zealand inherited from Britain, formed the basis for the rule of law, and provided a flexible constitutional structure which could accommodate

the interests of a diverse nation. The spread of Christianity, through European and Maori missionaries alike, created the basis for a common morality upon which moral judgements could be made.

These characteristics of what it means to be a New Zealander reveal what the social fabric of New Zealand is like. That is, it shows the range of complex relationships, values, customs and traditions which have emerged to shape the collective imagination of New Zealanders, and the way they perceive their identity. What is more, understanding what the social fabric of New Zealand is like is crucial to an understanding of limited government in New Zealand. This is because when a group of people such as the nation of New Zealand can grasp imaginatively what unifies them, they can see themselves as a single agency, which, when strong, helps protect against a government imposing its own conception of what is good for them. Therefore, a people are:<sup>2</sup>

a complex of social constituents: of local societies, determined by the common inhabitation of a place; of institutions, such as universities, banks and industries; of communities of specialist function, such as labourers, artists, teachers, financiers; of families; and of communities of enthusiasm such as sports clubs and musical organisations.

All of these distinct constituent elements contribute to what it means to be a people, because each has its own "stock of tradition, its reserve of memory, and its communal habits of practice."<sup>3</sup> If these communities are not evident, then a people, as a whole, lose their identity and disappear. What is more, this body of communicative action, and the body of custom and tradition associated with it, discloses what is good and valuable to a community.

In other words it points to the common good of the community.

This illustrates how the associative communities of civil society, which make up the wider society in all their richness, exist prior to the state. Communities are spontaneous, and have their own set of relationships, internal order and sovereignty over their affairs. The state and the government on the other hand are contrived. They are institutional arrangements which exist to serve people and communities.<sup>4</sup>

Hence, the principal powers of government should be strictly limited to those which protect the social order that pre-dates the state. It is not the job of the government to interfere in or absorb the life which comes from the community, since if this occurs, people's liberty is lost. In this situation, the government is no longer a guardian of the common good, but its master. People's loyalties turn away from each other as they become devoted to the state. In New Zealand, the task of government should be only to act to protect the common good from harm, as disclosed by the body of custom and tradition which is evident in the social fabric of New Zealand communities. It should do no more than this, lest it undermines the social fabric which sustains what is good for New Zealanders.

---

## ENDNOTES

- <sup>1</sup> J. Phillips, "The New Zealanders," in *Te Ara - the Encyclopedia of New Zealand* (2007), <http://www.TeAra.govt.nz/NewZealanders/NewZealandPeoples/TheNewZealanders/en> (accessed 21 July 2008).
- <sup>2</sup> O. O'Donovan, *The Ways of Judgement* (Grand Rapids, Michigan: Eerdmans, 2005), 150.
- <sup>3</sup> O. O'Donovan, *The Ways of Judgement*, 150.
- <sup>4</sup> D. Green, *From Welfare State to Civil Society. Towards welfare that works in New Zealand* (Wellington: New Zealand Business Roundtable (NZBR), 1996), 5-6.

# SECTION 1

## Introduction: Taxation and understanding the role of government and the community in society

---

If there is one political debate that is gaining more and more attention, it is the question of the role of government in society. The question has been thrown into stark relief by how much tax New Zealanders are paying. Government figures indicated that tax revenue was \$27.1 billion in 2007, seven percent higher than the previous year. Even so, over the same period, Government accounts showed its spending also rose 10 percent, as predicted by forecasts, while revenue had increased by a lesser five percent.<sup>1</sup> These figures show that central government has been taking more and more of taxpayers' money. Only this year, after years of talking, is tax relief being offered by the Government, in the form of tax cuts. The tax cuts were granted largely because the Government had promised tax cuts in 2005, which were subsequently cancelled, and also because it was finding it increasingly difficult to sit on a growing fiscal surplus. Even then, the Minister of Finance, Dr Michael Cullen has made delivering these tax cuts conditional on four criteria, that:<sup>2</sup>

1. the Government will not borrow to pay for tax cuts;
2. public services will not be cut to pay for tax cuts;
3. personal tax cuts will not cause pressure on inflation; and
4. tax cuts will not lead to greater social inequality.

The debate about government revenue and expenditure and tax cuts is a healthy one, but only talking about the appropriate level of taxation misses a more important prior question: to what end is central government taxing its citizens? In other words, what is the government using our money

for, and are these the right things for government to be involved in? These questions about the role of government should be fundamental to the taxation debate, as the government should only be taxing people so that it has enough money to carry out its proper tasks. Using Dr Cullen's second and fourth criteria for delivering tax cuts as an example, to what extent should the government be providing a range of services, or be involved in reducing social inequality? Currently, however, the public debate has not progressed beyond the surface level question about the size of the Government's operating surplus and tax rates.

This discussion paper forms the first in a series which considers the basis for a just, fair and compassionate taxation system for New Zealand, and what that system might look like in practice. It stems from a very basic question: "What is tax, and what is it for?" Fundamentally, tax is something imposed by government upon the citizens it governs in order to fund its activities. With this in mind, the major purpose of this discussion paper is to present a framework which outlines the tasks which government should take responsibility for, and conversely how the communities of civil society should take responsibility for the things government should not. The discussion paper also considers some important secondary issues which are related to defining the boundary between government and community responsibility. It establishes the parameters of proper government activity that taxpayers' money should fund, as well as an ethic for government intervention. It seeks to answer the perennial question, "What should government do?" It proposes that the associative communities of civil society can take responsibility for many of the matters that are currently a concern of central government, if allowed the liberty to

flourish on their own terms.

One of the central arguments of this discussion paper is that the role of government in society should be to protect the "common good" of a community from harm. Protecting against harm in this sense is defined as "defending against wrong."<sup>3</sup> It is therefore different to the popular use of harm developed by John Stuart Mill, who believed a person's welfare was his own responsibility, and that the only purpose of law is to prevent people from harming each other.<sup>4</sup> The "common good" may be conceived of as the irreducible goods which are good for every person everywhere, which are revealed by lived experience through proper custom and tradition. Custom and tradition are a partial aid to determining what is good for a community, and a government which governs with a view to the common good would act with restraint. A model of government action which considers what is in the best interests of everyone, rather than sectional interests, casts the role of government in terms of negative liberty, where government protects the freedoms of the people it is responsible for, and provides for their peace and security.

Custom and tradition also have an important role in limiting government power. They indicate the habits and practices which sustain the associative communities and institutions of civil society, as well as the social arrangements which are good for a community and should be conserved. A prudent government should look to custom and tradition as guides for whether the government or the community should respond to harm. In this way, the government would only respond to harm when the community could not, and so government activity would not erode the social fabric.

The discussion paper examines what government should do for another reason as well. In New Zealand, central government is increasingly supplying direction to the community at large. It is possible to see this happening with, for example:

- the introduction of the Working for Families package of targeted welfare, encouraging more families to supplement their income with money from the state;
- the growth of government ministries to manage and monitor the delivery of welfare services (such as the establishment of the Ministry of Social Development in 2001); and

- the roll-out of a new national school curriculum which prescribes values that all children should learn.

The vital question is whether, and on what grounds, government should be involved in these activities.

In the nineteenth century, the famous commentator on American political culture and society, Alexis de Tocqueville warned that the social equality brought about by democracy can replace duty to one's immediate relations with duty to the state. This may lead to the erosion of civic association, since people are equal but unconnected, needing little from one another, and their identity becomes bound up in their relationship to the state.<sup>5</sup> Similarly, government intervention in spheres of life beyond its justifiable role may also weaken the potential for the common good of a community to flourish on its own terms. Nevertheless, some recent legislation shows that New Zealand governments have a propensity to discard what the collected wisdom of the community has shown is best.

On these grounds, it is postulated that governments only have a mandate to intervene in the affairs of a community when the common good may be subject to harm. To be clear, this "reactive principle" is not the same as a libertarian view of government, which argues for as small a government as possible. Instead, the reactive principle implies that the government will exercise prudence in the way it governs, and that it does not take on tasks or push into areas of life which would hinder communities from flourishing on their own terms.<sup>6</sup> In essence, the reactive principle directs government to respond to harm, where the potential for wrong to be done extends to threats to the social fabric and protecting the goods which are in the best interests of people. This means that there should be an economy of government, where governmental activity is limited to instances of threat to the common good. The point is that the coercive power of government should be restrained to prevent the associative communities of civil society from suffering too great a loss of liberty. Nevertheless, there will still be times when the government can respond better to harm than any other agency, and so its involvement is warranted.

## THE STRUCTURE OF THIS DISCUSSION PAPER

This discussion paper presents a coherent framework which attempts to define where the boundary of proper government intervention should lie in New Zealand. It is framed with reference to the principle that the primary role of government is to defend the common good of a community. The implication of this principle is that government should be socially-minded in the way that it responds to harm, as it cares for the integrity of the social fabric, which may be considered as the associative communities and civil institutions which bind people together.

Accordingly, this discussion paper is structured into several sections. The following section presents evidence for the case that government intervention has been expanding, arguably to the extent that we now have positive government in New Zealand. It challenges the assumption that government intervention is right all the time. In this context, the third section introduces the common good as the fundamental reference point for deciding the proper tasks of government, pointing to how right custom and tradition indicate what the proper activities of government are. The section also discusses what the constituent elements of the common good are in terms of basic goods, such as friendship, justice and happiness. Another major element that will be discussed which shapes the custom and tradition of a community is its identity. That is, how a community perceives itself and what it values. Lastly, this section also considers how the common good of New Zealand may reasonably be defined, and challenges whether custom and tradition currently reflect the good. The fourth and fifth sections of the discussion paper apply the common good framework developed to differentiate between the responsibilities of government and local communities, respectively. As communities take responsibility where government cannot or should not, the fifth section also describes the role of the associative communities and institutions of civil society. The final section summaries the key points of the discussion and recommends some steps which should be taken in order to bring about limited government.

In this way, the discussion paper presents a framework for deciding what the most important tasks of government are. This framework can be applied to vital areas of concern to New Zealand, including but not limited to: the appropriate level of taxation,

public health care and education; the provision of social services; and the creation of an economic environment which nurtures an entrepreneurial culture and helps people of all backgrounds to be more prosperous. It also presents the case that a freer, more just and compassionate New Zealand is possible when government and community each do what they do best in their respective spheres of authority.

---

## ENDNOTES

- <sup>1</sup> "Surplus Hit by Sharemarket Falls, Govt Spending," *The New Zealand Herald*, 18 February 2008; "Cullen Quick to Emphasise Volatility after Surplus Hit," *The New Zealand Herald*, 19 February 2008.
- <sup>2</sup> M. Cullen, "Strong, Fair, Sustainable: The prosperity we deserve. Speech to the Auckland Chamber of Commerce, 7 February" (2008).
- <sup>3</sup> O. O'Donovan, *The Ways of Judgement* (Grand Rapids, Michigan: Eerdmans, 2005), 57-58.
- <sup>4</sup> J.S. Mill, *On Liberty* (London: Penguin, 1859), 68.
- <sup>5</sup> H. Seckinelgin, "Civil Society as a Metaphor for Western Liberalism," *Civil Society Working Paper*, 21 (London: London School of Economics, 2002), 12.
- <sup>6</sup> The use of the term "reactive principle" follows Oliver O'Donovan's presentation and discussion of the reactive principle, where he argues for an economy of government action. See O. O'Donovan, *The Ways of Judgement*, 59-66.



## SECTION 2

# Tax and Spend: Binge, bloat and ever-expanding government

---

A well-known anecdote about the role of government in New Zealand emerged several years ago. In 2003, the Government contributed \$5 million towards Team New Zealand's forthcoming challenge for the America's Cup trophy. The Prime Minister, Helen Clark, was asked whether the Government should be financing a yacht race. Her reply was that "the government's role is whatever the government defines it to be."<sup>1</sup> The Prime Minister's response would appear to give central government license to define its tasks—and the common good of the nation—all by itself. This section discusses the various ways that central government is growing in size, seen in the expansion of the welfare state. The first way this proposition is examined is by looking at the current extent of government revenue and expenditure. The second is by looking at the growing role of government in various aspects of community life. The analysis suggests that central government is currently geared more towards *promoting* the common good of New Zealand, rather than simply *protecting* it. The distinction between promoting and protecting the common good will be developed more in the following section. This section argues that central government is taking more money to fulfil a variety of tasks, resulting in the growth of the welfare state. The critical question is whether these tasks are proper activities of government or not.

### GOVERNMENT REVENUE AND EXPENDITURE

A prosperous economy has fuelled the expansion of the welfare state, with billions of dollars flowing in and out of the Government's accounts each year. According to the Minister of Finance, Dr Michael Cullen, the economy experienced "a sustained period of growth," as its size has increased by 28 percent

between 1999 and 2007.<sup>2</sup> Further, a 2005 OECD survey of the New Zealand economy commented that "Strong economic growth and buoyant tax revenues have made it possible for the government to channel an increasing share of [its] spending to the education and health sectors ... ."<sup>3</sup> This was because more households had more money. This also contributed to New Zealand's strong Gross Domestic Product (GDP).<sup>4</sup> The general growth of the economy allowed the Government to collect more revenue from taxation, which it used to finance increased spending on policy initiatives in health, education and social welfare.

Treasury figures for New Zealand's fiscal outlook have borne witness to a country engaged in a spending binge, with high amounts of government revenue and expenditure. In real dollars, core Crown revenue (the government's ordinary tax revenue excluding the superannuation fund) was \$58 billion dollars in 2007. It is forecast to rise to \$62 billion in 2008 and the Treasury expects core Crown revenue to rise to over \$69 billion by 2012.<sup>5</sup> The share of Crown revenue to GDP is another common indicator for the intensity of government spending. As a percentage of GDP, core Crown revenue is expected to decline modestly from 34 percent to 33 percent between 2007-08 and 2008-09.<sup>6</sup> Tax revenue, as a proportion of GDP, is predicted to fall, because of the introduction of personal tax cuts beginning in October 2008 and continuing until April 2011, as well as approximately \$1 billion less revenue from businesses each year from 2008-09, as the Business Tax Reforms take effect.<sup>7</sup> Even with these changes to the amount of Crown revenue, total Crown revenue (including revenue from state-owned enterprises and Crown entities) is still expected to be about 43 to 45 percent of GDP over the next five years.<sup>8</sup>

If government revenue is on the rise, then core

Crown expenses (the government's day-to-day expenditure excluding capital spending) are forecast to grow even faster. According to the Treasury, this is because of expenses brought about by new initiatives introduced in recent Budgets, such as allowing progressively more money for KiwiSaver (around \$1 billion by 2011-12) and for the proposed Emissions Trading Scheme (\$0.7 billion).<sup>9</sup> A paper released by the Centre for Independent Studies in 2007 also determined that core Crown expenses were \$20 billion more than in 2000. This was an increase of 32 percent in real terms.<sup>10</sup> Between 2007 and 2012, the Treasury also forecasts that core Crown expenses are likely to increase from \$54 billion to \$69.9 billion, although as a proportion of GDP the spending remains constant at about 33 percent.<sup>11</sup> Among this spending, benefits alone are expected to cost \$4.4 billion, with about \$2 billion of that allocated to adjusting benefits to the cost of living, but also adjustments to the Working for Families tax credits.<sup>12</sup>

Treasury figures, presented in its 2005 briefing to the incoming Government, have also shown how fast spending in various government sectors has accelerated during the preceding decade. In health and education, for example, the rates are seven percent or more per year (table 2.1). The Treasury considered these rates of spending unsustainable. Yet, between 2008 and 2012, the Government is still allowing an extra \$2 billion of spending for policy initiatives.<sup>13</sup> Total Crown expenses are also expected to remain constant over the next five years, at about 41 percent of GDP.

**Table 2.1. Growth in government spending by selected sector each year prior to 2005**

Expenditure type	Average growth per year		
	Last 10 years	Last 6 years	Last 3 years
Health	7%	7%	8%
Tertiary education	6%	8%	6%
Other education	7%	7%	9%
Social welfare	3%	2%	3%
Defence	3%	5%	4%
Other	4%	5%	8%
Total core Crown	4%	5%	6%

Source: The Treasury, "Sustaining Growth: Briefing to the incoming Government" (Wellington: The Treasury, New Zealand, 2005), 33.

The difference between the government's revenue and its expenditure is its operating balance, or what is often referred to as the surplus. In 2007,

the surplus before gains and losses was \$5.9 billion, and it is forecast to be \$5.2 billion in 2008.<sup>14</sup> After other commitments to expenses such as New Zealand Superannuation and physical expenses are taken into account, like roads, hospitals and schools, the Crown had about \$2.9 billion in residual cash in 2007. Thus, the Government made the case that recording an operating surplus each year was justified, because the money was already committed to future expenses.<sup>15</sup> The amount of residual cash is expected to drop into deficit from 2009, however, with the deficit being covered by borrowing. This is the consequence of greater government expenditure, combined with a worsening economic climate during 2008 related to rising interest rates, petrol costs and drought, which affected commodity prices. This means that the massive surpluses which were being recorded before will become rolling deficits. They are forecast to be approximately \$3.5 billion each year between 2009 and 2012.<sup>16</sup>

As the personal tax cuts are forecast to raise growth in GDP by about 0.3 percent over the year to March 2009,<sup>17</sup> it is worth questioning whether if tax cuts had been delivered sooner the economy would have been in better shape to weather this downturn. If anything, the worsening economic climate has given the Government grounds to keep taxation high. This avoids the Government having to borrow too much more money to pay for its high levels of public expenditure so that sovereign debt can be kept within the target of 20 percent of GDP.<sup>18</sup>

The recent economic downturn may affect the forecasts, but it does not change the point that the government's role and size, as measured by its revenue and expenditure, has increased dramatically in the last decade. In light of these skyrocketing figures for revenue and expenditure, the question should be asked whether government actually needs to tax and then spend this much public money. Allowing for the different size of each member's economy, New Zealand's tax to GDP ratio, at approximately 36 percent, is higher than the OECD average (31 percent). Such high levels of public expenditure have to be questioned for their effectiveness. One analysis of the outcomes of public spending, by Victor Tanzi and Ludger Schuknecht,<sup>19</sup> claimed that beyond levels of 31 to 35 percent of GDP, "government spending had a diminishing impact on social outcomes."<sup>20</sup> Phil Rennie, of the Centre for Independent Studies, has also examined whether outcomes have been

improved by increasing expenditure, and found that across a variety of indicators, such as life expectancy, education levels, a reduction in income inequality and crime rates, the effect of a 32 percent increase in government spending since 2000 was mostly negligible.<sup>21</sup>

Public demand for a massive welfare state may also be muted. A survey of a representative sample of 2,250 New Zealanders in 2006 by the International Social Survey Programme showed that 60 percent of respondents were actually in favour of cuts to government spending. What is more, 65 percent believed that taxes for those with low incomes were too high, and 70 percent believed taxes for those with middle incomes were too high. Even though a majority of people favoured less government spending, the survey still found that the public were more interested in increased government spending in three specific areas of welfare: health, education and the police.<sup>22</sup>

The value of this tax and spend approach to fiscal policy is also important when considering the increasing amount of government revenue and expenditure. In 2007, the OECD wrote that "the rapid increase in public spending should be scrutinised for its efficiency and sustainability."<sup>23</sup> Specifically, the OECD identified that the government has not controlled what it spends as carefully as it could. This is firstly because of the fragmentary budget process, as in each sector there are many government agencies, which have overlapping goals and compete for public money. This means it is rare to have good information about how money is being spent across all of a government sector. Secondly, spending is not properly reviewed, as ongoing expenditure is not properly monitored.<sup>24</sup> The Treasury's evaluation of the public sector's performance was even more damning in its briefing to the incoming government in 2005:<sup>25</sup>

There is little information to indicate that New Zealanders are getting more services and better results from the public sector for the large increase in resources provided. What little information exists is not encouraging.

There needs to be a greater degree of coordination and evaluation of government spending by Ministers and the agencies themselves so that value for money can be demonstrated, and so that unnecessary or wasteful policy initiatives can be improved or terminated. This could involve Ministers

demanding more rigorous performance evaluations from government ministries and state agencies, and devolving more services carried out by government agencies to providers in the wider community if they can provide a better service. Other instruments such as firm criteria for new spending might also help to rein in government spending. The Treasury, for example, has recommended that new spending should return benefits of more than \$1.20 for every dollar spent.<sup>26</sup> Another instrument could be a sunset clause on public spending. If results have not been achieved within a certain timeframe, then money could be cut from programmes or withdrawn entirely.<sup>27</sup> If the public sector could perform better, then more resources could be freed up to add to productivity which would assist with New Zealand's economic growth. More resources could also be devoted to the services which government should provide.<sup>28</sup>

This principle should also be applied with respect to the size of the public service. With growth in the amount of government spending and related programmes, there has also been an increase in the size of the bureaucracy which administers it. The Treasury's briefing to the incoming government forecast that the wage bill for public servants would be about \$4 billion. This was not just due to rising wage rates, but also increasing numbers of staff. The Treasury questioned whether the increased staff reflected value for money, and whether the increase in the number of staff at core ministries was addressing the areas of greatest need:<sup>29</sup>

Some of the increase can be explained by bringing functions into the core from the wider state sector, and a significant proportion has provided for strengthening of front-line delivery. A significant proportion has also provided for an expansion of head offices. These increases have occurred across 76% of core agencies, suggesting that they are not being channelled in areas of greatest need. Increased staffing costs have not been offset by a reduction in consultancy costs.

The State Services Commissioner also released a report in 2007 showing that the number of public servants has been growing.<sup>30</sup> "The public service" was defined as the employees of government departments. It did not include education or health services. This meant that the public service employed about 44,000 staff in June 2007, an increase of 5 percent from June 2006. Since 2002, the number of public servants has increased by a sizeable 35 percent. 75 percent of the

public service was made up of "Professionals, and Clerical and Administration workers." "Professionals" included occupations such as policy analysts, public relations officers, managers and clerks, as well as social workers and some teacher aides. The schemes which were the biggest contributors to the increase were the Department of Corrections, which has opened more new prisons, and the IRD, which is administering KiwiSaver and Working for Families. Given the doubt about the value of increased government spending to the quality of people's lives, the growing number of public servants is a difficult cost to justify, and suggests that the greater number of tasks being undertaken by central government might be performed better by third parties, such as community organisations.

New Zealand's long-term fiscal health is also at risk because of the tax and spend approach to the role of government. Again, the Treasury was very frank in its briefing to the incoming government, pointing out that New Zealand's current level of spending is unsustainable because, like most OECD countries, it will have to deal with the fiscal pressure of an ageing population, and fewer people in the workforce. This in turn will put pressure on social services, if current expectations for spending remain the same. The Treasury thought the pressures were so important that they would drive a "significant wedge" between expenses and revenue over time.<sup>31</sup> It identified the health system and superannuation as two services likely to be under extreme pressure because of demographic changes.

The Treasury's advice was to start planning for this contingency now, which requires changes to fiscal policy. In particular, the Treasury recommended that the rate of government saving should not be increased because:<sup>32</sup>

- government policy and individual behaviour (for example, decisions about retirement and saving as the population ages) will change in ways that are not necessarily predictable;
- more government saving may, by making the fiscal position appear stronger, loosen fiscal restraint or cement in place policies that are undesirable in the longer term; and
- higher saving is likely to crowd out opportunities for tax reforms and other growth-enhancing initiatives.

Furthermore, the Treasury also stated that current fiscal gains are unlikely to continue because "rates of expenditure in health and education will be more difficult to fund." To maintain a healthy fiscal outlook, the Treasury recommended that restraints on economic growth must be reduced, including lowering taxes over time as conditions permit, since reducing taxes stimulates economic growth. Hand-in-hand with reducing taxes is controlling the amount of government spending to avoid too much fiscal stimulus of the economy. The Treasury therefore also advised the Government that it needed to engage in a "sustained reprioritisation" of its spending within the existing baseline budget figures, so that the growth in expenses could be contained.

If there is little apparent value being added by more government spending, government should not be spending or saving increasing amounts of taxpayers' money. This does not mean the government should be irresponsible and should run deficits, but that when government does not need money it should not take it in the first place and, as the Treasury advises, implement tax cuts. The Government has been able to collect more tax through a buoyant economy and "bracket creep," where annual household incomes have increased, while tax thresholds have not been adjusted. At the same time, company tax revenue has increased. This means more of people's money is falling into higher tax brackets, creating fiscal drag. Consequently, the marginal tax rate that many people pay has increased over time.

This argument and the future fiscal outlook both illustrate the point that government spending is not inherently good. The welfare state incurs not only fiscal, but social costs. Public spending causes "churning," the situation which occurs when government spending is returned straight back to the people who paid the tax that funded it in the first place. With universal access to public services, wealthier and poorer people each have access. But in New Zealand, figures indicate that in 1997-98 the wealthiest 40 percent of households received 23 percent of the social expenditure.<sup>33</sup> With the massive increase in public spending since then, and rising household incomes, the churn is likely to be even greater now. Other negative consequences of churning include the extra administrative, compliance and enforcement costs involved with collecting and redistributing tax. Higher rates of taxation can also create disincentives for people to earn more money or

to seek promotion. Social cohesion suffers, as people look to the government more and more to meet their needs. Lastly, government spending to solicit votes politicises the affairs of day-to-day life.<sup>34</sup> These costs could be avoided if government did not take more money than its proper functions require in the first place, and individuals and communities took more responsibility for themselves again, deciding how best to use the wealth that they generate to meet their respective needs.

The challenge for government is that it is generally very difficult to reduce spending once it has started. For governments, it is always attractive to target spending at certain groups within society, because they can attract voters and shore up their support base between elections. By comparison, a tax cut could be more difficult for a government to sell to particular interest groups. This is because when governments spend money on social welfare programmes people can come to see it as an entitlement which, once received, is difficult to give up. On the other hand, tax cuts are likely to produce smaller political benefits, in terms of the number of extra dollars people would receive each week, and because they are not targeted to particular groups of people.<sup>35</sup>

In summary, the size of government spending is now so great that it must be reduced so that the size of the welfare state does not cause undue harm to New Zealand's fiscal position. Moreover, politicians and voters alike should remember that the government can only give what it first takes away.<sup>36</sup> One of the implications of this is that the government should only take what it needs to fund what it does best. The evidence from the outcomes of government spending does not suggest that everything the government is doing is being done to best effect. Given this situation, the reason the government is performing certain tasks must be critically appraised.

## EVER-EXPANDING GOVERNMENT

Besides the fiscal dimension to the growth in the size of government, the role of government in society has expanded in other ways. The result is that government has come to play a directive role in society, perhaps at the expense of community responsibility for welfare and services. The reason for this is related to how the role of the state has developed in New Zealand.

Firstly, the centralised state has a number of unique powers at its disposal. One economist, James Cox, describes these in terms of universal membership, the power to compel people to participate in government programmes and to pay taxation.<sup>37</sup> These powers mean that government can provide a range of welfare schemes and manage the economy. The degree to which it uses these powers has consequences for people's lives. For example, government welfare might address market failure, by providing minimum incomes for the poor. However, government services also have the potential to become unnecessarily costly, unresponsive to public need and subject to legislative constraints.

Once government programmes are introduced rent-seeking behaviour may encourage government to expand them.<sup>38</sup> The basic problem is that whenever the government pays for or subsidises public services—however well-intentioned—the programmes generate groups of people who will argue for their continuation if they employ them or benefit from them. When large numbers of people behave in this way it can become very difficult to modify, wind down or withdraw programmes if this is required.<sup>39</sup> Because governments rely on votes from people who benefit from government-provided services, ministers might also be persuaded to continue with programmes which should be modified or terminated if they are no longer meeting their objectives or costing too much money. In this way, rent-seeking behaviour is wasteful because of the large amount of resources that it absorbs.<sup>40</sup> The relationship between the government and people becomes like that between a patron and their clients.

In New Zealand since the Second World War, the role of the state has been polarised between two extremes, high government spending to grow the economy and to provide social services, and the adoption of economic policies which rolled back the state throughout the 1980s and 1990s. The latter reforms were necessary because of the mounting number of problems that had been bred by Sir Robert Muldoon's National Government. Besides excessive government spending, these included: an ever-changing interest rate regime; the Think Big programme, meant to make New Zealand more self-sufficient; freezes on wages and prices; and the overvaluation of the New Zealand dollar. In Muldoon's Budget of 1983, New Zealand's internal deficit rose to \$3.2 billion, which was \$600 million higher than

was expected.<sup>41</sup> Muldoon introduced subsidies to low-income families being hurt by the price increases occurring despite the price freeze. This caused instability in Muldoon's Government, and contributed to the snap election of July 1984 which the National Party lost. With all these problems coming to a head during 1983 and 1984, drastic action was required by the incoming Fourth Labour Government to rectify the damage of years of tight government regulation, high taxes and numerous controls.

The policies introduced by the Fourth Labour Government therefore introduced a measure of economic freedom not experienced before in New Zealand. The Government floated the New Zealand dollar and a regime of deregulation and restructuring of national industries was introduced. Farm subsidies were removed, financial markets were opened up, and import protection was phased out. Taxes on personal income were also dramatically reduced over the next four years, from a top marginal rate of 66 cents to 33 cents in the dollar while the tax base was broadened. Taxation was further reformed with the introduction of a consumption tax; the Goods and Services Tax (GST), initially at a rate of 10 percent, and rising to 12.5 percent in 1989.

The determination displayed by Prime Minister David Lange and his Minister of Finance, Roger Douglas, in selling and carrying out these reforms contributed to New Zealanders re-electing the Labour Party at the 1987 election. New Zealand political historian Michael Bassett notes that some New Zealanders felt the Government was doing everything it could to get the country on a path to prosperity.<sup>42</sup> Further, Douglas' plans were intended to ease the pain of high interest rates as much as possible, and to generate wealth which the government could use to provide core public services in health, social welfare and education. The difficulty for the Government was that the benefits of the reforms were slow to trickle down. For instance, low commodity prices delayed economic recovery, hurting the agricultural sector. Moreover, a difference of opinion over the pace and scope of the reforms divided Lange and Douglas, and the Government consequently lost focus and vision. Together, these factors contributed to the demise of the Fourth Labour Government at the 1990 election.<sup>43</sup>

In the face of an inherited fiscal deficit, however, the incoming National Government continued the restructuring even further into the social domain,

by reforming employment law and re-organising the provision of public health and housing along the lines of a market model and slashing benefits. Among the changes which raised the most ire, especially among pensioners, was National's retreat on the promise to remove the surcharge on superannuation. Like the monetarist policies of the Fourth Labour Government, the National Government's reforms created a degree of efficiency and transparency in the delivery of public services. Arguably, they were also needed to help pay off New Zealand's several billion dollars of foreign debt, and the massive losses which state-run firms had run-up, as well as those of the Bank of New Zealand.

While controversial, even critics of the reforms concede that they were successful in achieving their objectives.<sup>44</sup> They addressed New Zealand's fiscal imbalance, worked to lower inflation, opened New Zealand's borders, encouraged the free flow of capital and reduced regulation. Nevertheless, they are premised on problematic libertarian assumptions which put faith in the power of the free market to solve efficiency problems in public services and to bring down high wages. They also created structural imbalances between people. Small towns and rural communities paid a higher price than others in the short-term, with the cut-backs to welfare and state-supported services, including post office closures and reduced railway services.

Bassett also observes that Douglas thought that people would accept reform if they could be convinced the short-term cuts would contribute to prosperity in the future. This perhaps reflects another weakness of market-based reforms, and the libertarian worldview implicit within them, in the sense that not every person acts rationally in the way that orthodox market economics assumes. The danger of viewing people as rational utility-maximisers (as libertarians do) is that this form of individualism assumes every person can see the costs and benefits of an action and will always act responsibly. Another risk is that libertarianism can obscure a concern for the integrity of the social fabric. In other words, the most efficient policy may not be the one which protects people's well-being. Rolling back the state to solve New Zealand's fiscal problems therefore had the consequence of leaving many New Zealanders feeling cold and betrayed by central government.

The mistrust this period generated for

government was expressed in National's majority shrinking from 18 seats out of 99, in 1990, to just one at the 1993 election. Further, at a binding referendum New Zealanders rejected the First-Past-the-Post electoral system in favour of a proportional system (MMP). Given that the design of proportional electoral systems makes it difficult for governments to rule with a majority, its implementation in a single-chamber legislature has made it harder (but not impossible) for governments to ram through legislation in the way they did between 1984 and 1993. Former Prime Minister, Sir Geoffrey Palmer has noted that the 17-year average for the number of Government Bills passed between 1980 and 1996 was 173.<sup>45</sup> The average for the period since the first MMP election (1996 to 2007) has been 114 Bills.<sup>46</sup> The highest number of Bills passed in a single year during this period was 142, in 1999. The lowest was in 2002, when only 84 Bills were passed. The drop in the amount of legislation being enacted is indicative of a more contested legislative process, with more need for consultation and veto points to introduce changes or to stop Bills.

In the wake of these events, the various governments elected since 1999 have sought to recast the role of government in a more caring light. They drew on the intellectual sources of the Third Way movement, with its origins in the writings of such academics as Antony Giddens and Robert Reich and the political philosophy of social democratic leaders, including former President Bill Clinton in the United States, former Prime Minister Tony Blair in Britain, and former Chancellor Gerhard Schroeder in Germany. The basic premise of Third Way thinkers was that in order to move beyond the excesses of market capitalism experienced in New Zealand, Britain, the United States and the developing world, a "new" politics which harkened back to the core values of social democracy was required. The elements of the Third Way political programme may be summarised in the following way:<sup>47</sup>

- movement away from imposing equality of outcomes and conformity;
- higher public expenditure to achieve social justice;
- avoiding unwarranted extensions in the reach of government activity and the size of the bureaucracy;

- the need to foster a sense of responsibility and mutual obligation among people;
- fostering private enterprise through lower taxes and growing human capital through education; and
- the need for government to focus on the supply-side of macro-economic management.

In summary, according to Blair and Schroeder:<sup>48</sup>

The state should not row, but steer: not so much control, as challenge. Solutions to problems must be joined up. Within the public sector bureaucracy at all levels must be reduced, performance targets and objectives formulated, the quality of public services rigorously monitored, and bad performance rooted out.

Therefore, a typical Third Way manifesto called for a re-engagement between government and the various elements of civil society, reconciling the desire to address social inequalities with the growth generated by a free market economy. An implication of the progressive agenda of the Third Way is that it legitimises political parties to expand the role of government, based on the view that government has a role in upholding social equity.

Giddens, in defending the coherency and intellectual power of the Third Way, has painted a picture of this kind of progressive government and what it should do.<sup>49</sup> He describes a very active role for government, arguing that "Government and the state need thoroughgoing reform, to make them faster moving, more effective and responsive."<sup>50</sup> Further, he advocates for public investment which is only constrained by what the government can afford to spend, and says the state should enable people to enjoy a measure of freedom and security by making opportunities for them in the economy.<sup>51</sup> For Giddens, the enabling state represents a move away from command and control models of social democratic government where many industries and services were nationalised. The market also certainly has its place within the progressive philosophy of the Third Way, since it is accepted that encouraging a measure of market competition and choice in the provision of public services is better than state-run monopolies. However, the benefits of a free market economy are still subordinated to the state.

Lately, theorists of the Third Way have revised their prescriptions for building a progressive society in the face of social democratic governments being

replaced by conservative governments in a number of Western democracies. Again, Giddens is one who has led the way in trying to advocate for a large role for the state in bringing about social opportunities and becoming involved in the affairs of civil society. Rather than label this approach a Fourth Way, Giddens has preferred to adopt the term neoprogressivism, mimicking neoconservatism and the way it articulated a vision for society. Giddens states:<sup>52</sup>

We need ... to create more deep support for left of centre policies than was generated by the first wave of third way policies. We should not be content with a pragmatic appeal. Deep support means touching an emotional chord among citizens, not just appealing to their pragmatic interests. It means recovering some of that capacity the left had to a much greater degree before 1989, the capacity to inspire. It means having ideals that show what we are for, rather than only what we reject. It means conveying a notion of the type of society, and the type of world, we want to create.

And later:<sup>53</sup>

In developed economies, government and the state are almost everywhere, and have to be for people to lead decent, normal lives.

Accordingly, neoprogressivism is concerned with improving upon the role of the state as an enabler of civil society. The government should be responsible for protecting and upholding a public space. What this means is that neoprogressivists aspire to see what is good for the communities of civil society incorporated into the objectives of the state. This objective is presented in terms of inclusion. Giddens goes so far as to say that government should take responsibility for people's behaviour:<sup>54</sup>

'Enabling' certainly remains important, but it is recognised that the state has responsibilities after that point. These responsibilities are often 'double responsibilities'—they are responsibilities for making sure that others behave responsibly.

And further:<sup>55</sup>

We should instead speak of shared responsibilities, or what some have called the co-production of public goods. That is to say, there should be collaboration between the state and the citizen in the production of socially desirable outcomes.

Consequently, in the place of the enabling

state, as described by Third Way theorists, Giddens prefers the concept of the ensuring state. This means that the state should not only take an interest in providing material resources for people, but that the state should also care for and protect citizens. As part of this obligation, it is argued that the state should also provide "guarantees."<sup>56</sup> In practical terms, this means that the state should take "responsibility for the delivery of policy outcomes," for coordinating services, and for guaranteeing standards of delivery in areas such as "access to education, health care and welfare services."<sup>57</sup> Among these, a number of services may not be directly organised by the state. In Giddens' words, "the ensuring state is therefore a regulatory state, but its orientation differs from the traditional bureaucratic state," where regulation "does not mean direct control but standard setting and the offering of incentives for behaviour relevant to public purposes."<sup>58</sup> This is partly because neoprogressivists desire a wide range of civil society, voluntary and non-profit organisations being involved in policy and services.

Where the theory of Third Way government intervention concentrated on strategies to combat social inequality, such as the increased spending on education, neoprogressivists make the case that the government should concentrate on removing problems related to social inheritance—the inequalities which are passed on from each generation.<sup>59</sup> The argument is that the weight of sociological evidence of educational reforms which have been carried out by Third Way governments has shown that they have not solved problems of social inequality. This means that, for example, government should take more of an interest in what happens to children before they attend school and provide daycare for single mothers so that they can re-enter the workforce more quickly. This is what Giddens calls a politics of second chances, where government combines "structural policy with the fostering of individual capacities."<sup>60</sup>

The major implication of this approach to government is that it gives government a licence to intervene in the affairs of the family, which may have unintended consequences for life further down the track. The example of daycare is a particularly relevant case. While some inconsistencies exist among various studies of the effects of early and sustained daycare on infants, generally research findings indicate that early and prolonged day-care is linked

to a moderate increase in problem or emotional behaviours.<sup>61</sup> It appears that these kinds of problem behaviours may go on over the age of four.<sup>62</sup> Daycare therefore has implications for children's well-being in later life, perhaps deeper than the problems of material inequality which mothers returning to work are often trying to reduce. Arguably, the weakness of neoprogressive thought at this point is its assumption that governments know how to meet everyone's needs and desires better than people do, and that they are capable of curing social ills without causing more problems in other areas of life.

A further philosophical justification for the ideas and approaches to the role of government found in progressivism lies in the notion of solidarity.<sup>63</sup> Solidarity is the principle that the more individuals in society are defenceless, the more they require the care and concern of others. This may require government to intervene to come to their defence. Practical examples of government intervention to uphold social solidarity might be paying old age pensions, protection of minimum working conditions, or helping unemployed people. The implication of the principle of solidarity is that it justifies the use of government power to direct individuals and communities towards the common good; that is, to promote the common good.

This view of the role of government is similar to Isaiah Berlin's notion of positive liberty. Positive liberty is understood as "freedom to," where government sets the parameters for freedom, defining in legislation what people can or cannot do. Berlin's definition of positive liberty had in mind the freedom to realise one's true self, in terms of our identity as a member of a community, or the freedom to bring about an end. However, in Berlin's thought there is also a wariness of the totalising impulse that may come about when government claims to know what people ought to do.<sup>64</sup> This means that there is a risk that when government promotes positive liberty it creates an opportunity to steer a community to its own end, which at worst could lead to the control or oppression of its citizens.

This is in contrast to negative liberty, defined as "freedom from." The notion of negative freedom appreciates that there is a need for authority and order in society, but that this authority should not interfere unnecessarily in people's lives. Government should be as least coercive as possible, to protect people's liberty and allow them to pursue goods

on their own terms. Negative liberty means that government should have as few tasks as possible. As discussed with reference to the New Zealand reforms which rolled back the state, however, the process of reducing the amount of government control and regulation can cause damage just as readily as expansive government.

Currently, New Zealand's government is one that "steers." The Prime Minister, Helen Clark, and one of the Government's former senior Cabinet Ministers, Steve Maharey, have both affirmed that their government has been one which has adopted a programme bearing the likeness of a Third Way social democracy. In a speech to the London School of Economics in 2002, the Prime Minister said:<sup>65</sup>

the Coalition government in New Zealand is following a path parallel to those of other modernising centre-left governments. We do seek in Professor Giddens's words "to reconcile social justice with an energetic and competitive economy."

Reflecting on "the Third Way three years on" in 2003,<sup>66</sup> and the challenges facing the Government, Steve Maharey said that recognising:<sup>67</sup>

... these challenges and the policy responses represent a renewal of the social democratic tradition in New Zealand and elsewhere. However, they do not mark a departure from the values that social democracy has always embodied. Our goal is still the egalitarian project that has motivated all social democratic parties: the full development of every individual however disadvantaged they are by birth or circumstances.

However, the New Zealand variety of Third Way social democracy is also characterised by an element of pragmatism. In the same speech to the London School of Economics, the Prime Minister stated that her Government had determined to follow a line which would be acceptable to most New Zealanders who, her Government believes, do not want extreme solutions to the problems facing them, but practical ones instead.<sup>68</sup> Reflecting a common criticism of Third Way governments, in steering a course between the Scylla of the free market and the Charybdis of socialism, the Government's approach to social democracy has been concerned with adopting policies "which work," rather than being the principled outworking of a coherent vision for society.

The following examples of policy initiatives

introduced since 1999 demonstrate attempts to steer New Zealand towards a social democratic model of the public good. This is different to a model of government which limits its activities to punishing wrong, which indirectly encourages people not to do wrong and allows the associative communities of civil society to be responsible for themselves and to pursue the common good.

## Working for Families

The first high profile policy initiative of this kind to be described is the redistributive Working for Families package, introduced in October 2004. It is an expensive targeted welfare scheme, which can distort people's aspirations from pursuing highly-paid work to accessing subsidies and benefits. In the 2004 Budget, the cost of the package, including implementation costs, was estimated to be \$221 million in 2004-05, \$664 million in 2005-06, \$900 million in 2006-07, and \$1.1 billion in 2007-08 and for years beyond.<sup>69</sup> The spending on Working for Families contributed to there being little head room for fiscal loosening around the time of its introduction.

The initiative had its origins in concern by the Government to reform social assistance for working age people; to reduce disincentives to work; to support low-income earners to move between benefits and work; and to improve "income adequacy for the most vulnerable."<sup>70</sup> A related concern was also that "families on benefits with dependent children" were experiencing high rates of poverty, according to New Zealand Living Standards data produced in 2000.<sup>71</sup> Working for Families also simplified the benefit structure for family income assistance. The features of the package include an in-work payment, where "Beneficiaries can increase their income by taking up employment,"<sup>72</sup> and an income-related family payment.

The goals of the Working for Families initiative point to government intervention to uphold the weakest in society, and direct them toward the good of work. In his 2004 Budget speech introducing Working for Families, the Minister of Finance, Dr Michael Cullen, suggested that government intervention could spread the fruits of economic prosperity to people perhaps excluded from sharing in it:<sup>73</sup>

The government's Working for Families

programme makes tangible our commitment to ensuring that economic growth is pursued for its capacity to provide greater security and opportunity for all. It means greater ability to participate in the New Zealand lifestyle for many who find that difficult.

The Government's vision for Working for Families outlined by Dr Cullen also shows that there were strong economic arguments for introducing the initiative, to meet the Government's other objectives to grow the economy by increasing New Zealanders' participation in the labour market and reducing skill shortages.

That aside, the major focus of the initiative is to make work pay. The initiative is meant to address the problem that beneficiaries are not very much better off when they move from welfare to "work once work-related costs, benefit abatement and tax are taken into account."<sup>74</sup> The lowest earning families are also suffering from living below the level of an adequate standard of living, which is impacting on their ability to become self-supporting.

An analysis of the Working for Families initiative by economist Greg Dwyer, produced in 2005, criticised the redistributive package's mechanisms, claiming that the in-work credit for working families would not realistically make work pay as the Government expects.<sup>75</sup> For example, Dwyer states that "About 63 percent of the total additional assistance to be provided in 2007/08 (\$697 million) will go to families that will not receive a benefit during that year." The balance, a mere 37 percent, would be paid to families either receiving a benefit, or families working and receiving a benefit.<sup>76</sup> Moreover, the benefits of Working for Families are "poorly targeted."<sup>77</sup> "A third of the cost of" the package is targeted at "families earning over \$35,000 per year after tax."<sup>78</sup> This tends to benefit households in the middle and upper income bands, not the poorest.

Further, Dwyer claims that the increase in "income gain from moving off a benefit and into work,"<sup>79</sup> is modest under Working for Families. Citing figures produced by the Treasury, Dwyer argues that "just 2 percent of sole parents," one of the groups targeted by the initiative, might move from the Domestic Purposes Benefit (DPB) to work, and "at a massive cost of up to \$84,600 per beneficiary moved into work" in the year 2006-07.<sup>80</sup>

Perhaps the biggest area of concern highlighted by Dwyer is how the Working for Families initiative

affects mean effective marginal tax rates (EMTR). The Treasury has calculated "that the mean rate of tax on each additional dollar earned by all individual taxpayers," will be 3.8 percent higher in the year 2007–08 than if Working for Families had not been introduced.<sup>81</sup> Higher mean EMTRs cause people to change their behaviour by reducing the reward they get from earning additional income. Dwyer is harshly critical of claims that Working for Families will have a positive "impact on the work effort of beneficiaries,"<sup>82</sup> especially given the high costs involved in creating incentives for them to work.<sup>83</sup>

Any additional employment by people who would otherwise be on a benefit is likely to be offset by lower employment than otherwise among other sectors of the population because WFF requires higher EMTRs than otherwise and the incomes of other people are lower than otherwise.

Crudely put, the in-work payment discourages people to earn more money because their benefit abates as their income from work increases. Hence, a major weakness of Working for Families is that it extends higher mean EMTRs up the income scale, which discourages people from being more productive and adds more deadweight costs to the economy. Once locked into high mean EMTRs it is difficult for families with dependent children to break free from them. In short, the effect of Working for Families is to increase welfare expenditure at the risk of decreasing productivity and creating disincentives to work—the very outcome the intervention was meant to avoid. Thus families are at risk of becoming trapped in welfare dependency rather than becoming self-sustaining.

One of the other criticisms that Dwyer levels is that "The government's income adequacy objective is imprecisely defined and unable to be monitored against actual outcomes,"<sup>84</sup> making it difficult to measure the effects of spending. This might make it tempting for government to keep redistributing money to reduce the gap between rich and poor families.<sup>85</sup>

In general, the focus on reducing income inequality through the Working for Families initiative is flawed. Working for Families actually makes additional work less rewarding because it alters people's behaviour to taxation and government handouts. For example, Patrick Nolan notes that while the package gives more incentives to sole parents to work, it also discourages secondary earners from

entering the workforce because of the hours-worked eligibility criterion which applies to the Minimum Family Tax Credit and the In-Work Tax Credit.<sup>86</sup> With more people working part-time jobs and seasonal work, combined with a more diverse range of family structures, the circumstances of recipients of the credit are likely to change more often throughout the income tax year. Nolan therefore also notes that the tight targeting of the Minimum Family Tax Credit means that the chance for under- and over-payments of benefits to these families is increased.<sup>87</sup> In short, the Working for Families package tries to incentivise full-time work for families with children, but it also makes it difficult for some families to move off welfare. What is more, families' needs are so diverse that the package cannot account for all of them.

Further, by transferring large amounts of income, the package does not address the "underlying causes of child poverty,"<sup>88</sup> or welfare dependency among the families that it targets, and it is likely to foster more dependency given the disincentive to move to higher paying jobs. Another long-term effect of Working for Families is that it will have a barely noticeable net positive effect on aggregate employment.<sup>89</sup> The high costs of redistributing income are also harmful to productivity and growth, which are important determinants of material well-being and for ensuring that more jobs can be created in the economy for beneficiaries and low income workers.

Dwyer's forecasts about the poor targeting of the assistance offered by the Working for Families package appear to be coming true, according to a joint evaluation of Working for Families carried out by the Inland Revenue Department and the Ministry of Social Development, released in 2007.<sup>90</sup> The evaluation considered the rate of uptake of the main components of Working for Families, including tax credits, the accommodation supplement and childcare subsidies across New Zealand over the period 2006 to 2007.

The evaluation found that while Working for Families is reaching the population of low-middle income families who have children, the uptake is also strong among other families of higher incomes. About 75 percent of the families receiving tax credits earned below the 2006 Census median family income of \$50,000. The effect of the in-work tax credit has been to increase the proportion of recipient families earning over the median income from nine percent

to 23 percent.<sup>91</sup> Moreover, the number of non-beneficiary families, families that "do not receive any income from a main benefit,"<sup>92</sup> who received tax credits had increased by 114 percent, since Working for Families was introduced in 2006. There has been an overall increase to date of 25 percent in the total number of families receiving Working for Families. The numbers of non-beneficiary families receiving the accommodation supplement, which increased after Working for Families was introduced, has also been sustained, and is rising with the current set of eligibility criteria.<sup>93</sup>

In summary, the Working for Families initiative is about the government using fiscal levers to iron out inequalities created by a market society. Arguably, similar results could be achieved by allowing entrepreneurs to grow their businesses in order to create jobs and more wealth. While it is true that the package will make some families better off, it will always be at the cost of others. Further, such a package creates a culture of entitlement where more families become dependent on the government, rather than addressing the problems which are the causes of real hardship. In this case as well, it is likely that Working for Families will entrench middle class welfare even further. Government activity is working against encouraging people to move from welfare to work, and it is locking them into a maze of regulation and red-tape to access subsidies. Simplifying the benefit system would help to reduce the administration and compliance costs, but would also cause short-term costs for some families. However, these might be offset in time by the long-term rewards of moving from welfare to work. Whatever happens in the future, the net result of Working for Families is that it enlarges the government's role in family and work life, with serious fiscal implications.

### Foreign investment

Government intervention in early 2008 to make it difficult for a 40 percent share of Auckland International Airport to be sold to the Canada Pension Plan Investment Board is a very recent case of government action to promote a vision of the common good. In this case the Government's intervention also had negative consequences for entrepreneurs' and corporations' ability to freely carry on business. The nature of the intervention was that the Government moved to change the

Overseas Investment Act 2005, just days before the sale was going to be voted on by shareholders. Now, Ministers are required to take into account whether foreign investment means that the sale will help New Zealand keep control "of strategically important infrastructure on sensitive land."<sup>94</sup>

Dr Michael Cullen stated that the Government intervened because it wanted "to be clear about the fact that New Zealand control factors will be taken into account as part of the national interest tests to be applied under the act."<sup>95</sup> Auckland Airport is an important piece of infrastructure, the successful operation of which is essential to the common good because it helps New Zealand to access other countries around the globe, critical to foreign exchange and trade. The argument is that keeping control of the airport in New Zealand hands provides a measure of security that those who run it will operate it in a way which would benefit the common good of New Zealanders. But the Government intervening to prevent the sale of Auckland Airport is also another instance of it steering the economy, in this case micro-managing the terms of a business transaction between two private parties which was being conducted within the parameters of existing law.

Now that the Government has intervened to change the law to protect a share of one asset from being sold to foreign owners, it has raised new problems. For instance, it is unclear which of New Zealand's major assets are affected by the amended legislation. This is because of the provision that the assets must be on "sensitive land," which is defined as the foreshore, sea bed and lake beds, non-urban land plots of greater than five hectares, land adjoining conservation land, or land subject to heritage order.<sup>96</sup> This means that Wellington Airport is affected, because it is situated on the foreshore, as well as New Zealand's sea ports. The Clyde Dam is also affected, because it is located on Lake Dunstan. Further, it is unclear from the legislation which assets are strategic.

The legislation also affects existing foreign ownership of those assets, so existing owners have to pass the same test that the Canada Pension Plan Investment Board faced. The long-term consequence of the intervention makes it more difficult to secure international investment, as there is a greater risk of government interference with business negotiations. The Government's intervention also sends the signal

that it does not trust business leaders to conduct their business in a way which will bring benefits to New Zealand. In the long-term, the Government's actions may not be in the public interest, when it is considered that New Zealand is a country dependent on being an attractive location for foreign investment so that businesses can raise capital to support their growth.

In summary, the Government's intervention in an attempt to uphold the common good in this case makes it difficult to conduct business by defining the test for foreign investment in important infrastructure badly. Arguably, New Zealand's interests could have been protected without using the force of complicated legislation. Further, the legislation has also undoubtedly damaged New Zealand's interests in terms of being seen as an attractive destination for foreign investment.<sup>97</sup>

### KiwiSaver

The KiwiSaver retirement savings scheme and associated tax incentives, introduced by the KiwiSaver Act 2006, is an example of the Government pushing in and taking a directive role based upon the assumption that it knows what is in the best interests of every person. This is not to say that governments should not be concerned about people's retirement savings, but it is a further example of the assumption that government intervention is the best way to solve a problem, in this case the problem of low levels of retirement saving.

KiwiSaver is an auto-enrolment savings scheme, and it is the first national scheme of its kind in the world. In the explanatory note to the KiwiSaver Bill, the Government considered "its role in encouraging saving (was) to facilitate, rather than coerce."<sup>98</sup> Thus, the purpose of the legislation as defined in the KiwiSaver Act is:<sup>99</sup>

to encourage a long term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in preretirement. The Act aims to increase individuals' wellbeing and financial independence, particularly in retirement, and to provide retirement benefits.

This means that the legislation is intended to change people's behaviour by making them consider saving through the workplace.

Some of the most important features of

KiwiSaver are that:

- from 2007, all employees entering new jobs have had to choose whether to opt out of the KiwiSaver scheme, or to be signed up to a retirement savings provider of their choice, or one of six default providers decided by the IRD;
- once an employee joins, they must make contributions for at least one year at a rate of either four or eight percent of their gross pay;
- employees cannot normally access the savings until retirement age (65), but there is a facility for them to put some of the money saved towards buying a first home (up to \$5000);
- taxpayers' money is used to subsidise KiwiSaver through the Government's tax-free contribution of \$1000 when an employee makes their first contribution, and a matching contribution of up to \$20 per week; and
- other subsidies are also included in the scheme, such as an exemption for employer contributions from the Specified Superannuation Contribution Withholding Tax up to a maximum of four percent of an employee's gross pay, a fee subsidy of \$40 per year, an employer tax credit of \$20 per week to help offset the cost of employer contributions, and a tax rate of only 30 percent on the highest paid income, rather than the top personal income rate of 39 percent.

One of the assumptions of the KiwiSaver legislation is that employees need a lot of help to make decisions about retirement savings. Following the findings of behavioural finance research, the designers of KiwiSaver believe that providing default providers is necessary because there are higher rates for joining an appropriate provider if employees are guided in their choices.<sup>100</sup> This ignores the evidence that in New Zealand a lot of people already save.<sup>101</sup> This behaviour would suggest there is insufficient justification for government intervention to direct people to investment in one kind of savings package. Moreover, allowing people to make choices might help them to invest more in entrepreneurial activity that would help to stimulate the economy and create greater wealth for the wider community.

An analysis by John Gibson and Chris Hector of Waikato University and Trinh Le of the New Zealand

Institute of Economic Research, based on figures for the first year of KiwiSaver, revealed another problem with the scheme. The distribution of incentives across population sub-groups means that it will distribute benefits unevenly throughout the population.<sup>102</sup> This is because the tax exemptions for employer contributions are capped at a proportion of an employee's salary, not a capped dollar amount. Across time, the proportional contributions will become more important than the Government's kick start contribution, since the benefits are open-ended each year until retirement, meaning people on higher incomes stand to benefit more from these arrangements. The study also argued that the incentives are distributed unequally, compared to New Zealand Superannuation. The calculations also indicated that over a lifetime high income earners (\$70,001 or more per year) would receive 80 percent of the benefits from incentives.<sup>103</sup> This means that KiwiSaver helps the wealthy in the long-term, who will always be able to save more than people on lower incomes. People on lower incomes will also be squeezed more by KiwiSaver's salary contributions.

This trend is also evident in the way the very attractive tax incentives on offer are encouraging wealthier people to take advantage of it more than poorer people. In a further study, John Gibson and Trinh Le have recently provided figures that show auto-enrolees tend to be younger and poorer, while direct enrolees are older and richer.<sup>104</sup> Examining who is joining the KiwiSaver scheme and how they are saving also shows that fewer people are engaging in new saving. For example, only 58,000 KiwiSaver members were auto-enrolees who had not opted out of the scheme by the end of 2007. By contrast the number of direct enrolees was 255,700.<sup>105</sup>

The saving into KiwiSaver accounts by and large represents people rearranging their income and investments so that they can reduce their tax liability and receive government subsidies at the same time.<sup>106</sup> On this point, Gibson and Le find that only between \$0.09 and \$0.19 of each dollar of KiwiSaver balances is new saving.<sup>107</sup> It seems that the people who are taking the most advantage of KiwiSaver so far are those who already have the means to save and invest. Other evidence from New Zealand and around the world shows that a country's level of saving does not seem to change no matter what kind of policies governments introduce. For instance, the Auckland University's Retirement Policy Centre has looked at a

range of studies which show that saving incentives do change people's behaviour, but, like Gibson and Le's results, that comes in the form of substituting one kind of saving for another.<sup>108</sup> Consequently, KiwiSaver induces more New Zealanders to divert a proportion of their income away from other purposes, like consumption, debt repayment or private investment, and among low income workers, the loss of income is felt more acutely.

In effect, the kind of behaviour which KiwiSaver encourages is for people to put their future consumption, in the form of savings, ahead of current consumption.<sup>109</sup> If KiwiSaver continues in its current form it will become a costly initiative for encouraging retirement savings, since it does not promote much of the new saving it is intended to. By 2012, the cost could be as much as \$6 billion, given the higher popularity of KiwiSaver than predicted.<sup>110</sup> The cost of the KiwiSaver subsidies has created additional deadweight in the economy which would not be there if the scheme had remained a lower cost auto-enrolment scheme, as it was prior to July 2007. Further, people earning low incomes support those who have not opted out of the scheme and will not see any reward from the money through general taxation that they pay towards KiwiSaver. The KiwiSaver tax incentives are therefore the feature of the scheme which shows the hand of positive government at work. Not only is the government creating certain kinds of investment opportunities and influencing how people should use their income, it is also spending wasteful sums of public money to do so.

In summary, KiwiSaver is a case of paternalistic government regulation meant to correct perceived errors in people's behaviour that lead them not to act in their best interests, in this case being able to voluntarily choose a retirement savings scheme without incentives. By the same token, this kind of paternalism also reduces people's opportunities to decide what is really in their best interests. The billions of dollars being spent on KiwiSaver could be used to reduce tax, giving people more flexibility about how to best use their money, including paying off debt, investing or saving. Further, as Phil Rennie has illustrated, the economic benefits of tax cuts are sounder in theory and in practice than those of saving.<sup>111</sup> Tax cuts would contribute to economic growth, and evidence from around the world suggests that growth causes savings, not that forced savings

causes growth.<sup>112</sup>

If the Treasury, other agencies and commentators are right, the Government is misallocating money on a massive scale, by encouraging people to divert their money away from investment in other sectors of the economy, or paying off personal debt, because it wants people to develop a savings habit. To accomplish this end, it has decided a workplace-based auto-enrolment savings scheme is the best way for New Zealanders to save for their retirement, and by offering tax incentives it has reduced the attractiveness of other investment options for no significant increase in the amount of savings. Further the design of KiwiSaver will benefit those people who naturally save more, while those people on lower incomes who do not opt out will share in fewer benefits from incentives and see a reduction in their disposable income.

### The New Zealand Curriculum

The education curriculum is another sector where the Government has intervened to shape society through the values which are taught in schools. All state schools are required by the National Administration Guidelines, established by the Education Act 1989, to teach the New Zealand Curriculum.<sup>113</sup> The revised New Zealand Curriculum, launched in 2007, specifies the values which should be taught to all pupils, which are said to be those "that enjoy widespread support, because it is by holding to these values and acting on them that we are able to live together and thrive." The curriculum specifies seven key values that should be taught:<sup>114</sup>

- excellence (defined as perseverance in the face of difficulty);
- innovation, inquiry and curiosity;
- diversity (as found in different cultures, languages and heritages);
- equity (defined as fairness and social justice);
- community and participation for the common good;
- ecological sustainability (including care for the environment); and
- integrity (including values such as honesty, responsibility, accountability and acting ethically).

The revised curriculum is generally less prescriptive than its predecessor. In relation to how schools will teach these values, the curriculum states that "the ways in which these values will find expression in an individual school will be guided by dialogue between the school and its community."<sup>115</sup> Schools therefore have some flexibility in incorporating the values they and the school community think are important when they interpret how the Ministry of Education's values should be taught. Values like integrity, inquiry and excellence are also positive ones to teach and foster among children.

However, the curriculum does nothing to explain the ethical and moral foundation of the values. This is perhaps an area that cannot be addressed properly without reference to the four cardinal virtues of justice, prudence, fortitude and temperance. In moral philosophy, the four virtues are the "hinge" of the qualities found in all other moral virtues. They are therefore a better basis for values because each moral virtue has an affective dimension, they are measured, and each contributes to the common good.<sup>116</sup> In short, they give clearer direction to moral action than the values outlined in the curriculum. An illustration of this point is that the curriculum offers no guidance for pupils about how to act if two or more values conflict.

In spite of the flexibility granted to schools to teach them, the fact remains that the values are prescribed by government. Consequently, schools must encourage, model and explore the centrally-imposed values in what they teach and in the assessments they carry out to meet their obligations under the Education Act 1989. Similar to the situation with welfare, when values education is defined by central government it leads to the politicisation of schooling, a risk less likely when the values reflected in schooling come from the community.

A directive approach is also seen in legislation that restricts access to schools through the policy of school enrolment zones, and regulations which prescribe the establishment of new schools and whether a school can change its designation, for example from a state school to a special character school.<sup>117</sup> A lighter touch by the government would create more flexibility and greater diversity in the provision of schooling in New Zealand. But the New Zealand Curriculum is a clear case of government

intervention to shape and direct the prevailing values and attitudes reflected in society through the education system.

### **Amendment of section 59 of the Crimes Act 1961**

The legislative force of government has also been used to mould and socialise the behaviour of parents, and impinge on their authority to raise their children with the amendment of section 59 of the Crimes Act 1961, in 2007. The amendment removed the old law which permitted parents to use "force by way of correction towards [a] child, if the force used is reasonable in the circumstances." The purpose of the Bill that made the change, as reported back from Select Committee in November 2006, was "to make better provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction."<sup>118</sup> The Bill should be interpreted in the light of attempts to reduce the incidence of child abuse, as some borderline cases had been shielded by the provisions of section 59 prior to this amendment. However, the effect of amending the Crimes Act 1961 is that now any corrective force, even a light smack or physically removing a child to "time out," constitutes assault, and parents who do these things are criminalised. Only the police's discretion about whether to proceed with a complaint prevents parents from being prosecuted.

The section 59 debate was heavily influenced by the philosophy of children's rights, found in the United Nations Convention on the Rights of the Child, for example, where children are treated as mini-adults who have legal rights, which requires law to be enforced which secures those rights. The result is that the normative authority of parents and parental responsibility for their children is reduced in the face of moral authority coming to reside in law. The legislation impinges on the unique relationship between parent and child, where parents need to have authority in order to take responsibility for bringing their child up in a way which leads them to maturity.

In short, the amendment of section 59 is an example of central government intervening to prevent injury being inflicted on the defenceless in the form of child abuse. However, while the outward concern of legislators was to reduce child abuse, the legislation has also impinged on parental

authority, since it restricts the ways in which parents can legally and reasonably discipline their children, criminalising conduct that falls far short of abuse. Child discipline is an area of life where arguably the principle of subsidiarity (see section 3) implies that families have primary responsibility for and authority over the lives of their children, rather than the state. This is because parents can deal with issues of child discipline better than the institutions of the state. The state can, and should, use legislation to prohibit and punish behaviour in order to prevent child abuse (as was provided for by the original section 59) because it threatens the common good if children are being harmed by their parents or caregivers. However, it is not the task of Parliament to pass legislation which in effect limits the ways that parents can reasonably discipline their children.

The amendment of section 59 of the Crimes Act 1961 was a case of law being used to change people's attitudes and behaviour. It is also indicative of government power being used to induce people to act in a way which promotes a vision of the common good. But by impinging upon the authority of parents and the institution of the family, the legislation arguably reflects an attack upon one of the associative communities of civil society which contributes to freedom from government regulation, and sustains the common good. This is so important because the family is prior to all of the other associative communities and institutions of civil society. The state should not be in the business of passing legislation which supplants the vital role of families in caring for, educating or bringing up the young. The consequence is a stronger hand for the state in determining what is right for families, which leads to a mistrust of parents.

### **CONCLUSION**

This section has examined the proposition that the role of government has been expanding dramatically in recent years. Levels of government expenditure are at levels above the OECD average, as a proportion of GDP, and its revenue has contributed to a large surplus. There is clearly scope for the Government to reduce its expenditure to the level necessary to fund the activities which are critical to its proper tasks.

The current Government uses fiscal policy to manage the economy, to distribute benefits and create incentives for people. This has meant that its

tax and spend approach to governance has perhaps become an end in itself. Phil Rennie is one who has called for a deeper questioning of the ends of the public spending binge.<sup>119</sup>

There is not enough scrutiny of public spending, of its benefits and of the alternatives to policy makers. ... There needs to be a wider debate on what the proper role of government is and what services should be realistically provided by people themselves. We need to consider what governments can do as well as what they should do.

This means that central government should approach its tasks with humility and respect for the security and prosperity of the communities it serves. Such an approach would call into question the various policies and programmes described before, which show that government has been intervening more in the affairs of the New Zealand community, promoting a social democratic vision of the common good, based on conformity reducing inequality and intervening in the economy to produce those desired outcomes. The policies and programmes described show that New Zealand's government has become paternalist. In aspects of life ranging from the family to private savings and benefits, government is stepping in, assuming a role for itself in defining social attitudes, either by influencing people's behaviour or providing support for people, based on the assumption that it knows what is best for every person.

Arguably, this approach to government erodes the ability of individuals and communities to flourish on their own terms, and creates a culture of entitlement and dependency on the agencies of central government. The product of this kind of government intervention is ultimately a politicised civil society, where people look to their own interests and what government can do for them, rather than the common good of the community as a whole. The next section considers a framework which identifies the need for government, but casts it in the context of how central government should defend the common good of the community. This suggests that governments should have a smaller range of legitimate tasks, implying the size of central government in New Zealand needs to be reduced.

---

## ENDNOTES

- <sup>1</sup> R. Kerr, "The Government's Role is Whatever the Government Defines It To Be! Discuss." Speech to the Auckland Downtown Rotary Club, Auckland, 6 April (Wellington: New Zealand Business Round Table (NZBR), 2003).
- <sup>2</sup> M. Cullen, "Budget Policy Statement 2008" (Wellington: Office of the Minister of Finance; The Treasury, New Zealand, 2007), 3.
- <sup>3</sup> Organisation for Economic Cooperation and Development, "Economic Survey of New Zealand 2005," *Policy Brief (Paris: OECD, 2005)*, 7.
- <sup>4</sup> Treasury, "Half Year Economic & Fiscal Update 2007" (Wellington: The Treasury, New Zealand, 2007).
- <sup>5</sup> Treasury, "Half Year Economic & Fiscal Update 2007," 37; Treasury, "Budget Economic & Fiscal Update 2008" (Wellington: The Treasury, New Zealand, 2008), 90.
- <sup>6</sup> Treasury, "Budget Economic & Fiscal Update 2008," 90.
- <sup>7</sup> Treasury, "Half Year Economic & Fiscal Update 2007," 37-38; Treasury, "Budget Economic & Fiscal Update 2008," 91-92.
- <sup>8</sup> Treasury, "Half Year Economic & Fiscal Update 2007," 57.
- <sup>9</sup> Treasury, "Half Year Economic & Fiscal Update 2007," 38; Treasury, "Budget Economic & Fiscal Update 2008," 96.
- <sup>10</sup> P. Rennie, "New Zealand's Spending Binge," *Issue Analysis*, 83 (St. Leonard's NSW: Centre for Independent Studies, 2007), 2.
- <sup>11</sup> Treasury, "Budget Economic & Fiscal Update 2008," 96.
- <sup>12</sup> Treasury, "Budget Economic & Fiscal Update 2008," 97.
- <sup>13</sup> Treasury, "Half Year Economic & Fiscal Update 2007," 49-50.
- <sup>14</sup> Treasury, "Budget Economic & Fiscal Update 2008," 90, 99.
- <sup>15</sup> New Zealand Government, *Operating Surplus Explained* (2006), <http://www.beehive.govt.nz/feature/operating+surplus+explained> (accessed 27 February 2008); J. Whitehead, "New Zealand's Fiscal Policy Choices - The Big Picture" (Wellington: The Treasury, New Zealand, 2007).
- <sup>16</sup> Treasury, "Budget Economic & Fiscal Update 2008," 99-101.
- <sup>17</sup> Treasury, "Budget Economic & Fiscal Update 2008," 81.
- <sup>18</sup> Treasury, "Budget Economic & Fiscal Update 2008," 89, 104; "Cullen Shows Us the Money," *The New Zealand Herald*, 23 May 2008.
- <sup>19</sup> V. Tanzi and L. Schuknecht, *Public Spending in the 20th Century* (Cambridge, U.K.; New York: Cambridge University Press, 2000).
- <sup>20</sup> P. Rennie, "New Zealand's Spending Binge," 9.
- <sup>21</sup> P. Rennie, "New Zealand's Spending Binge," 9.
- <sup>22</sup> P. Gendall, V. Michaeli and C. Pegg, "The Role of Government" (Palmerston North: International Social Survey Programme (ISSP); Department of Marketing, Massey University, 2007), 2.
- <sup>23</sup> "OECD Economic Outlook - New Zealand," 82 (Paris: Organisation for Economic Cooperation and Development (OECD), 2007).
- <sup>24</sup> "OECD Economic Outlook - New Zealand."
- <sup>25</sup> The Treasury, "Sustaining Growth: Briefing to the incoming Government," 36.
- <sup>26</sup> The Treasury, "Cost Benefit Analysis Primer" (Wellington: The Treasury, New Zealand, 2005).

- <sup>27</sup> P. Rennie, "Taming New Zealand's Tax Monster," *Issue Analysis*, 87 (St. Leonard's NSW: Centre for Independent Studies, 2007), 6.
- <sup>28</sup> The Treasury, "Sustaining Growth: Briefing to the incoming Government," 35.
- <sup>29</sup> The Treasury, "Sustaining Growth: Briefing to the incoming Government," 36.
- <sup>30</sup> State Services Commission, "Human Resource Capability Survey of Public Service Departments. As at 30 June 2007" (Wellington: 2007).
- <sup>31</sup> The Treasury, "Sustaining Growth: Briefing to the incoming Government," 30.
- <sup>32</sup> The Treasury, "Sustaining Growth: Briefing to the incoming Government," 31.
- <sup>33</sup> J. Cox, *Middle Class Welfare* (Wellington: New Zealand Business Roundtable (NZBR), 2001), cited in P. Rennie, "Taming New Zealand's Tax Monster," 10.
- <sup>34</sup> P. Saunders, "Reinventing New Zealand's Welfare State," *Issue Analysis*, 85 (St. Leonard's NSW: Centre for Independent Studies, 2007), 4-5.
- <sup>35</sup> P. Rennie, "New Zealand's Spending Binge."
- <sup>36</sup> L. Reed, "The Seven Principles of Sound Public Policy" (Midland, Michigan: Mackinac Center, 2006), 10.
- <sup>37</sup> J. Cox, *Middle Class Welfare*, 43.
- <sup>38</sup> J. Cox, *Middle Class Welfare*, 43.
- <sup>39</sup> J. Cox, *Middle Class Welfare*, 7.
- <sup>40</sup> J. Cox, *Middle Class Welfare*, 8.
- <sup>41</sup> M. Bassett, *Working with David. Inside the Lange Cabinet* (Auckland: Hodder Moa, 2008), 88.
- <sup>42</sup> M. Bassett, *Working with David. Inside the Lange Cabinet*, 224.
- <sup>43</sup> M. Bassett, *Working with David. Inside the Lange Cabinet*, 538.
- <sup>44</sup> See B. Gustafson, "New Zealand Since the War," in *New Zealand Government and Politics*, ed. R. Miller (Auckland: Oxford University Press, 2006), 13; H. Clark, "Prime Minister's Address to the London School of Economics, 21 February" (2002).
- <sup>45</sup> G.W.R. Palmer, "To What Extent has MMP Reduced the Powers of the Executive in New Zealand" (Wellington: Chen Palmer & Partners, 2003).
- <sup>46</sup> The numbers of Government Bills (i.e. Bills which were not Members', Local or Private Bills) that were passed during the period 1996 to 2007 were calculated from a list compiled using the *Journals of the House of Representatives* and the *Parliamentary Bulletin*.
- <sup>47</sup> C. Eichbaum, "The Politics and Economics of the Third Way," in *The New Politics: A Third Way for New Zealand*, ed. S. Chatterjee et al. (Palmerston North: Dunmore Press, 1999), 53.
- <sup>48</sup> T. Blair and G. Schroeder, "Europe: The Third Way" (1999).
- <sup>49</sup> A. Giddens, *The Third Way and Its Critics* (Cambridge: Polity Press, 2000). This work was in response to criticisms of Giddens' first major work articulating a vision for a Third Way society. See A. Giddens, *The Third Way: The renewal of social democracy* (Cambridge, England: Polity Press, 1998).
- <sup>50</sup> A. Giddens, *The Progressive Manifesto* (Cambridge: Polity Press, 2004), 2.
- <sup>51</sup> A. Giddens, *The Third Way and Its Critics*, 2, cited in C. Eichbaum, "The Third Way," in *New Zealand Government and Politics*, ed. R. Miller, (Auckland: Oxford University Press, 2006), 52.
- <sup>52</sup> A. Giddens, *The Progressive Manifesto*, 4.
- <sup>53</sup> A. Giddens, *The Progressive Manifesto*, 5.
- <sup>54</sup> A. Giddens, *The Progressive Manifesto*, 9.
- <sup>55</sup> A. Giddens, *The Progressive Manifesto*, 10.
- <sup>56</sup> A. Giddens, *The Progressive Manifesto*, 8.
- <sup>57</sup> A. Giddens, *The Progressive Manifesto*, 8.
- <sup>58</sup> A. Giddens, *The Progressive Manifesto*, 8.
- <sup>59</sup> A. Giddens, *The Progressive Manifesto*, 13-15.
- <sup>60</sup> A. Giddens, *The Progressive Manifesto*, 14.
- <sup>61</sup> One study found that early and prolonged day-care means that young children are 1.6 times more likely to have social or emotional problems. J. Belsky and M.J. Rovine, "Nonmaternal Care in the First Year of Life and the Security of Infant-Parent Attachment," *Child Development* 59, no. 1 (1988): 157.
- <sup>62</sup> NICHD Early Child Care Research Network, "Type of Child Care and Children's Development at 54 Months," *Early Childhood Research Quarterly* 19, no. 2 (2004): 203-30; NICHD Early Child Care Research Network, "Infant-Mother Attachment Classification: Risk and Protection in Relation to Changing Maternal Caregiving Quality," *Developmental Psychology* 42, no. 1 (2006): 38-58.
- <sup>63</sup> P. Harris, "Rogernomics, the 'Washington Consensus' and New Zealand Economic Policy," in *The New Politics: A Third Way for New Zealand*, ed. S. Chatterjee et al. (Palmerston North: Dunmore Press, 1999).
- <sup>64</sup> Isaiah Berlin, "Two Concepts of Liberty," in *The Proper Study of Mankind: An anthology of essays* (New York: Farrar, Straus and Giroux, 1997), 194-203 cited in S. Gregg, *On Ordered Liberty. A treatise on the free society* (Lanham: Lexington Books, 2003), 30-31.
- <sup>65</sup> H. Clark, "Prime Minister's Address to the London School of Economics, 21 February."
- <sup>66</sup> S. Maharey, "The Third Way and How I Got On To It. Speech, 3 June" (2003).
- <sup>67</sup> S. Maharey, "The Third Way and How I Got On To It. "
- <sup>68</sup> H. Clark, "Prime Minister's Address to the London School of Economics, 21 February."
- <sup>69</sup> M. Cullen, "Budget 2004. Budget speech" (Wellington: The Treasury, New Zealand, 2004), 12.
- <sup>70</sup> Ministry of Social Development, "Future Directions for Social Assistance" (Wellington: New Zealand House of Representatives, 2001), 1.
- <sup>71</sup> G. Dwyer, "Dissecting the *Working for Families* Package" (Wellington: New Zealand Business Roundtable (NZBR), 2005), 40. New Zealand Living Standards data cited in Ministry of Social Development, "Future Directions for Social Assistance," 6.
- <sup>72</sup> G. Dwyer, "Dissecting the *Working for Families* Package," 32.
- <sup>73</sup> M. Cullen, "Budget 2004. Budget speech," 12.
- <sup>74</sup> M. Cullen, and S. Maharey, "Reform of Social Assistance: *Working for Families* package," Report to the Cabinet Policy Committee, Office of the Minister of Finance and Revenue and Office of the Minister for Social Development and

- Employment (Wellington), 2, cited in G. Dwyer, "Dissecting the *Working for Families* Package," 2.
- <sup>75</sup> G. Dwyer, "Dissecting the *Working for Families* Package."
- <sup>76</sup> G. Dwyer, "Dissecting the *Working for Families* Package," 17.
- <sup>77</sup> G. Dwyer, "Dissecting the *Working for Families* Package," ix.
- <sup>78</sup> G. Dwyer, "Dissecting the *Working for Families* Package," ix, 44.
- <sup>79</sup> G. Dwyer, "Dissecting the *Working for Families* Package," viii.
- <sup>80</sup> G. Dwyer, "Dissecting the *Working for Families* Package," 33.
- <sup>81</sup> G. Dwyer, "Dissecting the *Working for Families* Package," viii, 29.
- <sup>82</sup> G. Dwyer, "Dissecting the *Working for Families* Package," 34.
- <sup>83</sup> G. Dwyer, "Dissecting the *Working for Families* Package," 34.
- <sup>84</sup> G. Dwyer, "Dissecting the *Working for Families* Package," 47.
- <sup>85</sup> G. Dwyer, "Dissecting the *Working for Families* Package," 40.
- <sup>86</sup> P. Nolan, "Lifting Families' Income," *Policy Quarterly* 3, no. 2 (2007): 25-26.
- <sup>87</sup> P. Nolan, "Lifting Families' Income," 26.
- <sup>88</sup> G. Dwyer, "Dissecting the *Working for Families* Package," 43.
- <sup>89</sup> An officials' paper on the package observed that "The modest employment effects of Future Directions – Working for Families may have a small positive impact on GDP per capita in New Zealand over a period of time." Ministry of Social Development, The Treasury and Inland Revenue Department, "Future Directions – Working for Families Impacts, Report prepared for the Minister of Finance and the Minister of Social Development and Employment, 15 March" (Wellington: Ministry of Social Development, 2004), 3, cited in G. Dwyer, "Dissecting the *Working for Families* Package," 40.
- <sup>90</sup> Centre for Social Research and Evaluation and Inland Revenue Department, "Receipt of the Working for Families Package: 2007 Update" (Wellington: Ministry of Social Development; Inland Revenue Department, 2007).
- <sup>91</sup> Centre for Social Research and Evaluation and Inland Revenue Department, "Receipt of the Working for Families Package: 2007 Update," 28-29.
- <sup>92</sup> Centre for Social Research and Evaluation and Inland Revenue Department, "Receipt of the Working for Families Package: 2007 Update," 45.
- <sup>93</sup> Centre for Social Research and Evaluation and Inland Revenue Department, "Receipt of the Working for Families Package: 2007 Update," v.
- <sup>94</sup> "Government Guarded on Potential List of Strategic Assets," *The New Zealand Herald*, 6 March 2008.
- <sup>95</sup> "NZ Govt Tightens Foreign Investment Laws," *The New Zealand Herald*, 3 March 2008.
- <sup>96</sup> "Government Guarded on Potential List of Strategic Assets," *The New Zealand Herald*.
- <sup>97</sup> See, for example, the Ministry of Foreign Affairs and Trade Statement of Intent 2008, which highlights that attracting foreign investment is an important aspiration of New Zealand. Ministry of Foreign Affairs and Trade, "Statement of Intent 2008" (Wellington: 2008), 25.
- <sup>98</sup> KiwiSaver Bill, 2006, 3.
- <sup>99</sup> KiwiSaver Bill, 2006, 3 (1).
- <sup>100</sup> New Zealand Business Roundtable, "Submission on the KiwiSaver Bill" (Wellington: 2006), 21-26.
- <sup>101</sup> G. Scobie, J. Gibson and T. Le, "Saving for Retirement: New evidence for New Zealand," *Working Paper*, 04/12 (Wellington: The Treasury, New Zealand, 2004), cited in New Zealand Business Roundtable, "Submission on the KiwiSaver Bill," 15.
- <sup>102</sup> J. Gibson, C. Hector and T. Le, "The Distributional Impact of KiwiSaver Incentives," *Working Paper in Economics*, 02/08 (Hamilton: Department of Economics, Waikato University, 2008).
- <sup>103</sup> J. Gibson, C. Hector and T. Le, "The Distributional Impact of KiwiSaver Incentives," 10.
- <sup>104</sup> J. Gibson and T. Le, "How Much New Saving will KiwiSaver Produce?" *Working Paper in Economics*, 03/08 (Hamilton: Department of Economics, University of Waikato, 2008), 5.
- <sup>105</sup> J. Gibson and T. Le, "How Much New Saving will KiwiSaver Produce?" 5, note 5.
- <sup>106</sup> John Gibson and Trinh Le also cite studies from the United States which indicate that retirement schemes which give people tax incentives do little to increase net saving and lead to people "reshuffling" their investments to take advantage of them. For example, E. Engen, W. Gale and J.K. Scholz, "The Illusory Effects of Saving Incentives on Saving," *Journal of Economic Perspectives* 10, no. 4 (1996): 113-38 and O. Attanasio and T. DeLeire, "The Effect of Individual Retirement Accounts on Household Consumption and National Saving," *The Economic Journal* 112, no. July (2002): 504-38, cited in J. Gibson and T. Le, "How Much New Saving will KiwiSaver Produce?" 4.
- <sup>107</sup> J. Gibson and T. Le, "How Much New Saving will KiwiSaver Produce?" 10.
- <sup>108</sup> M. Littlewood and S. St John, "Submission on the 'Taxation (Annual Rates, Business Taxation, KiwiSaver and Remedial Matters) Bill,'" (Auckland: Retirement Policy Research Centre, University of Auckland, 2006), 10.
- <sup>109</sup> P. Rennie, "KiwiSaver or KiwiSucker? A critical view," *Issue Analysis*, 94 (St Leonard's: Centre for Independent Studies (CIS), 2008), 3.
- <sup>110</sup> J. Gibson and T. Le, "How Much New Saving will KiwiSaver Produce?" 5-6, note 7.
- <sup>111</sup> P. Rennie, "Why Tax Rates are Good for Growth," *Issue Analysis*, 75 (St. Leonard's NSW: Centre for Independent Studies, 2006).
- <sup>112</sup> T. Le, "Does New Zealand Have a Household Saving Crisis?" (Wellington: New Zealand Institute for Economic Research (NZIER), 2007); M. Littlewood and S. St John, "Submission on the 'Taxation (Annual Rates, Business Taxation, KiwiSaver and Remedial Matters) Bill.'"
- <sup>113</sup> National Administration Guideline 1 states: "Each Board of Trustees is required to foster student achievement by providing teaching and learning programmes which incorporate the New Zealand Curriculum (essential learning areas, essential skills and attitudes and values) as expressed in National Curriculum Statements." Ministry of Education, "The National Administration Guidelines" (Wellington: Ministry of Education, New Zealand, 2005), no. 1.
- <sup>114</sup> Ministry of Education, "The New Zealand Curriculum for English Medium Teaching and Learning in Years 1-13" (Wellington: Learning Media; Ministry of Education, New Zealand, 2007), 10.
- <sup>115</sup> Ministry of Education, "The New Zealand Curriculum for

English Medium Teaching and Learning in Years 1-13," 10.

<sup>116</sup> J. Rickaby, "Cardinal Virtues" in *The Catholic Encyclopedia* (New Advent; Robert Appleton Company, 1908), <http://www.newadvent.org/cathen/03343a.htm> (accessed 8 July 2008).

<sup>117</sup> See for example the criticisms held by the City of Manukau Education Trust (COMET) of the school governance provisions in the Education Act 1989 (section 154 in particular) which limit schools from adopting different designations or governance arrangements. City of Manukau Education Trust, "Governance and Complex Urban Campus Schools" (Auckland: City of Manukau Education Trust (COMET), 2007).

<sup>118</sup> Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill 271-2, 2006, 1.

<sup>119</sup> P. Rennie, "New Zealand's Spending Binge," 13.

## SECTION 3

### Governing with a View to the Common Good

---

If there are concerns about the size of government, because it has expanded its role into areas where individuals and communities should take responsibility for themselves, then we must ask where the boundary should lie between government's responsibilities to intervene on behalf of people's welfare and where the communities of civil society should have primary responsibility. As political scientist Jonathan Boston and colleagues have asked, "What should be the state's role in terms of regulation, ownership, funding, provision, and moral suasion?"<sup>1</sup> The question highlights the tension between the public and private sectors, and whether certain functions or activities are "inherently public or inherently governmental."<sup>2</sup>

The purpose of this section is to present a framework which answers this question, by drawing on the principles that describe a conservative political society. The major line of thought which is developed is that the proper role of government is defined by how it can best *defend* the common good of the community it represents from harm. Protecting against harm is defined as "defending against wrong."<sup>3</sup> Official delineations between right and wrong are developed by the ongoing practice of political judgment, declaring what actions are wrong in relation to the moral order. If government defends against wrong, it lends a moral dimension to government activity, or in other words it is right to respond to "objective wrong."<sup>4</sup>

However, because such government activity can also lead to the extension or even the abuse of state power, the government should be subject to various internal and external constraints. There are three key internal limiting factors on government power. The first is that government should be limited because of the loss of liberty which comes with government

intervention. A second reason for limited government is that when the government intervenes it can cause additional problems, such as those arising from a lack of information, and people losing a sense of responsibility for the decisions they make. A third reason is human fallibility, since people's tendency to misuse power is good reason to limit the power of government. These concerns aside, responding to wrong, to prevent injury to the common good,<sup>5</sup> is a reasonable principle for determining when the government may intervene. It implies that the government exists to serve people in a certain way, and that it should be concerned with the integrity of the social fabric. It should therefore be socially-minded and govern with a view to protecting the common good.

This means that several external limiting factors should also control government power. The first of these is the role of custom and tradition in limiting the extent of government intervention into the affairs of the associative communities of civil society. This is because the body of custom and tradition which a community values indicates the common good; that is, the irreducible goods which are good for every person everywhere. This means that protecting people's public liberties and freedom of association, which allow custom and tradition to flourish, should be a responsibility of government. Custom and tradition also serve to limit government power in the way that they indicate which social arrangements are good for a community and should be conserved. A prudent government should use custom and tradition as guides to where the boundary is for proper government action so that it does not erode the social fabric, which habit and practice shows sustains the associative communities and institutions of civil society.

The second external limiting factor which restricts government power is civil association. Civil association is when people identify and associate first with the communities of civil society—the family, neighbourhoods, churches, schools, voluntary organisations and so on—rather than looking to the state. Civil association is also justified by the notion of subsidiarity.<sup>6</sup> Subsidiarity is also helpful at this point for defining the proper boundaries of responsibility. This is because subsidiarity dictates that decisions should be taken by the level of government closest to local communities. One of the other major premises of subsidiarity is that the government is but one of the institutions of civil society, although it has a special responsibility to care for the well-being of the nation or the community which it serves. Nevertheless, the institution of government is contrived, whereas the unity of the associative communities and institutions of civil society has developed naturally, especially in the case of organic communities like the family and the church. Because each community or institution has a unity, authority is differentiated throughout society. Each community or institution is responsible for a leading function.<sup>7</sup> This creates clear boundaries between what each of these communities should be responsible for and what the government should be responsible for, in terms of what each community or institution can attend to best. As Pope John Paul II has written:<sup>8</sup>

Malfunctions and defects in the Social Assistance State are the result of an inadequate understanding of the tasks proper to the State. Here again the principle of subsidiarity must be respected: a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good.

Subsidiarity thus serves to prevent the government encroaching on the proper functioning of other communities and institutions, limiting its role and power.

Central government should only be granted the authority to make decisions on behalf of local communities when it can show that it will do a better job than those communities and than a lower level of government. This is where custom and tradition can limit the impulse for government intervention,

as they point to what communities can do and which social arrangements the government should avoid interfering with. The principle of subsidiarity also implies that a hierarchy exists in the way society operates. The implications of subsidiarity are that the state should not be responsible for everything. The associative communities of civil society have responsibilities that should be respected, and not interfered with or absorbed.<sup>9</sup> Nevertheless, subsidiarity grants a circumscribed role for government to come to the aid of individuals and communities when they cannot protect themselves. As will be discussed later, if subsidiarity is the only principle followed for defining the proper role of government, it may lead to the kind of expansive government described in section 2, where government promotes and upholds the common good rather than understanding its limits. In this respect, subsidiarity should be moderated by custom and tradition. This stresses how important it is that when the government does act to prevent harm to the common good of a community its intervention should not be indefinite. The government should always look to step back as soon as the threat of harm has been dealt with so that the responsibilities and functions of associative communities are not absorbed by the state, but can be resumed by their proper holders.

The implications of subsidiarity for the role of government in society are that the government should not intervene unless it is to prevent harm and associative communities cannot deal with the threat of harm themselves. If government acts within the constraints of custom and tradition and subsidiarity, this would help prevent government activity moving from protecting the common good to promoting it.

As a political-legal community, the leading task of government is to adjudicate between right and wrong, and to help protect the social order which allows civil society to be free. This means that the government should not impinge on the sovereignty of the other associative communities of civil society. This allows those communities to be strong, meaning that there would be less need for the government to intervene at all. In this fashion, the scope of government power would be consciously limited to the tasks which allow a community to pursue the common good. By accepting these principles as fundamental for defining the essential task of government, several more questions are raised: what the common good is; how it is defined; how the power

of government may be limited to protecting the common good from harm, as opposed to promoting it; and how the common good of New Zealand may be described.

Consequently, this section expands upon a conservative framework for the role of government in society which responds to these questions. It does so by discussing the role of government; how the customs and traditions of a community indicate the common good; and how government may be limited by governing with a view to the common good of a community. The penultimate part of this discussion concentrates on defining the features of the common good of New Zealand. In summary, this section presents some general principles, or what might even be regarded as an ethic, for how government may intervene to defend the common good. Throughout this discussion, the customs and traditions of a community are held to be essential to this framework as they help clarify what the common good looks like in society and, therefore, the boundary between legitimate government intervention and community responsibility.

## THE ROLE OF GOVERNMENT

The proper role of government shall be described from first principles. This means that a basic question needs to be answered prior to the one which concerns the essential tasks of government. That is, why do we need government?

The answer to this question is simple. We need government because it is natural for people, who make up the various associative communities of civil society, to want to live peaceful lives. Peace means the order which comes from bringing the different interests of different people into harmony.<sup>10</sup> It is a reality of mutual life within a community that there are different individuals who hold different opinions, and so there will be disagreement about how individual and common goals should be achieved. Likewise, for life to function in a complex society, such as the nation-state of New Zealand, it is necessary to decide how material resources should be used in an orderly way.

A higher form of political authority, which we understand today as representative government ruling through the apparatus of the nation-state, with appropriate checks and balances on its authority, is a proper and reasonable solution to this problem.

This is not to advocate a form of social contract theory, where the individual, the family and all forms of association are subsumed by the state to serve its ends. Instead, representative government can use its coercive power to protect the order which people desire (whose end should be peace). In doing so, leaders should govern with humility, because they too are human, share human frailties and are themselves members of a nation.<sup>11</sup> They should value mutual obligation to the given order as a means rather than an end to life.<sup>12</sup> In short, leaders should respect the fact that society is prior to the state, and that the government is only a legal-constitutional construct that serves people, using law to protect people from undue harm.

Government is also necessary because it maintains the social arrangements in which people may pursue liberty and associate. This is because established institutions like the government have the authority to command a people's allegiance. Contrary to those who believe freedoms can be claimed, the first reason why government can command allegiance is because liberty is not an absolute value. This is because people are born into a pre-existing social order, which gives continuity to life. In an ordered free society, people have a measure of personal freedom, but personal liberty should be subject to the social fabric and established political authority, whose responsibilities are limited to ensuring that individuals and local communities have an environment available in which to associate. The social fabric is a tapestry of the communities which are part of the social order. The essential point is that people do not exist in isolation; they stand in the stream of common life. The individual person and society are bound together insofar as people desire to love the life that has been given to them. The implication is that society should be conceptualised as a kind of social organism, even to the point of having personhood.<sup>13</sup>

Flowing from this understanding of society, the role of government is to guard the pre-existing social order from harm, so long as the custom and tradition of that order do not mean that an injury is being done to people. This is so because of the way proper government protects people's liberties. This relationship between the people and government is related to how people recognise legitimate authority in the various permanent institutions of society, because they serve to give people a sense of allegiance

in a common identity.<sup>14</sup> Sharing a common identity enables people to establish social bonds which are greater than themselves. In other words, people have a natural disposition to recognise the legitimacy of the existing order because they are born into it. This means that the bond between people and the institutions of society does not emerge as the result of individual choice or by entering into a contract, it is entered into objectively, much like a child recognises the authority of his or her parents and behaves with a sense of duty or obligation towards them. The crucial contention which underpins this point is that truth corresponds to a fact or things as they are.<sup>15</sup>

British writer and philosopher, Roger Scruton, puts it this way in relation to authority as it is exercised throughout life:<sup>16</sup>

Authority ... is an enormous artifact. By which, I mean not that authority is intentionally constructed, but rather that it exists only in so far as men exercise, understand and submit to it.

And further:<sup>17</sup>

Society exists through authority, and the recognition of this authority requires the allegiance to a bond that is not contractual, but transcendent, in the manner of a family tie. Such allegiance requires tradition and custom through which to find enactment.

Consequently, the institutions of government represent one of the bonds between a people and a transcendent form of authority. Because it represents order and permanence in society, government may be considered necessary since it is one of the set of civil institutions which people develop loyalty to. This means that proper government has the authority to defend the existing social arrangements of a community. One of the most fundamental social arrangements is ownership of private property. As the seventeenth century philosopher John Locke stated in his *Second Treatise on Government*:<sup>18</sup>

... because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is political society, where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it. And thus all private judgment of every particular member

being excluded, the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, for the execution of those rules, decides all the differences that may happen between any members of that society concerning any matter of right; and punishes those offences which any member hath committed against the society, with such penalties as the law has established: whereby it is easy to discern, who are, and who are not, in political society together. Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders, are in civil society one with another.

The need to protect people's private property, essential for creating wealth, brings forth political society and the need for good government capable of adjudicating between people's demands. An implication of this relationship between government and the people is that if there is any kind of social contract, it is the mutual bond which is generated by allegiance to proper civil institutions.

It may also be argued then that the role of government is to supply a measure of coercive force to protect people's freedom to live by their own custom and tradition.<sup>19</sup> Long before Scruton, the eighteenth century British politician, Edmund Burke expounded upon this point when he wrote that the only liberty he could defend was "a liberty connected with order; that not only exists along with order and virtue, but which cannot exist at all without them."<sup>20</sup> In stating this argument, Burke was adamant that "the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjections."<sup>21</sup>

Burke understood that people are prone to weakness and passion, which underpinned his proposition that central government should not have too much power. The institutions that he thought best protected people's liberty were to be found in the community rather than the state, for example, in the authority of the family, the local community, the church or the guild. Burke's understanding of the relationship between government and civil society illustrates that government should have strictly limited tasks, irrespective of the problems facing it. For Burke, this extended even to national disasters, such as a severe famine:<sup>22</sup>

The State ought to confine itself to what regards the State or the creatures of the State, namely the exterior establishment of religion, its magistracy, its military force by land and sea, its revenue, the corporations that owe their existence to its fiat; in a word everything that is truly and properly public, to the public peace, to the public safety, to the public order and to the public property.

In summary, Burke limits the tasks of government to tending to the institutions of the state which have a legitimate role in protecting the public interest. In all other matters of life it should not impose, leaving people well alone. Burke also argues the more government tries to perform duties which are not its primary responsibility the more certain its failure will be at accomplishing them.<sup>23</sup> In the areas where law cannot regulate, manners should. This means aside from certain functions which may protect the common good of a community, private issues which face individual people and families should not be the business of government, because government cannot deal with these issues as effectively as the associative communities of civil society. This is because communities exist prior to the state, and each civil institution has its own proper functions related to the sphere of life it is responsible for.

American sociologist, Robert Nisbet argued similarly that a necessary function of government is to shore up or reinforce the natural communities in society which are the true building blocks of social order.<sup>24</sup> For Nisbet, people can only truly have liberty when there is local and regional differentiation, association among the different communities of civil society and the diversification of power which may occur when the power of central government is weak.<sup>25</sup>

In summary, Burke's and Nisbet's arguments illustrate that while liberty is critical for a functioning civil society, it must be balanced against the need for authority and order. In this case, government is necessary, but its tasks are few in the face of the authority and order that the associative communities and institutions of civil society can provide better in their sphere of responsibility. The need for proper government is a consequence of the character of people. At their core, people are cracked vessels, who have disparate desires. Consequently, there is a need for a common over-arching political authority which can limit the use of private force,<sup>26</sup> enact justice and provide security, so that a community of people, who

each have a degree of liberty as free individuals, may enjoy peace and order, and garner wealth.

Proper government does so by adjudicating between the disputes of people living in a community. Proper government also has a role in fostering the associative communities and institutions of society which are prior to the state because they sustain the custom and tradition of a community. Related to this, government has a responsibility to sustain an objective public realm in which people can be creative, and develop wealth, character and relationships with one another. In this way, the role of proper government is to protect the social order—the basic goods which help people to live a fulfilling life. In this way, government is a friend of the existing social order, rather than its master, as it governs with reference to the good of a community.

## DEFINING THE COMMON GOOD

The chief role of government has been said to be to protect the common good from harm, rather than to promote it. Consequently, what is meant by the common good should be described further in order to understand what the good is that government should protect. This is important because the common good is a concept which has a number of contestable meanings attached to it. The definition of the common good which is preferred in this discussion paper situates the concept in terms of the irreducible goods which are good for every person everywhere, which are revealed by lived experience through proper custom and tradition. This is what some have described as the right (*ius*) and tradition of a community.<sup>27</sup>

The common good understood in this way gives identity to a people and creates a sense of unity and shared experience among a people. It may also be said that people even share in the common good irrespective of whether there is actually a personal bond between them.<sup>28</sup> The common good is therefore sustained by partnerships between people for their mutual benefit. The family is vital for teaching people the habits of association to this end. Such relationships inhibit the opportunities for government to become involved in the lives of individuals and associative communities. This is a conservative approach to understanding the common good of a community, but it also owes some debt to conceptions of the common good advanced by natural law theorists.

## Conceptions of the common good

Over the centuries the common good has been defined in a number of ways. Some simplistic definitions include "the good to be pursued in common," or "what is best for the most people."<sup>29</sup> These definitions at best only hint at what the common good might be. For example, a clear danger with the simplistic nature of the latter definition is that it could mean that only a few people define the common good, opening the door to totalitarianism. However, the majority of thought about the common good has delved deeper into the ethical implications of the concept. As a result, better definitions than these have been produced which have sought to define it in terms of what is good for a community.

Perhaps the first tradition of thought which formalised the principles for how people could live in community and realise their best interests by way of common pursuits and shared goods was classical Greek and Roman political philosophy. For Aristotle, the common good was a higher good than the individual person, since the common good was associated with the *polis* (the city) in which one lived.<sup>30</sup> More precisely, the *polis* represented "the rational moral whole of which all other human associations and functions are parts."<sup>31</sup> In the *polis*, people were supposed to find their fulfilment in accord with an ultimate norm, whether through friendship, family, rationality, the law or communal self-sufficiency.<sup>32</sup> Aristotle believed that the city was a partnership in a good life, and, recognising that virtue exists in short supply among people, that the best regime was a mixed polity in which ruler and ruled shared the responsibility for governance.<sup>33</sup> There is much to commend in Aristotle's view of the relationship between the government and the community. However, his faith in the goodness of government creates a danger that a ruler could direct people toward a particular conception of the common good, upon the assertion that it would benefit people. This marks the distinction between a government that promotes the common good, which may be considered a feature of positive government, and one that protects the common good, which reflects limited government.

For the Roman statesman, Cicero, himself drawing on Scipio, virtue was also important for securing the common good of a community. He argued that there is a public sphere, or a

commonwealth (*res publica*), when an identifiable group of people live in some mutually ordered way. The condition for this is prior community in virtue, which may only come about if there is a longing for just such a community.<sup>34</sup>

These various conceptions of the common good and how it is realised, while attractive, are perhaps also dangerous. The reasons are twofold. Firstly, if the *polis* is an all-encompassing social whole—man writ large—then the social order is not differentiated between government and the community.<sup>35</sup> Secondly, according to these classical views the common good is the end of government. According to Aristotle, the norms of the *polis*, which define the common good, are also established and shaped through natural reasoning. The ultimate good which gives purpose and direction to life is human rationality, which explains why Aristotle believed the best kind of *polis* was one where philosophers govern. The implication of Aristotle's view is that everything finds its meaning in relation to the political whole of the *polis*, subsumed under the rationality of wise rulers who determine the best principles for governing the *polis* and realising the good life.<sup>36</sup>

In more contemporary times, the common good has also been distorted by utilitarian philosophy. The utilitarian understanding of the common good is that it is whatever serves the greater good of the community. The danger is that someone in authority defines the general good, making it a human contrivance serving the interests of a few. For example, while the social contract theory of John Locke explains that government is necessary to end the state of nature which each person is born into, and to protect our private interests—in particular private property—his model of political power creates the possibility for positive government. The following excerpt from Locke's *Second Treatise on Government* illustrates this point:<sup>37</sup>

Political power, then, I take to be a right of making laws with penalties of death, and consequently all less penalties, for the regulating and preserving of property, and of employing the force of the community, in the execution of such laws, and in the defence of the common-wealth from foreign injury; and all this only for the public good.

And in *An Essay Concerning Toleration*:<sup>38</sup>

The magistrate having a power to appoint ways of transferring properties from one man to another,

may establish any, so they be universal, equal and without violence and suited to the welfare of that society.

Locke's point is that when people are subject to the authority of government, it has considerable power to promote the public good. Locke also thought that since people can accumulate more produce and wealth than they can consume, government should use its power to regulate the use of private property so that everyone has enough.<sup>39</sup> This line of thought would mean government could forcibly redistribute wealth, and use legislation to enable whatever the majority of people thought was desirable to cultivate the earth.<sup>40</sup>

The danger of government promoting the common good can also be illustrated by how some contemporary liberal theorists have sought to describe how the power of the state may be limited constitutionally. However, they have generally avoided making any reference to the good in order to do so. Their reason is that an appeal to the will of the people has been used by totalitarian regimes to define the good, such as during the French Revolution (Jacobinism), in Nazi Germany (the Volk), or in Communism (the will of the proletariat).<sup>41</sup>

To demonstrate this point further using the example of Jacobinism, one only need look at the political philosophy of Jean-Jacques Rousseau, considered to be one of the intellectual fathers of the French Revolution. For Rousseau the beginnings of political society are mythical, originating from a "social [com]pact."<sup>42</sup> Under the social compact, or contract, each person gives up his liberty to the whole community, in exchange for its protection. A legitimate society is the product of the social compact, through the association of free individuals. Rousseau describes it in the following way:<sup>43</sup>

Natural man is entirely for himself. He is a numerical unity, the absolute whole ... civil man is a fractional unity dependent on the denominator; his value is determined by his relation to the whole, which is the social body. Good social institutions are those that best know how to denature man, to take his absolute existence from him in order to give him a relative one, and transport the / into the common unity ... [so that] he believes himself no longer one but a part of the unity, and no longer feels except within the whole.

By considering the individual to be free and rejecting an idea of a natural order to life and politics,

such as the community of the family being prior to the state, the only thing that holds civil society together in community for Rousseau is "convention."<sup>44</sup>

Rousseau's communitarian vision for society imbues the community with a power and a voice, one sovereign "general will."<sup>45</sup> Rousseau's definition of the general will is the sum of the individual wills with the selfish or private interests removed.<sup>46</sup> The general will is not determined by private interest, or as in democracy by a plural contest of voices arguing about what is the good, but by "common interest."<sup>47</sup> The negative consequence of pursuing the general will for a community is that it blots out the received wisdom disclosed by custom and tradition. Further, individual people are subordinated to the good of the collective as determined by the greatest number. The social contract is legitimate insofar as the "shackles" placed on one person are no tighter than those of another.<sup>48</sup> Further, people's freedom, according to Rousseau, is secured by obeying the general will. The obligations are mutual, common and equal.<sup>49</sup> However, this means that people in effect dedicate their lives to the state in order to be protected by it.<sup>50</sup> Rousseau states that, "Whoever refuses to obey the general will shall be constrained to do so by the entire body: which means nothing other than that he shall be forced to be free."<sup>51</sup>

In some ways, Rousseau's notion of the general will is similar to classical conceptions of the common good.<sup>52</sup> However, it is dangerous to the good of a community, as it strips away checks and balances upon popular authority and grants government a totalitarian power to enforce obedience to a common will.<sup>53</sup> This is evident in the way that Rousseau stipulates that the role of "the Lawgiver"<sup>54</sup> is to guide people on "the good path which it is seeking," and to teach them "to know what it wills."<sup>55</sup> The purpose of law is to be an act of the general will, which "wills and moves" society to an end.<sup>56</sup> The way Rousseau deems property rights should be alienated to the state, by citizens relinquishing their control of their private goods, is also disastrous for personal well-being and ownership of private property. Private property and ownership is a bulwark against individuals' and families' dependence on and control by the state.

The implications of Rousseau's social contract are profound, and can lead to forms of government which trample liberty and tear the social fabric. Governments which rule in the name of the general will invoke the common good as the basis for the use

of coercive force, to control and produce conformity in society. Individuals and communities therefore have very little power in the face of governments which pursue the general will. Each person's goods belong to them as long as they are not required by the community. The community can also call upon a person to serve the general will.<sup>57</sup> In short, when the community is directed by the general will, individual people are subject to the good of the whole. The result is that people not only lose their liberty, but also their sense of identity as individual people, as members of families and as members of a community which is prior to the state.

In stark contrast to the possibilities of control and oppression opened up by Rousseau's conception of the common good, the tradition of thought contained in Catholic social teaching perhaps represents one of the best sustained attempts at defining an ethical framework for how communities can pursue shared goods. This tradition has developed across several centuries, beginning in the twelfth century, since Catholic social teaching draws its rationale for the purpose of the common good from the philosophy of government advanced by the intellectual giant, Thomas Aquinas. There are two features to Aquinas' conception of the common good. The first is that the common good is understood in contrast to the private or individual good. The second is that it is also tied closely to government. Appealing to Aristotle, Aquinas says that as individuals direct their actions by reference to the good as they understand it, so too the leader of a community directs the activities of a community towards safeguarding and promoting its common good.<sup>58</sup> Legislators, who themselves are virtuous, legislate for the common good. People need only be virtuous enough to obey the law.

Consequently, the aim and the ground for law are one and the same, according to Aquinas, since both are orientated to the common good. The character of law is as a norm of reason, but to have force it must be established by the community as a whole, or those who are responsible for it. Hence, Aquinas' definition of the law is that:<sup>59</sup>

Law is an ordinance of reason directed toward the common good, instituted by one who has the responsibility for the community, and promulgated.

It may be tempting to think that Aquinas believed private goods are subsumed by the common good, but

this is incorrect. Government is limited in the sense that individuals' pursuit of virtue can contribute to the common good. This is why, according to Aquinas, the common good always relates to government in some way, and provides a positive justification for its authority to act on behalf of people and suggests the scope and limits of government.

Aquinas did not elaborate on what a good society would look like, however. Nevertheless, inspired by Aquinas, later Catholic social teaching has elaborated on the framework of positive law he established to describe the conditions for human flourishing. Catholic social teaching on this matter has been principally contained in 14 papal encyclicals, published between 1888 and 1995.<sup>60</sup> These documents have refined how the church has understood the social order and the roles of the various institutions which ought to contribute to the social order.<sup>61</sup> Attention is directed to some of the more recent Catholic views of the common good, and its relationship to the role of government. One of the most specific definitions which the church has arrived at for the common good was contained in the encyclical *Gaudium et spes*, in 1965:<sup>62</sup>

Every day human interdependence grows more tightly drawn and spread by degrees over the whole world. As a result, the common good, that is, the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfilment, today takes on an increasingly universal complexion and consequently involves rights and duties with respect to the whole human race. Every social group must take account of the needs and legitimate aspiration of other groups, and even of the general welfare of the entire human family.

This definition of the common good indicates the good was no longer considered self-evident by the church. The church henceforth defined the common good in relation to moral aspirations and imperatives, and the initiatives it thought would contribute to personal and collective fulfilment. The church's teaching at this point led to accommodation with government to achieve these social ends. For example, promoting human dignity became a synonym or partial substitute for endorsing the promotion of human rights and social justice by government. For example, in *Laborum exercens* (1981), Pope John Paul II made the connection that human work is a good,

in the way that it gives identity and value to what people do. By making that connection, the church put forward a position which advocated that the state and organised labour should interact. In *Rerum novarum* (1991), the same Pope also made the point that the forces of the free market, left to their own devices, would not promote the common good. Thus, the church's position endorsed partial coordination or regulation by government in order to realise the common good.<sup>63</sup>

In summary, in Catholic social teaching, the common good gives order to ethical priorities and imperatives which concern government. The actions of government are meant to promote human dignity and social solidarity. Catholic social teaching has consequently placed a strong priority on care for human life. Throughout its encyclicals, the church has warned when totalitarianism, individualism and socialism have at various times threatened the values and aspirations which would protect human dignity. Nevertheless, a key weakness of the Catholic framework of the common good is that it places too much faith in the good that government can achieve for people and communities. Following the Thomist tradition,<sup>64</sup> it holds that government should legislate, coordinate and direct society towards the common good. Hence, some exponents of Catholic thought, like Jean Porter, are keen to argue that "public authority does have a positive and indeed indispensable role to play in promoting the common good."<sup>65</sup> The essential task of government is consequently not to adjudicate between right and wrong on the basis of communal understanding, but to order the whole political community to what is right, defined by positive law.

While a representative democratic government can promote goods like justice, the rule of law and reasoned public debate by the way it structures the judicial and legislative system, which might contribute to the common good, these activities are not the primary role of government. Rather they are a consequence of government's primary task of adjudicating between right and wrong to prevent harm to the common good.

Out of all of the conceptions of the common good described above, the Catholic conception of the common good comes closest to approximating one which differentiates well between the responsibilities of government and the community. In the end, however, Catholic social teaching is still an unsatisfactory basis for a theory of proper

limited government. Its emphasis on human reason and positive law means that it describes an expansive role for government, as it is the task of higher authorities, like government, to come to the aid of lower authorities among the communities of civil society. Nonetheless, some elements of that framework are worthy, such as the force of custom as law, found in Aquinas' thought,<sup>66</sup> and the idea that while government has some legitimate regulative functions, the communities of civil society are better suited to particular tasks in contributing towards the common good. But a better framework is needed for conceptualising the common good of a community so that strong associative communities are free to flourish without incurring the force of positive law and government authority. In short, how can the common good be *protected*, rather than *promoted*?

### **Custom and tradition indicate the common good**

The previous question can be answered best by starting with the notion that the custom and tradition of a community give meaning to the common good, and the idea that protecting a public realm of freedom helps to secure people's private aspirations. This means that when government intervenes to protect the common good, it is really acting to prevent losing the patterns and institutions which bind people together and constitute the point of individual people's lives. To be more precise, our liberty is put at risk when we are deprived of the social institutions and patterns of life within which we have learnt how to act: the communicative actions which sustain the identity of a people.<sup>67</sup>

Consequently, the freedom which could be lost is a loss of identity, as people cannot recognise themselves effectively when they are devoid of the customs and traditions which give authority and meaning to life. This point is clearer if the case of revolutionary change is considered, such as that brought about by the French Revolution. During the French Revolution radical and drastic change to the social order occurred, including regicide and the establishment of a new civil religion and a new representative assembly. The Jacobins decided the French national interest, as well as right and wrong. As a result, many French lost their liberty, and even their lives, as the familiar established patterns of life were sacrificed on the altar of the Revolution.

The point is clear: a society is not free unless it also values the freedom of the institutions which secure its members' freedom.

Patterns of communication are sustained by tradition. Tradition may be defined as a continuing set of practices which are learned, repeated and developed. Within a society, the role of history is critical in sustaining tradition. This is because history helps foster a connection with the past,<sup>68</sup> and to recount what is important to each place and society. This of course means that histories vary, which also means that the content and character of each people's tradition differs too. If a people are to be free their history and lived experience need to be intimately tied to their way of life. If a community becomes disconnected from its history it is difficult for it to sustain its freedom, such as when social innovations fail to connect with established traditions.<sup>69</sup> When this happens it is no longer the existing community which is innovating, but a new community, which is preying on the original.

The implication is that government is not just about political leaders realising their projects as a means to an end for society, since subjecting politics to a set of pre-determined principles or purposes, however well-intentioned, carries the risk that the relationship between government and the existing social order may be eroded or destroyed.<sup>70</sup>

### **Custom and tradition serve to limit government action**

If political leaders hold rigid aims and objectives, they are unlikely to be modified or changed in the light of reciprocal engagement by government with society, making the absolute authority of such aims unjustifiable. Following Scruton, the fulfilment of pre-determined aims is not an "inevitable, natural or even reasonable outcome" of intercourse between people,<sup>71</sup> much less than between a people and government. In short, if political leaders attempt to impose their own set of purposes upon society, without regard for why various institutions are valued, then they run the risk of abusing their authority to govern.

As a result, the customs and traditions of a community limit the manner in which government exercises its authority and the extent of its power. If government governs with respect for custom and tradition, it is likely to be more wary of the consequences of implementing programmes and

policies which could upset the social order. Since custom and tradition indicate the existing social arrangements of a community that are good for it and which should be respected and conserved, a wise and prudent political leader should use them as guides to where the boundary is for proper government action. Therefore, proper limited government is really about the proper use of authority as opposed to carrying out wanton reform, or harming the common good. Nevertheless, government has some responsibility to be socially-minded, which may involve tending to the ills which may afflict society and harm the common good.

### **Characteristics of the common good in practice**

The idea has been put forward that the common good is the flourishing of all people in community together. This means that there is more to the common good than maximising one good because it is a product of each person living well in association. Governing with a view to protecting the common good is therefore about creating the conditions which encourage people to live well in harmony so that they can realise basic goods. People can understand and participate in these basic goods because they are encountered through lived experience. Again, the role of custom and tradition is important, because they disclose the basic goods which demonstrate what helps to sustain life and community.

While custom and tradition are important for identifying the nature of the social fabric which political leaders should defend on behalf of the community, it is even more important to identify which goods are properly basic to human life. Without a conception of the basic goods which contribute to a good life, then arguably governing with a view to the common good could fall into several traps. For example: the utilitarian trap that an act is morally right if it maximises the good, and that pleasure is the only intrinsic good which should be pursued; the instrumentalist trap of doing things only to pursue certain objectives or thinking that there is no particular good which ought to be pursued for its own intrinsic value; or the trap of holding to customs and traditions which may cause harm to people. The natural law tradition, and in particular the contribution made by natural law theorist John Finnis, is helpful at this point for illustrating what the

basic goods are which constitute the common good (see the appendix).

Natural law is an important component of a proper understanding of the common good because it offers an account of the constitutive aspects of well-being and the fulfilment of people and the communities they belong to.<sup>72</sup> The propositions of natural law are directive for thinking about what to do or what not to do, as an aid to identifying principles of right action. These actions should be in accord with what can bring about integral human fulfilment. Among these are the rights which people possess by virtue of being human, which should be respected by others and protected by government.

There are several aspects to human well-being, which include not only our physical well-being, but also our moral and intellectual well-being, too. Friendship and sociability are also critical constituent elements of human flourishing. This is because when people form bonds with one another, they meet deeper needs for community which go beyond instrumental purposes for human relationships. Instead, there is some quality about being together and forming a range of formal and informal groups, associations and communities which brings inherent fulfilment. Reflecting on the basic goods of human nature which are important to social and political life also helps to produce solid ground for understanding proper principles of justice. Natural law offers a holistic approach to understanding the social nature of the human person in a way which liberal individualism and collectivism do not. The latter schools of thought tend to reduce human beings to determinate beings; individuals who are rational and devoid of richer, broader social purposes and whose well-being does not intrinsically include relationships with other people in various associative communities where they have, "as a matter of justice, both rights and responsibilities."<sup>73</sup>

The significance of the basic goods is that they each contribute to leading a fulfilling life. The goods are incommensurable, meaning they do not have a common underlying measure making it possible to reduce them to one end. Each has an intrinsic value in themselves. If the goods explain our actions, and are irreducibly good, then it follows that it is bad to act against them. The goods point to the good that should be pursued. One should not choose against what is good; for oneself or others. What is more, being self-evident, they are universal to all places and at all times.<sup>74</sup>

The proper customs and traditions which have been evident in cultures and society everywhere also help to indicate what the basic goods are, and what they are like. This is because of the way custom and tradition give meaning to the world, and communicate appropriate actions and responses for people. In a similar vein to Finnis' argument that basic goods are participated in by people,<sup>75</sup> practices established by custom and tradition help people to understand their social nature. This is because practices help people to perceive the value of their actions, and shape who they are; since people do not make themselves (*causa sui*), they are in part moulded by the social arrangements around them. As customs and traditions arise from every institution of society, being enacted and not designed, they also reveal why things are the way they are, because of what has come before.<sup>76</sup> Scruton says that tradition delineates:<sup>77</sup>

the kind of thing that is intended, and to present some partial exposition of instances. Tradition must include all those practices which serve to define the individual's 'being in society.' It constitutes his image of himself as a fragment of the greater social organism ... .

For example, it may be argued that marriage is a properly basic form of human relationship, as it is natural and good for men and women to be married.<sup>78</sup> Natural law theorists argue that there is an intrinsic value associated with the union of a man and woman, tied to the experience of, for example, pleasure and expressing feelings.<sup>79</sup> While the intrinsic value cannot be demonstrated, it can be grasped by reflecting on the evidence provided by inclination and experience.<sup>80</sup> For example, people who may not understand the intrinsic value of marriage would not say that marriage is confusing or pointless. Marriage is also the building block of the family unit, from which children come, and so marriage contributes to the common good. It may also be argued that children participate in the good of their parents' marriage. They are human beings in their own right, and not merely the means for parents to satisfy their own desires. Children are therefore an instance of the non-instrumental aspects of marriage.<sup>81</sup>

Significantly, marriage has also been valued throughout different cultures and societies across time. It is therefore a relationship which bears witness to the basic good of sociability. With respect to family, Scruton makes similar comments:<sup>82</sup>

No man who participates in that institution can remain unaffected in his conception of himself. He can no longer regard the fact of fatherhood ... as a biological accident. In seeing himself as a father he finds himself entangled in a social bond, a bond of responsibility. And the reason for this bond and for the actions which express it, lies in the fact that this is how things are.

Confidence can also be placed in the assumption that marriage is a basic good because of the psychological and health benefits which accrue to men and women who are married as opposed to other forms of relationship and lifestyle choices which people can make.<sup>83</sup>

That basic goods are irreducible illuminates what Aquinas meant about the purpose of law made by the government when he wrote that, "law is an ordinance of reason for the common good, made by him who has care of the community."<sup>84</sup> In short, when government passes just and effective law, it fulfils an obligation to the community it represents to protect people's private and public goods. Questions of whether government should provide social services like education or health care, and what priority they should take, are narrower technical and prudential issues, which must be consistent with government's responsibility to ensure that justice be done in the face of the particular circumstances facing society at any one time.<sup>85</sup>

Nonetheless, government, in its care for the community, should pass law which protects the goods that are properly basic to everyone so that it does not work against the common good. The authority of a political leader, not simply their power, is derived from how they serve the common good. For example, if a leader made unjust laws which militated against the common good the laws would lack moral authority, even if they carried legal authority. Further, according to Finnis, the basic goods are fundamental to the principles of justice, for care of the basic goods ought to prevent injustice from occurring. The basic rights generate several absolute intrinsic natural rights. In Finnis' own words:<sup>86</sup>

There is, I think no alternative but to hold in one's mind's eye some pattern, or range of patterns, of human character, conduct and interaction in community, and then to choose such specification of rights as tends to favour the pattern, or range of patterns. In other words, one needs some conception of human good,

of individual flourishing in a form (or range of forms) of communal life that fosters rather than hinders such flourishing. One attends not merely to character types desirable in the abstract or in isolation, but also to the quality of interaction among persons; and one should not seek to realise some patterned end state imagined in abstraction from the processes of individual initiative and interaction, processes which are integral to human good and which make the future, let alone its evaluation, incalculable.

Enacting justice and securing basic liberties is therefore the major implication for the role of government to protect the common good of one's community because these things secure the goods which allow us to flourish as human beings. In looking at the practical outworking of the goods, Finnis makes the point that in "the case of political community, the point or common good of such an all-round association was said to be the securing of a whole ensemble of material and other conditions that tend to favour the realisation by each individual in the community of his or her personal development."<sup>87</sup> In short, the common good gives the reason for our collaboration with others: whether that is in the pursuit of a shared objective between people; good play and sportsmanship among teammates during a game; or self-fulfilment between friends, by the sharing of life, sociability and material goods.

Finnis also makes the important distinction that realising the common good of the community is incompatible with having one or a limited range of pre-determined visions for what society should become. Further he argues that there is a common good because each person everywhere can experience the basic goods. Consequently, in the case of the political community, Finnis also affirms the idea advanced in this discussion paper that the common good is protected when the conditions obtain for each of the members to attain their own objectives. This is because Finnis defines the common good of a political community as:<sup>88</sup>

a set of conditions which enable the members of a community to attain for themselves reasonable objectives, or to realise reasonably for themselves the values, for the sake of which they have reason to collaborate with each other (positively and/or negatively) in a community.

Finnis recognises that the common good of the community rests on the basic goods which are self-

evident to people, "inasmuch as life, knowledge, play, aesthetic experience, friendship, religion and freedom in practical reasonableness are good for any and every person."<sup>89</sup> The implication for those charged with governing and care for the community is that they cannot rule well without protecting the basic goods of the individuals and communities of civil society.

Besides the protection of the basic goods which help a society to flourish, a further implication of natural law for understanding the role of government is that each community and civil institution has a particular identity and internal order to it, as described by a theory similar to subsidiarity, sphere sovereignty. In the case of the state, it is only indirectly responsible for realising the conditions constitutive of the common good because its functions are subsidiary to the functions of other associative communities of civil society.<sup>90</sup> The state then is only one community within a community of communities in which people display their sociability. It does not supplant or absorb the functions of the associations and individuals of society, but enables such communities to be themselves in order to make distinctive contributions to the common good. It performs a coordinating role using public law to create the conditions within which people can lead fulfilling lives with some relative ease.<sup>91</sup>

Not only does this mean that the government should recognise that there is a diversity of communities and civil institutions, it should also recognise and respect the natural structure of each of them. This is important because law and policy should not be used to shape the form of vital institutions like the family. Instead the identity, key functions and natural purposes of each institution should be discerned by governments so that the whole range of human institutions can contribute to human flourishing together, as balanced parts of an ordered unity.<sup>92</sup> This idea that a measure of sovereignty is found within each community and civil institution is critical for determining the proper division of responsibility between government and the associations and communities of civil society, discussed in section 4.

### **Disconnection from custom and tradition erodes the common good**

If a people are to be free their history and lived

experience should be reflected in their way of life. When people are disconnected from their history it is difficult to sustain freedom, because it causes a loss of identity and erodes the common good. For example, when legislation bears little or no relation to established traditions, it promotes a single, perhaps distorted view of the common good, and what is good for people.

In New Zealand, there are several cases where harm has resulted from government action that has caused people to become disconnected from their history, heritage or established tradition. One of these is the way in which the early education system did not value the custom and tradition of Maori, and attempted to integrate Maori into Pakeha society. The Native Schools Act 1867 created separate schools for Maori. Their purpose, however, was to assimilate Maori children (*tamariki*) into Pakeha society, and expunge all traces of things Maori from native education. The isolation of Maori settlements and settler prejudice also worked to limit the number of Maori children attending public schools.<sup>93</sup> In the wake of Pakeha settlement, land wars and disease in the late nineteenth and early twentieth centuries Maori custom and tradition were at risk of disappearing. From 1931, a new policy of adaptation was introduced into native schooling.<sup>94</sup> Three articles of faith undergirded the policy:<sup>95</sup>

1. the happiness and welfare of Maori, through the cultivation of pride in their people;
2. Maori were no different than any other people in their ability to adapt to changing conditions; and
3. the role of education should be limited to assisting Maori to acquire the worthwhile elements of both cultures.

While the adaptation policy conceded that Maori children who attended native schools should deepen their knowledge of their own society, the underlying objective was still to blend Maori youth into wider society. Native schools were neither meant to help Maori to achieve highly, nor to put them in influential positions in society. They were meant to educate Maori only enough to be able to perform manual occupations.<sup>96</sup> The Director of Education, T B Strong defined the purpose of Maori schooling as providing "a type of education that would lead Maori to become a good farmer and the Maori girl

to become a good farmer's wife."<sup>97</sup> This attitude was not just held by Pakeha, however. Te Ranghi Hiroa (Sir Peter Buck) did not see Maoridom's future in the cities as professionals, but as workers of the land.<sup>98</sup>

The assimilation policy only began to soften when more Maori moved from rural to urban communities.<sup>99</sup> This coincided with the election of the First Labour Government, which opened three native district high schools, providing a minority of pupils with qualifications that allowed them to enter the professions and others with training for practical occupations in their local communities.<sup>100</sup> Nevertheless, the curriculum proposed by the Department of Education was disappointing. It maintained a dim view of the boundaries of Maori learning, prescribing training in trades and home management, and was devoid of serious academic instruction. Some Maori parents agitated against the Department, sending the message that they were not content with a second-rate curriculum in the native schools, when their peers in denominational secondary schools and urban secondary schools were receiving an academic education.<sup>101</sup> The Department grudgingly conceded that foundation-learning did little to make native schools attractive to Maori. In time, native schools were gradually transferred to the control of the Education Board.

As a consequence of the disconnection of Maori education from Maori custom and tradition, Maori schooling is only just reviving today through the *kura kaupapa* schooling movement, which has led to the establishment of over 50 specialist schools which teach in Te Reo Maori, and teach a Maori worldview. Further, Maori are one of the groups that struggle the most in the New Zealand education system. For example, results from the 2000 Programme for International Student Achievement (PISA) showed that there was wide variation in the achievement levels within the Maori pupil population.<sup>102</sup> In reading literacy, 26 percent of pupils achieved a high level of proficiency,<sup>103</sup> but a concentration of Maori at the lower end of the literacy scale was also detected, and the disparity in achievement was higher among Maori than among other ethnic groups.<sup>104</sup>

The Crimes (Repeal of Seditious Offences) Amendment Act is another instance of an innovation by government disconnecting New Zealand from its heritage. It may also be considered as a case of hurried law-making, without regard for the consequences. Sedition is the prevention of "revolutionary

statements encouraging revolt, insurrection and public riot against lawful authority."<sup>105</sup> The Bill came about after the Law Commission recommended in early 2007 that seditious offences in the Crimes Act 1961 be repealed on the grounds that they unduly restricted free speech. When the Green Party, the United Future Party, the Maori Party and the ACT Party joined forces to advocate for repeal, the Government undertook to advance the Bill as a Government Bill to repeal in full sections 80 to 85 of the Crimes Act 1961, introducing it in June 2007. The Bill passed its first reading unopposed to go to the Justice and Electoral Select Committee for closer examination. The Select Committee did not recommend any amendments, and the Bill sailed through its final two readings in October 2007 with next to no opposition. In the space of six months, a centuries-old offence was repealed, and only general criminal law was left to punish offences against lawful authority.<sup>106</sup>

The politicians who supported the Bill presented it as a law change that would help to safeguard free speech. However, the legislation has actually devalued New Zealand's constitutional systems and institutions of government.<sup>107</sup> The legislation implies that there is nothing special about protecting these institutions from violent attack, since the old law allowed the government to prevent such acts in response to incitement to violence before it actually occurred. When an institution like this is dismantled, through legislative fiat, it undermines a common commitment to democracy and New Zealand's constitution. Removing the crime of seditious offences, in particular, erodes the degree of respect which people may hold for lawful authority. This could in time contribute to disengagement with democracy, and people seeking alternative means to advance their ends, given that this legislation suggests that vital parts of our democratic heritage can be ignored if they are felt to be out-of-date or irrelevant.

Further, that the provisions for seditious offences were disused was not a compelling argument for repeal.<sup>108</sup> Arguably, the law also carried a symbolic value, being part of statute law since the beginning of New Zealand. It communicated what was right and wrong, and that people should respect the lawful governing authorities.<sup>109</sup> That the provisions of the law were not being used could not have been a sufficient reason to repeal them, since those offences could occur again in the future. As has been described,

one of the most important tasks of the government is to ensure there is peace and order so that people can enjoy security in order to associate. While people lose some of their liberty in coming under proper governmental authority in this way, it helps secure the order which they require.<sup>110</sup> The law on seditious offences, while not used often, contributed towards that end and was for the common good. The interest that the old law protected remains as important in twenty-first century New Zealand as it did in the past. A better solution to the threat to free speech would have been to amend the law so that a seditious offence only existed when there was a threat of "direct or immediate" intentional violence against lawful authority.<sup>111</sup>

## GOVERNMENT PREVENTS HARM TO THE COMMON GOOD

The point which brings together the strands of the discussion about the common good is that government cannot reasonably propose aims, objectives or plans for society until it has understood the character of the society it has responsibility for governing.<sup>112</sup> Because society is like a living organism, a prudent leader should understand and appreciate its character. The character of society is bound up in the history, tradition, culture and prejudice of a nation. As a result, when government acts, society should be the object of that action rather than an excuse for leaders to take action.<sup>113</sup>

To state the case from a different angle, both public and private institutions of society pursue the common good. The difference is that public institutions, such as the institutions of government, pursue the common good directly, while private individuals pursue the common good indirectly. This is because private actions are restricted to a particular sphere of influence, like the family, businesses, societies, sports clubs and so on, whereas the actions of government have a genuinely public dimension to them. Thus, government should govern with the good of the community in mind. When it intervenes, however, the problem should be of a nature that a community's good cannot be defended by private activity on its own.

This means in some limited circumstances government should take responsibility for defending the common good, pronouncing on public and private affairs. Moral philosopher, Samuel Gregg

has summarised this position on the extent of the legitimate tasks of government in terms of securing the integral liberty of a community:<sup>114</sup>

As a form of human association, the political community may thus be understood as existing to assist all its members to realise integral liberty. Its ways of doing so might include: vindicating justice by punishing wrong-doers; or defining the responsibilities associated with particular relationships, such as contractual duties and the obligations of harm-doers to the harmed.

In this way, government assists people's liberty; it does not create liberties for people. The essential task of government is to respond to threats to the existing common good of a community. If its purpose is to protect the good, government should not have a mandate to push in and pursue public goals. This principle is in stark contrast to the Aristotelian view that government's role is to impose an abstract grand design from above upon civil society, whereby the *societas perfecta* (the self-sufficient state) would be established. Instead, its rightful task is to foster the public sphere and a set of civil associations in which people pursue various goods, which might not be possible in a situation where government did not exist.

The conditions which government helps to bring about are for the fulfilment of individual people and associative communities. They sustain the common good of a community. Construed in this fashion, the common good is instrumental, and defines the boundaries of the legitimate authority of government, since its essential task is to protect what helps people to lead fulfilling lives. Consequently, government should never be self-serving, as its legitimate authority proceeds from administering justice, and always with a view to what will defend the common good of a community.

A good example is when government decides whether it should intervene in the free market. A major benefit of the free market is that it indicates what people are really prepared to pay for a product or service. Another is that it allows scarce resources to be allocated in the most efficient way. However, a potential problem with the workings of the free market is that people approach the market with different levels of social capital and knowledge. This means that some private interests will probably exploit others. This might mean that national governments have legitimate grounds for regulating

free markets, since there are grounds for ensuring that exchange is ordered and just, and protecting those people who have no other defence against loss or harm.<sup>115</sup> Regulating to prevent harm therefore is not necessarily an act of positive government; it is about enacting justice by making a moral discrimination about what is right or wrong.

That said, the major concern with government regulation is the threat of the power of unconstrained government; for example, the risk that public power and exploitation will replace private power and exploitation. This illustrates the importance of discerning the proper essential task of government, according to its leading function, which is to adjudicate by discriminating right from wrong. To this end, the common good of a community discloses what government should protect, and helps political leaders to judge what the proper use of government power should be.

A final, perhaps subtle, dimension to the argument that the role of government is to defend the common good of a community is that reacting against harm has a definite social edge. This is because what is good for people lies at the heart of exercising judgement to enact justice. When people are permitted to harm one another, or even to harm themselves, it leaves them damaged and weakens the social fabric. Again, it is stressed that if government intervention is necessary it should be as light as possible, to protect the common good, because whenever government intervenes there is a proportionate loss of liberty which in turn threatens the common good. Judgement needs to be restrained in order to safeguard the very social order which government is meant to protect. The liberties and justice which legitimate government can give, it can also take away. As such, if government only intervenes to prevent public injury, it should not quell the free initiative of the people it should protect.

In summary, the proper basis for governmental authority is whether it defends the common good of the community it represents and one way that it does this is by enacting judgement. Conversely, if government does not act in accord with the common good then it loses its authority to govern the community. By relating the common good to the right and proper tradition of a community, the role of government is limited to being a servant of the community, and doing what is good and just for

human association.

This view of the role of government appreciates the diversity of human life and social forms, and that they need to be supported for life to flourish on its own terms, lest the common good be subsumed, subordinated or dissolved by the *polis* (the whole political community). American political commentator, James Skillen has said as much:<sup>116</sup>

The political common good as standard or norm is the opposite of an all-dissolving, omniscient, totalitarian norm. This is true because a political order whose government acts (or tries to act) with omniscient authority undermines the very possibility of realising the common good. The reason is that the normative question about the common good arises only because there are many things about human life in society that are uncommon ... . The common good, then refers to some kind of normative universality that can be realised only through the simultaneous recognition and affirmation of a diversity of non-political responsibilities in a differentiated society. That is why "affairs of the commonwealth" ... will always include concerns that fall "beyond the limited scope of government."

Skillen also affirms that government has a responsibility for protecting the weak, and encouraging what is good by means of wise and just control of force. Government should take an interest in people, and what might harm them, but this means it can only secure the common good by being responsible for enacting justice.

One problem with the view that government should protect the common good of a community is that it may be difficult to draw a line between that and promoting the common good. The research cited in section 2 on attitudes to public spending indicated that New Zealanders would like more spending on health, education and the police. These are areas in which a level of government activity may be justified to protect people from bodily harm, to protect their property and also to prevent widespread illness and illiteracy. While this point can be accepted, high levels of government regulation and spending should be avoided if these lead to government performing functions which are beyond its legitimate ones as a public-legal community, and if they threaten the integrity of the social fabric.

Furthermore, government intervention should only ever be a temporary measure, to right wrong

and remove the threat of harm to the common good. When government responds in this way, it keeps to its proper function as a public-legal institution, which is to enact public justice and protect the social fabric. Once the threat of harm has been removed, the associative communities and civil institutions should be given back responsibility so that the state does not permanently absorb the functions and responsibilities of the community.

There is also a risk that government could act in a way which results in too much power being taken into itself. The examples mentioned before of the government's intervention to control the conditions of foreign investment, the paternalistic KiwiSaver incentives and the amendment of section 59 of the Crimes Act 1961 are modest examples of this kind of government action. They point to the larger issue of how the individual and local communities should be protected from the abuse of state power. As James Madison wrote in *The Federalist Papers*:<sup>117</sup>

But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

Of any system of government in the world, the government of the United States has one of the most careful sets of institutional constraints in place to divide power between the branches of government (the executive, the legislature and the judiciary). The founding fathers understood that people are capable of both good and evil, trust and opportunism, but also that there are huge risks in investing too much power in the government. The issue of consent to taxation was also crucial, since taxation without proper representation was a reason for the outbreak of the United States' War of Independence with Britain. Good government is government which is constrained.

The government should therefore only ever be trusted to protect the common good, because it actually cannot promote the common good without ending up exercising too much power over individuals and local communities. Its power should be constrained, not only with reference to the

common good, but also to custom and tradition and subsidiarity. Recent policies illustrate the government operating in an unconstrained manner.<sup>118</sup> Interest-free student loans, for example, have allowed students to borrow increasing amounts of money, but without apparent concern that this would change the incentives for students to borrow. Now student debt is over \$10 billion, and the average debt is over 147 percent higher than it was in 1998.<sup>119</sup> Where market failure has been experienced, such as in banking, rail and accident insurance, recent moves have tended to reassert central control. In education, the Ministry of Education still has tremendous power over how schools run, teachers are paid, which parents can choose a school and what is taught in school. Bureaucrats seem to have more say than families do in these matters.

If government observes these principles, and limits its intervention in the life of a community to prevent harm and to protect the social order, then its size should be limited and its powers few. Furthermore, government would be less likely to become a contrivance of human reason serving the general will, and it would intervene only to protect the goods of people and the communities which they belong to.<sup>120</sup>

## DEFINING THE COMMON GOOD OF NEW ZEALAND

Before concluding this discussion of the common good, it is also helpful to discuss what the common good of New Zealand is that government should protect from harm. The self-evident basic goods discussed earlier in this section (also see the appendix) are part of New Zealand's common good, and require no further discussion here. Instead the discussion focuses on the body of custom and tradition that New Zealanders value, as found in the unique institutions of life in New Zealand and features of the nation's identity. These constitute the set of human networks, associations and communicative actions which give expression to the common good and point to the social arrangements which are good for a community and should be conserved. They represent the right and tradition of a community which government should defend, and so they play an important role in limiting government power. A prudent government should defend the customs and traditions of New Zealand which have proven good for people and for

communities. However, as we shall see, not every custom and tradition has proven good.

The first important element of New Zealand's common good is its constitution and political institutions. The character of a country's political institutions is an important indicator of a country's identity.<sup>121</sup> New Zealand draws on the long-standing traditions of the Westminster system of government, which is the product of centuries of development in Britain. This means that New Zealand's system of government is a representative democracy, where citizens elect representatives to make decisions about how the country should be governed. It may also be described as a liberal democracy, because the New Zealand constitution maintains the separation of powers between the executive, the legislature and the judiciary.

The Westminster system of government creates a tradition of strong government with tremendous authority to rule. Some survey research of voters' attitudes has shown that New Zealanders favour strong government, but also value fairness. In its 1999 survey of 1,586 voters, the New Zealand Electoral Study found that there was a strong preference from voters for single party government at 44 percent (coalition government was favoured by 47 percent).<sup>122</sup> Other data collected since then suggest that many New Zealanders prefer majority government, but at the same time are not opposed to a proportional distribution of seats. This may be explained by a lack of understanding of the relationship between the principle of proportional representation and the workings of the electoral system.<sup>123</sup> This means New Zealanders like strong government, but at the same time believe that the outcome of elections should be fair in the sense that the seats each party receives in Parliament should be in proportion to their share of the vote.

As a result of the Westminster system, for several decades after the end of the Great Depression, political parties were able to govern as they saw fit. Nonetheless, there was a consensus between the Labour and National Governments during this time about what the role of government ought to be. When the First Labour Government came to power in 1935 it set about restructuring the economy, involving public spending to stimulate growth and to reduce unemployment. This was also followed by radical social welfare legislation, through the Social Welfare Act 1938, and a growing sense of identity

independent of Britain. The Labour Government promised to deliver "cradle to grave" state welfare, educational opportunity and state-sponsored development for farming and industry.

When the liberals, re-organised into the National Party, came to power in 1949, they did not change the consensus established by Labour that the state should create equality of opportunity for people and provide a generous welfare net for disadvantaged New Zealanders. As New Zealand political scientist Barry Gustafson comments, "[National] largely accepted what Labour had done to the economy and social security system" and "argued that it would be a better manager of the system."<sup>124</sup> Perhaps the only major difference was over how much responsibility individuals should have. National's objective was to help people to own private property, while Labour favoured strong social security. Embedded within these policies was the assumption that outcomes should be fair for every New Zealander. Collective responses to education, health and welfare were universally favoured.

From the 1960s though, New Zealand society began to change. The Vietnam War created opposition within New Zealand and a more pluralistic, less conformist mindset developed among New Zealanders. Some became more concerned with creating opportunities for themselves rather than with what was fair.<sup>125</sup> Prime Ministers such as Sir Keith Holyoake and Sir Robert Muldoon tried to preserve the veneer of consensus in their approach to government by involving major interest groups in decision-making processes. Farmers, trade unions and manufacturers were all consulted. Further, government legislation and regulation was used to intervene frequently to resolve problems with the economy and conflicts among the different interest groups. The state remained actively involved in the life of the nation. According to Gustafson, "The state was no mere referee but a major player, with its own vested interest and agenda, particularly in stabilising society and maximising production and export receipts."<sup>126</sup>

No New Zealand governments broke the consensus until a crisis point was reached in 1984, when rising prices and unemployment signalled reform was necessary (see section 2). The legacy of consensus for statist government is that many New Zealanders expect that government will play a large role in each sphere of life, using public money

to create opportunities for people and dispensing large amounts for welfare assistance.<sup>127</sup> As discussed previously, the voter backlash generated in part by the economic reforms of the Fourth Labour Government and the National Government which came after it, showed how deeply entrenched were such expectations. The social security net was cut, and people came to distrust government; even to the point of supporting a change of electoral systems to restrain governments from the First-Past-the-Post system to MMP.

It might also be argued that the pursuit of consensus kept political innovation to the centre of the political spectrum, meaning that change was incremental and pragmatic rather than being driven by pure ideology. Prime Minister Helen Clark gave a textbook definition of the political values which many New Zealanders share, in her speech to the London School of Economics in 2002, mentioned in section 2:<sup>128</sup>

We have also determined to appeal to the broad mainstream of the population which abhors extremes and wants commonsense, practical solutions to everyday problems ... . In the New Zealand Government we believe in promoting innovation and enterprise to build economic prosperity, and also in being collaborative, compassionate, and inclusive.

It is not clear whether New Zealanders have valued an "equalitarian democracy,"<sup>129</sup> where the politics of democracy and the economics of socialism are blended, and social security is blurred with compassion, as a result of the government shaping culture or culture shaping government activity. The economic reforms of the 1980s and 1990s challenged those sorts of values, but they have not been utterly rejected, as illustrated by the size of the current Government and the amount of intervention to equalise social outcomes for individuals, families and various interest groups.

Lastly, the common good of New Zealand cannot be discussed without describing the relationship between the Crown and Maori. One of the challenges to New Zealand society which emerged after the Second World War was a growing awareness of the significance of the Treaty of Waitangi. This included unresolved grievances from the settlement of New Zealand such as the unjust loss of land, and the fading of Maori language and culture. Today, a willingness to settle those grievances, engage with the meaning

of the Treaty and to better define New Zealand's national identity has consolidated the country's bicultural identity. This is because the politics of the Treaty divides New Zealanders into Pakeha and Maori, with legislation and judicial interpretation from the mid-1980s requiring policies to be subject to the principles of the Treaty.<sup>130</sup> A bicultural identity has also been fostered by New Zealand adopting Te Reo Maori as an official language, Maori language and ceremony being used during official functions, state funding of Maori broadcasting and references to the principles of the Treaty in the national education curriculum. Last, but not least, are the seven Maori seats in Parliament, which created separate Maori constituencies and have recently aided the rise of a new political party, the Maori Party, representing a cross-section of Maori interests.

Biculturalism therefore has had several implications for New Zealand's identity. Firstly, it fixes and homogenises Pakeha and Maori identities. Secondly, it has not only led to the celebration of one or two cultures, but has also become the basis for Maori rights. Thirdly, biculturalism has become a framework for managing how power is shared between the two peoples of New Zealand who signed the Treaty. Two commentators who have entered the biculturalism debate, Augie Fleras and Paul Spoonley, have criticised biculturalism at this point by saying that New Zealand is actually a "binational" country.<sup>131</sup> They claim that binationalism better distinguishes Maori as an indigenous people with specific rights to self-determination (*tino rangatiratanga*) different to the rights of other ethnicities.

Professor Jock Brookfield has also argued along similar lines that New Zealand requires further constitutional reform to solve the problems surrounding the Treaty and national identity.<sup>132</sup> He argues that further steps should be taken to fully legitimate Crown rule in New Zealand, given that Maori only partially ceded sovereignty to the Crown, and to help address historical injustices. He says that Maori people, through the courts and successive revolutions, have kept alive claims for a measure of autonomy. He claims this is reasonable for them to expect, because they were promised it in the Treaty. As well as remedying specific grievances, he sees the need for a "passive revolution" involving constitutional reform to recognise previously promised *tino rangatiratanga* in some sort of qualified autonomy. Although not a supporter of

dual legal systems, Brookfield believes that this could involve Maori being granted self-government and the entrenchment of tribal and national bodies as part of the New Zealand constitution. Brookfield's solutions are radical, yet he believes they are justified because significant rights were guaranteed to Maori, as an indigenous people, and their right to self-determination has been consistently overridden.

Obviously, biculturalism or binationalism creates several tensions for realising the common good of New Zealand. They relate to the problem of sectionalism and interest group politics. Once society becomes separated into particular identity groups, it is difficult for the entire community to conceive of what it shares in common. For example, if the principles of binationalism were applied to their fullest extent, there would be separate rights for Maori within New Zealand, different to the rights of Pakeha and the other ethnicities which live in New Zealand.<sup>133</sup> This actually works against building an inclusive society and politicises justice. A plural society cannot function well without each group submitting to the rule of law and a common constitution. Sectionalism therefore works to consolidate the power of the state, as groups become loyal to it as it recognises various claims to rights and entitlements. The implication is that it becomes more difficult for people to conceive of the common good, in terms of a set of common customs, traditions and practices which give meaning and continuity to life.

Arguably, the flexibility of New Zealand's unwritten constitution and the existing Treaty relationship between Maori and Pakeha provide a sound basis for a harmonious relationship. Without the unifying symbol of the Crown it would be difficult for New Zealand to conceive of its common good. The body of law, the institutions and the custom and tradition which New Zealand inherited from Britain have helped the two peoples to come together, build a nation and work out their differences relatively peacefully. One law for all is better than several laws and rights claims for each different group of people. Nevertheless, a bicultural identity is firmly part of New Zealand's heritage, because of the Treaty. Consequently, there will always be an element of tension in conceiving of the common good of New Zealand.

In summary, the following features of the common good of New Zealand may be discerned from the preceding discussion. The first is that New

Zealand's identity and institutions strongly reflect its heritage as a nation of the British Commonwealth. The New Zealand political system is built on the received traditions of the British Westminster system. There is an expectation that government should rule with authority and with a view to local interests as well as what is good for the country. At the same time, New Zealanders have become accustomed to governments which uphold the common good by intervening in the economy to solve problems such as market failure and material inequality. The consensus around this approach to the role of government, which endured for so many years after the Second World War, perhaps accounts in part for the strong egalitarian ethic and desire for fairness that is part of New Zealand's identity. Other reasons may be that until the 1960s, New Zealand was a new nation that was socially homogenous, and a measure of government assistance was required to establish vital infrastructure and to help people to own private property.

This has also meant that New Zealand governments have generally been pragmatic, not sticking rigidly to ideologically-derived programmes of public management, except for some of the reforms of the 1980s and 1990s. They have proceeded with caution and engaged in incremental change to preserve the social democratic consensus. In short, there is a tension between the pursuit of individual opportunity and ensuring equality of outcomes in New Zealand. Further, the relationship between Maori and the Crown has created a hanging question about the implications of biculturalism. The conclusion is that New Zealand's institutions and identity are largely the result of convention and received custom and tradition. In some ways though, New Zealand's identity is difficult to define, making it challenging for the nation to conceive of a clear common good. Nonetheless, several features of political culture stand out, such as the desire for equal outcomes, justice as fairness and consensus.

These aspects of identity and political culture have shaped the values which are important to New Zealanders, especially with respect to the outcomes of government activity. However, these values deserve serious criticism because on closer inspection they do not bring about true equality, treat people fairly or achieve consensus. It is worth remembering that the First Labour Government, under Michael Joseph Savage, believed in policies which should give

people a hand up, not a hand-out. The example of that government's approach to the benefit system is a good case in point. Michael Bassett has noted that from when the first benefits were introduced in 1898 right up until about 1970, applications for benefits were carefully scrutinised. To receive an Invalid's Benefit, for example, applicants were required to show that the reason they could not work "was not self-induced or in any way brought about with a view to qualifying for an invalidity benefit."<sup>134</sup>

The fundamental principle which drove the provision of welfare was that material assistance from the state should only be made available in the most carefully considered circumstances. The objective in mind was that everyone should work and that people receiving welfare should only do so for a minimum amount of time. This was because the values which New Zealanders held at the time discouraged dependency. The prevailing attitude was that benefits should not be paid to so-called "malingerers," let alone that it should become a way of life for people.<sup>135</sup>

When both National and Labour Governments enlarged the welfare state after the Second World War, with price controls and large public spending programmes, people's attitudes gradually changed as their expectations of what the government could provide increased. The historian David Thomson has shown that to allow every New Zealander to enjoy a high standard of living called for more and more "inter-generational theft." New Zealanders who had worked, earned and paid taxes had also paid for services, and they wanted a payout: even if the costs were passed on to the next generation.<sup>136</sup> As Bassett says, "The Social Security Royal Commission of 1972 and the introduction of no fault accident compensation two years later put stamps of approval on those changing attitudes."<sup>137</sup>

The kernel of the problem is that the vision which Savage held for a harmonious society ruled by a government which owed no allegiance to sectional interests, which, in Bassett's words, would re-organise society "scientifically ... on behalf of those they deemed deserving, was bound to fail."<sup>138</sup> The consequences of high public spending and protectionism, chiefly high inflation and artificial prices, were able to be controlled for a time. However, it generated a creeping sense of entitlement, which weakens the habits of self-responsibility and mutual obligation among people which make civil association

work. In this vein, Bassett has made the following comment about the Fourth Labour Government:<sup>139</sup>

I feel fairly certain that the approach taken by the Fourth Labour Government between 1984 (to) 1990 would be nearer to [Savage's colleagues'] hearts than the excesses which some of the big spending apostles of the modern left want to perpetrate these days—supposedly in the name of Michael Joseph Savage.

Two basic principles dear to the First Labour Government should therefore be elevated among the values which New Zealanders cherish: that people ought to accept a sense of self-responsibility, and that they have an obligation to work for a living.

Besides treating people unfairly, another consequence of the creeping culture of entitlement under various New Zealand governments has been the rise of interest group politics and social sectionalism. The problem is that when government uses redistribution to give benefits to various groups of people, whether identified by socio-economic status or ethnicity, it divides society. When that happens it becomes more difficult for people to pursue the common good because communities of self-interest form around the policies and programmes which favour special interests. These communities then end up promoting and defending claims to rights and entitlements for their small part of the community, rather than what is good for everyone.

In New Zealand, this kind of sectionalism has become commonplace. The introduction of MMP has abetted the process. In Parliament, the rise of minor political parties such as the Green Party, the Maori Party and Christian parties has played to the interests of various lobby and interest groups. The debate over the amendment of section 59 of the Crimes Act is again an example, since some advocates of the legislation claimed that children were a separate group of people in society, distinct from the family, who deserved special rights.

In summary, there are certain values which underpin New Zealand's custom and tradition that are incompatible with what helps people to pursue the common good. An egalitarian society is difficult to maintain, because there will always be a measure of difference between people in terms of their material resources. To correct this can, for example by redistributing people's money through taxation, unfairly penalise people who have worked hard. Moreover, such policies help to establish a culture of

entitlement among the groups of people who benefit from the state's beneficence. When groups form in this way around the government, sectionalism becomes a problem because it divides society up and erodes the basis for a people to conceive of what binds them together.

Reflecting on the views New Zealand's leaders held about the role of government prior to the rise of the welfare state gives some clear lessons for how New Zealand's common good should be properly understood. It is clear that a sense of personal responsibility and an awareness of one's obligations to the broader community are values which have been important in the past. As these values are ones which mitigate against the government taking a large role in steering society, they should supplant other notions which have crept in, such as equality of outcomes and distribution of material resources.

## CONCLUSION

In summary, the custom and tradition of a community is a key resource for discerning the common good because it shows people what the common good is like. People, through their communicative actions and sociability, bear witness to the common good. It is the task of government to protect those freedoms and the public sphere which sustains sociability. Custom and tradition reflect the collective identity of a people, what is important to them and what sustains the social fabric. When a community can conceive of the common good it creates a public realm which connects all the different spheres of life in a community together, and puts up a barrier against unwarranted government activity. This is because the common good represents the horizon point for legitimate government activity. If the government governs in a way which does not respect the common good, then it can be claimed that it has over-stepped its task to maintain the institutions which time and convention show are good for people. What is more, when people realise they belong to the wider community, it enables them to realise their own fulfilment without government direction. The most fundamental human right which is both objective and subjective is the right of each person to be social.<sup>140</sup>

This is important because a complete picture of government is not simply about what the government plans, organises or does; it is also concerned with the

reciprocal relationships which exist between people and communities. Cast in this light, proper governance is not about political leaders approaching society with a set of policies they clinically put into practice, like a painter approaching a blank canvas. Instead, good governance involves government engaging with a society's history, institutions and culture, which act as natural restraints on what government has permission to do. Governing well should be about care for what has come before as much as it is about planning wisely for the future, and bringing about positive change. Proper government is consequently secured by those with political authority being conscious of government's relationship to society, since political leaders, governing rightly, should implement programmes and policies which protect the common good.

This is not to say that government intervention is not without its limitations, given the risks of government failure associated with monopoly provision and the fact that it never has complete information about people's needs, not to mention that it is an institutional arrangement which cannot provide compassion to people. When government intervenes, there is also a risk that it can become too powerful. Further, when it takes action there is also a risk that people will not respond in the way that is desired, which can cause unintended consequences. These consequences of government intervention should reinforce the idea that custom and tradition and subsidiarity delineate the proper limits of government responsibility and action, as they pay respect to the constitutional and social arrangements that should protect the common good.

In conclusion, the common good is ultimately reflected in the affinity of all people together. This means that human friendship, and protection of the goods which are basic to human life and civility, are primary aspects of the common good. What is more, the common good is secured not when government directs people to the good, but by people taking personal responsibility for the good of everyone, involving a commitment to deliberative processes, sharing insights and achieving moral consensus.<sup>141</sup>

---

## ENDNOTES

- <sup>1</sup> J. Boston et al., "Public Management. The New Zealand Model" (Auckland; New York: Oxford University Press, 1996), 8.
- <sup>2</sup> J. Boston et al., "Public Management. The New Zealand Model," 8.
- <sup>3</sup> O. O'Donovan, *The Ways of Judgement* (Grand Rapids, Michigan: Eerdmans, 2005), 57–58.
- <sup>4</sup> O. O'Donovan, *The Ways of Judgement*, 58.
- <sup>5</sup> O. O'Donovan, *The Ways of Judgement*, 59.
- <sup>6</sup> Citing Abraham Kuyper, *Lectures on Calvinism* (1931; repr., Grand Rapids: Eerdmans, 2002). J. Budziszewski, *Evangelicals in the Public Square* (Grand Rapids, Michigan: Baker Academic, 2006), 57–58.
- <sup>7</sup> J. Chaplin, "Civil Society and the State: A neo-Calvinist perspective." Paper presented at the conference "Civil Society and Christian Social Thought: Three views," Baylor University, 22–23 March" (2002), 10–11.
- <sup>8</sup> Pope John Paul II, *Centesimus annus* (The Vatican: The Holy See, 1991), section 48.
- <sup>9</sup> Pope Leo XIII, *Rerum novarum* (The Vatican: The Holy See, 1891), section 35.
- <sup>10</sup> D.X. Burt, "Friendship and Society. An introduction to Augustine's practical philosophy" (Grand Rapids, Michigan: Eerdmans, 1999), 133–135.
- <sup>11</sup> D.X. Burt, "Friendship and Society. An introduction to Augustine's practical philosophy," 147.
- <sup>12</sup> R. Scruton, *The Meaning of Conservatism* (Harmondsworth: Penguin, 1980), 86–87.
- <sup>13</sup> R. Scruton, *The Meaning of Conservatism*, 21.
- <sup>14</sup> R. Scruton, *The Meaning of Conservatism*, 28ff.
- <sup>15</sup> On correspondence theory and realism see, for example, G.E. Moore, *Some Main Problems of Philosophy* (1953; repr., London: George Allen & Unwin, 1911), chapter 15; B. Russell, *Problems of Philosophy*, (Oxford: Oxford University Press, 1912), 129–1971.
- <sup>16</sup> R. Scruton, *The Meaning of Conservatism*, 33.
- <sup>17</sup> R. Scruton, *The Meaning of Conservatism*, 45.
- <sup>18</sup> J. Locke, *Two Treatises of Government*, ed. T.Hollis (London: A. Millar, et al., 1764), chapter 7, § 87.
- <sup>19</sup> R. Nisbet, *Conservatism: Dream and reality* (Milton Keynes: Open University Press, 1986), 35.
- <sup>20</sup> E. Burke, *Reflections on the Revolution in France*, cited in R. Nisbet, *Conservatism: Dream and reality*, 35.
- <sup>21</sup> E. Burke, *Reflections on the Revolution in France*, cited in R. Nisbet, *Conservatism: Dream and reality*, 35.
- <sup>22</sup> E. Burke, "Thoughts and Details on Scarcity" (1795) cited in R. Nisbet, *Conservatism: Dream and reality*, 36.
- <sup>23</sup> E. Burke, "Thoughts and Details on Scarcity," cited in R. Nisbet, *Conservatism: Dream and reality*, 37.
- <sup>24</sup> Citing Robert Nisbet, E.J. Feulner, "Robert Nisbet," in *The March of Freedom. Modern classics in conservative thought* (Washington D.C.: Heritage Books, 2003), 199.
- <sup>25</sup> R.A. Nisbet, *Community and Power (formerly The Quest for Community)* (New York: Oxford University Press, 1962), 264–265.
- <sup>26</sup> R.A. Epstein, "How Big Should Government Be?" (Wellington: New Zealand Business Roundtable (NZBR), 2005), 5.
- <sup>27</sup> The definition of the term right is not restricted to the kind of definitions held by legal-positivists that rights pertain to the original natural rights of the individual to private goods and immunities. In this paper, the definition of right which is preferred is one developed by the natural law theorist Hugo Grotius. Grotius defines right in terms that mean what is just (*ius*). Further, Grotius understands what is just in negative terms as what is not unjust. What is unjust is for Grotius is the negation of sociability. This means that rights relate to correcting the loss of sociability, and that individual virtue is not the ground upon which rights rest. The implication is that the only objective right which people have is the claim to be social, to associate and participate in community. See H. Grotius, *De iure belli ac pacis* (1625), I.1.3–9. Also see the discussion of this passage in O. O'Donovan, *The Ways of Judgement*, 139; and O. O'Donovan and J.L. O'Donovan, *Bonds of Imperfection. Christian politics, past and present* (Grand Rapids, Michigan: Eerdmans, 2004), 167–203.
- <sup>28</sup> J. Budziszewski, *Written on the Heart* (Downers Grove, Illinois: Intervarsity Press, 1997), 33.
- <sup>29</sup> P.D. Miller and D.P. McCann, *In Search of the Common Good* (New York and London: T & T Clark, 2005), 3–4.
- <sup>30</sup> P.D. Miller and D.P. McCann, *In Search of the Common Good*, 5.
- <sup>31</sup> J.W. Skillen, "The Common Good as Political Norm," in *In Search of the Common Good*, ed. P.D. Miller and D.P. McCann (New York and London: T & T Clark, 2005), 264.
- <sup>32</sup> J.W. Skillen, "The Common Good as Political Norm," 264.
- <sup>33</sup> J. Budziszewski, *Written on the Heart*, 34–35.
- <sup>34</sup> R.W. Jenson, "The Trinity of the Common Good," in *In Search of the Common Good*, ed. D.P. McCann and P.D. Miller (New York & London: T & T Clark, 2005), 333.
- <sup>35</sup> J.W. Skillen, "The Common Good as Political Norm," 264.
- <sup>36</sup> J.W. Skillen, "The Common Good as Political Norm," 265.
- <sup>37</sup> J. Locke, *Two Treatises of Government*, §3. Also see §95 and §104.
- <sup>38</sup> J. Locke, *An Essay Concerning Toleration* (1667), cited in S.R. Letwin, "John Locke: Liberalism and Natural Law," in *Traditions of Liberalism. Essays on John Locke, Adam Smith and John Stuart Mill*, ed. K. Haakonssen (St. Leonard's: Centre for Independent Studies, 1988), 21.
- <sup>39</sup> S.R. Letwin, "John Locke: Liberalism and Natural Law," 21.
- <sup>40</sup> S.R. Letwin, "John Locke: Liberalism and Natural Law," 21.
- <sup>41</sup> S. Gregg, *On Ordered Liberty. A treatise on the free society* (Lanham: Lexington Books, 2003), 70.
- <sup>42</sup> J.J. Rousseau, *The Social Contract*, ed. C. Betts (Oxford: Oxford University Press, 1994), 54.
- <sup>43</sup> J.J. Rousseau, *Emile or On Education*, ed. A. Bloom (London: Penguin, 1991), 39ff.
- <sup>44</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings*, ed. V. Gourevitch (Cambridge: Cambridge University Press, 1997), 42.
- <sup>45</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings*, 58ff.

- <sup>46</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings*, 59.
- <sup>47</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings*, 62.
- <sup>48</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings*, 61.
- <sup>49</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings* 63.
- <sup>50</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings*, 63.
- <sup>51</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings*, 53.
- <sup>52</sup> Rousseau points to that in Book III of *The Social Contract*. J.J. Rousseau, *The Social Contract*, 134ff.
- <sup>53</sup> This view is supported by Paul Johnson, who writes: "Although Rousseau writes about the General Will in terms of liberty, it is essentially an authoritarian instrument." P. Johnson, *Intellectuals* (New York: Harper's, 1990), 24.
- <sup>54</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings*, 68.
- <sup>55</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings*, 68.
- <sup>56</sup> J.J. Rousseau, *The Social Contract*, 73 .
- <sup>57</sup> J.J. Rousseau, *The Social Contract*, 61.
- <sup>58</sup> Aquinas, *Summa theologiae*, I-II:1. Further, Thomas Aquinas states that no one can attain his own proper good unless he stands in right relation to the common good. *Summa theologiae*-II:92.1 ad 3; II-II:47.10. Cited in J. Porter, "The Common Good in Thomas Aquinas," in *In Search of the Common Good*, ed. P.D. Miller and D.P. McCann (New York and London: T & T Clark, 2005), 107.
- <sup>59</sup> Aquinas, *Summa theologiae*, I-II:90.4, cited in J. Porter, "The Common Good in Thomas Aquinas," 107.
- <sup>60</sup> D.P. McCann, "The Common Good in Catholic Social Teaching," in *In Search of the Common Good*, ed. P.D. Miller and D.P. McCann (New York and London: T & T Clark, 2005), 121, 123.
- <sup>61</sup> D.P. McCann, "The Common Good in Catholic Social Teaching," 145.
- <sup>62</sup> Pope Paul VI, "*Gaudium et spes* (The Pastoral Constitution on the Church in the Modern World)" (Vatican: The Holy See, 1965), par. 26.
- <sup>63</sup> Pope Paul VI, "*Gaudium et spes* (The Pastoral Constitution on the Church in the Modern World)," par. 58.
- <sup>64</sup> The writings of Jacques Maritain, a modern Thomist, in the 1940s and 1950s shaped Catholic political theory by synthesising Thomist-Aristotelian and liberal-democratic ideas together. His conclusion is that liberal democracy allows natural rights to be most adequately expressed, through regular elections and representation. See in particular J. Maritain, *Man and the State* (Chicago: Chicago University Press, 1951).
- <sup>65</sup> J. Porter, "The Common Good in Thomas Aquinas," 120.
- <sup>66</sup> Aquinas states that: "All law proceeds from the reason and will of the lawgiver; the Divine and natural laws from the reasonable will of God; the human law from the will of man, regulated by reason. Now just as human reason and will, in practical matters, may be made manifest by speech, so

may they be made known by deeds: since seemingly a man chooses as good that which he carries into execution. But it is evident that by human speech, law can be both changed and expounded, in so far as it manifests the interior movement and thought of human reason. Wherefore by actions also, especially if they be repeated, so as to make a custom, law can be changed and expounded; and also something can be established which obtains force of law, in so far as by repeated external actions, the inward movement of the will, and concepts of reason are most effectually declared; for when a thing is done again and again, it seems to proceed from a deliberate judgment of reason. Accordingly, custom has the force of a law, abolishes law, and is the interpreter of law. ... The people among whom a custom is introduced may be of two conditions. For if they are free, and able to make their own laws, the consent of the whole people expressed by a custom counts far more in favour of a particular observance, that does the authority of the sovereign, who has not the power to frame laws, except as representing the people. Wherefore although each individual cannot make laws, yet the whole people can. If however the people have not the free power to make their own laws, or to abolish a law made by a higher authority; nevertheless with such a people a prevailing custom obtains force of law, in so far as it is tolerated by those to whom it belongs to make laws for that people: because by the very fact that they tolerate it they seem to approve of that which is introduced by custom." Aquinas, *Summa theologiae*, I-II:97, 3.

- <sup>67</sup> O. O'Donovan, *The Ways of Judgement*, 69-72.
- <sup>68</sup> M. Oakeshott, *On Human Conduct* (Oxford: Clarendon Press, 1975).
- <sup>69</sup> O. O'Donovan, *The Ways of Judgement*, 69-70.
- <sup>70</sup> R. Scruton, *The Meaning of Conservatism*, 23-24.
- <sup>71</sup> R. Scruton, *The Meaning of Conservatism*, 23.
- <sup>72</sup> R.P. George, "Natural Law," *Harvard Journal of Law and Public Policy* 31, no. 1 (2008): 172.
- <sup>73</sup> R.P. George, "Natural Law," 173.
- <sup>74</sup> R. Wacks, *Philosophy of Law: A very short introduction* (Oxford: Oxford University Press, 2006), 14-15.
- <sup>75</sup> J. Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980), 64.
- <sup>76</sup> R. Scruton, *The Meaning of Conservatism*, 40.
- <sup>77</sup> R. Scruton, *The Meaning of Conservatism*, 42.
- <sup>78</sup> J. Finnis, "Is Natural Law Theory Compatible with Limited Government?" in *Natural Law, Liberalism, and Morality*, ed. R.P. George (Oxford: Oxford University Press, 1996), 5.
- <sup>79</sup> R.P. George, *In Defense of Natural Law* (Oxford and New York: Oxford University Press, 1999), 142-143; G. Grisez, "The Christian Family as Fulfilment of the Sacramental Marriage." Paper delivered to the "Society of Christian Ethics Annual Conference" (1995), 1-8.
- <sup>80</sup> Cf. J. Finnis, *Natural Law and Natural Rights*, 34.
- <sup>81</sup> G. Grisez, "The Christian Family as Fulfilment of the Sacramental Marriage."
- <sup>82</sup> R. Scruton, *The Meaning of Conservatism*, 42.
- <sup>83</sup> Research has consistently found that married couples have higher levels of emotional and psychological well-being than singles, couples who are divorced and cohabiting couples. S. Brown, "Relationship Quality Dynamics of Cohabiting

- Unions," *Journal of Family Issues* 24, no. 5 (2003): 583-603; J.K. Kiecolt-Glaser and T. Newton, "Marriage and Health: His and hers," *Psychological Bulletin* 127, no. 4 (2001): 472-485; S.L. Brown, "The Effect of Union Type on Psychological Well-being: Depression among cohabitators versus marrieds," *Journal of Health and Social Behavior* 41, no. 3 (2000): 241-256; K. Marcussen, "Explaining Differences in Mental Health Between Married and Cohabiting Individuals," *Social Psychology Quarterly* 68, no. 3 (1999); S. Stack and R. Eshelman, "Marital Status and Happiness: A 17-nation study," *Journal of Marriage and the Family* 60 (1998): 527-536; K.A.S. Wickrama and F. Lorenz, "Marital Quality and Physical Illness: A latent growth curve analysis," *Journal of Marriage and the Family* 59, no. 1 (1997): 143-156; B. Hahn, "Marital Status and Women's Health: The effect of economic marital acquisitions," *Journal of Marriage and the Family* 55, no. 2 (1993): 495-505; L.A. Lillard and L.J. Waite, "'Til Death Do us Part: Marital disruption and mortality," *The American Journal of Sociology* 100, no. 5 (1995): 1131-1157; Y. Hu and N. Goldman, "Morality Differentials by Marital Status: An international comparison," *Demography* 27, no. 2 (1990): 233. Further, Lee Lillard and Linda Waite also find that people who are married generally stay healthy, and live longer lives, than those who are unmarried. Couples' health also improves after marriage and divorced people's health improves after they re-marry. L.A. Lillard and L.J. Waite, "'Til Death Do Us Part: Marital disruption and mortality," 1131-1157.
- <sup>84</sup> Aquinas, *Summa theologiae*, I-II:90, 4.
- <sup>85</sup> R.P. George, "Natural Law," 175.
- <sup>86</sup> Citing Finnis, R. Wacks, *Philosophy of Law: A very short introduction*, 16.
- <sup>87</sup> J. Finnis, *Natural Law and Natural Rights*, 154.
- <sup>88</sup> J. Finnis, *Natural Law and Natural Rights*, 155.
- <sup>89</sup> J. Finnis, *Natural Law and Natural Rights*, 155.
- <sup>90</sup> K.L. Grasso, "The Subsidiary State: Society, the state and the principle of subsidiarity in Catholic social thought." Paper presented at the Civitas Annual Symposium, "Civil Society and Christian Social Thought: Three views" (2002), 26-27.
- <sup>91</sup> Citing the Second Vatican Council, *Dignitatis humanae*. K.L. Grasso, "The Subsidiary State: Society, the state and the principle of subsidiarity in Catholic social thought," 26.
- <sup>92</sup> K.L. Grasso, "The Subsidiary State: Society, the state and the principle of subsidiarity in Catholic social thought," 28.
- <sup>93</sup> J.D.S. McKenzie, "More than a Show of Justice? The Enrolment of Maoris in European Schools prior to 1900," *New Zealand Journal of Educational Studies* 17, no. 1 (1982): 1-21.
- <sup>94</sup> R. Openshaw, G. Lee and H. Lee, *Challenging the Myths. Rethinking New Zealand's educational history* (Palmerston North: Dunmore Press, 1993), 60.
- <sup>95</sup> D.G. Ball, "Native Education in New Zealand." A Paper presented to the "Seminar-Conference on Native Education," Honolulu, July, (1936).
- <sup>96</sup> R. Openshaw, G. Lee and H. Lee, *Challenging the Myths. Rethinking New Zealand's educational history*, 62.
- <sup>97</sup> T.B. Strong, "The Education of South Seas Natives," in *The Maori and Education*, ed. P. Jackson (Wellington: Fregusson and Osborne, 1931), 192.
- <sup>98</sup> R. Openshaw, G. Lee and H. Lee, *Challenging the Myths. Rethinking New Zealand's educational history*, 62.
- <sup>99</sup> R. Openshaw, G. Lee and H. Lee, *Challenging the Myths. Rethinking New Zealand's educational history*, 65.
- <sup>100</sup> R. Openshaw, G. Lee and H. Lee, *Challenging the Myths. Rethinking New Zealand's educational history*, 66.
- <sup>101</sup> R. Openshaw, G. Lee and H. Lee, *Challenging the Myths. Rethinking New Zealand's educational history*, 66-67.
- <sup>102</sup> Ministry of Education, "Focus on Achievement in Reading Literacy - PISA 2000" (Wellington: Comparative Education Research Unit, Ministry of Education, New Zealand, 2004), 21.
- <sup>103</sup> Ministry of Education, "Focus on Achievement in Reading Literacy - PISA 2000," 21.
- <sup>104</sup> Ministry of Education, "Focus on Achievement in Reading Literacy - PISA 2000," 5.
- <sup>105</sup> Foreword by Geoffrey W. Palmer, in Law Commission, "Reforming the Law of Sedition" (Wellington: Law Commission, 2007), 6.
- <sup>106</sup> Maxim Institute, "Submission on Crimes (Repeal of Seditious Offences) Amendment Bill," (Auckland: 2007).
- <sup>107</sup> Maxim Institute, "Submission on Crimes (Repeal of Seditious Offences) Amendment Bill," 2-3.
- <sup>108</sup> Law Commission, "Reforming the Law of Sedition," 23; L. Maher, "The Use and Abuse of Sedition," *SydLR*, 14 (1992), 287; "Parties Unite to Call for End to Crime of Sedition," *The New Zealand Herald*, 25 April 2007.
- <sup>109</sup> Maxim Institute, "Submission on Crimes (Repeal of Seditious Offences) Amendment Bill," 3.
- <sup>110</sup> Cf. P. Joseph, *Constitutional and Administrative Law in New Zealand* (Wellington: Brookers, 2001), 219, citing *Gendall v Te Kooti* (1891) 9 NZLR 26, 58.
- <sup>111</sup> Maxim Institute, "Submission on Crimes (Repeal of Seditious Offences) Amendment Bill," 9.
- <sup>112</sup> R. Scruton, *The Meaning of Conservatism*, 24.
- <sup>113</sup> R. Scruton, *The Meaning of Conservatism*, 24.
- <sup>114</sup> S. Gregg, *On Ordered Liberty. A treatise on the free society*, 73.
- <sup>115</sup> Oliver O'Donovan writes: "The economy ... is simply the way in which our various endeavours and engagements appear when observed at a certain cross-section. A snapshot of the market is a snapshot of life, but one taken from an unnatural angle. The attempt to regulate all that appears in the market would not only be an attempt to control all life, but an attempt to control it through its most incidental feature. ... Yet this does not mean that markets are a nullity which can be allowed to regulate themselves with the same confidence that we trust well-kept books to balance themselves. Exchange is a distinct kind of human undertaking, and, because it involves comparing unlike with unlike, it is full of opportunities for wrong ... . It is to restrain these wrongs that governments intervene into the mechanisms of economic transactions." O. O'Donovan, *The Ways of Judgement*, 64, 63-65.
- <sup>116</sup> J.W. Skillen, "The Common Good as Political Norm," 257.
- <sup>117</sup> J. Madison, *The Federalist No. 51. The structure of the government must furnish the proper checks and balances between the different departments* (2008; repr., The Constitution Society, 1788), <http://www.constitution.org/fed/federa51.htm> (accessed 18 July 2008).
- <sup>118</sup> R. Kerr, "A Conflict of Visions. Paper presented to the ACT New Zealand 10th Annual Conference" (Wellington: New Zealand

- Business Roundtable (NZBR), 2004), 7-8.
- <sup>119</sup> New Zealand Union of Students' Associations, "Massive Student Debt Increase Since 2004" (2008).
- <sup>120</sup> R.P. George, "Natural Law," 187.
- <sup>121</sup> J. Boston, *New Zealand Under MMP: A new politics?* (Auckland: Auckland University Press with Bridget Williams Books, 1996), 3.
- <sup>122</sup> J. Vowles, *Proportional Representation on Trial: The 1999 New Zealand general election and the fate of MMP* (Auckland: Auckland University Press, 2002), xiv, 255.
- <sup>123</sup> By mid-2001, NZES data (n=729) indicated that opinion about electoral systems appeared to show low levels of understanding that Mixed Member Proportional (MMP) is a system of proportional representation and that First-Past-the-Post (FPP) is not. On the other hand, the data shows that voters supported the principle of proportional representation by margins of 10 to 15 percent, even when traded off against single-party governments fostered by FPP systems. The more knowledge people had that MMP was a proportional system, and that FPP is not, the more likely they were to support MMP. The lack of understanding about the relationship between electoral systems and proportional representation explains a paradox in previous NZES data up to 1999 that New Zealanders have consistently expressed support for the principle of proportional representation while often expressing opposition to MMP. In 2005, voter knowledge of the concept of proportionality was low again, as around 20 percent (n=3,743) of respondents did not understand it when they were asked in two scenarios to consider whether a party should receive the proportion of seats according to its share of the vote. Generally then voter knowledge of both kinds of electoral systems and their consequences is low. As the 2005 results confirm, even if New Zealanders understand the mechanics of voting under MMP, it is possible many do not actually understand what the outcome of the voting system is. These findings also indicate that hidden support for MMP seems higher than apparent support. This suggests that while many New Zealanders support majority government, many are also not opposed to a proportional distribution of seats. Electoral Commission, "MMP Monitor. Pre-election Survey 2005. Summary report" (Wellington: 2005).
- <sup>124</sup> B. Gustafson, "New Zealand Since the War," in *New Zealand Government and Politics*, ed. R. Miller (Auckland: Oxford University Press, 2006), 3-4.
- <sup>125</sup> B. Gustafson, "New Zealand Since the War," 6.
- <sup>126</sup> B. Gustafson, "New Zealand Since the War," 7.
- <sup>127</sup> B. Gustafson, "New Zealand Since the War," 11.
- <sup>128</sup> H. Clark, "Prime Minister's Address to the London School of Economics, 21 February" (2002).
- <sup>129</sup> L. Lipson, *The Politics of Equality: New Zealand's adventures in democracy* (Chicago: University of Chicago Press, 1948), 482, cited in P. Moloney, "New Zealand's Ideological Tradition," in *New Zealand Government and Politics*, ed. R. Miller (Auckland: Oxford University Press, 2006), 44.
- <sup>130</sup> K. Smits, "Multicultural Identity in a Bicultural Context," in *New Zealand Government and Politics*, ed. R. Miller (Auckland: Oxford University Press, 2006), 30-31.
- <sup>131</sup> A. Fleras and P. Spoonley, *Recalling Aotearoa: Indigenous politics and ethnic relations in New Zealand* (Oxford: Oxford University Press, 1999) cited in K. Smits, "Multicultural Identity in a Bicultural Context," 31-32.
- <sup>132</sup> F.M. Brookfield, *Waitangi & Indigenous Rights: Revolution, law & legitimation* (Auckland: Auckland University Press, 2006).
- <sup>133</sup> Cf. K. Smits, "Multicultural Identity in a Bicultural Context," 32.
- <sup>134</sup> M. Bassett, "Sowing the Wind and Reaping the Whirlwind." Presentation to the "Welfare Reform Seminar." 14 August (2004).
- <sup>135</sup> Bassett recounts two anecdotes from Ministers in the post-war Labour Government which carried this sentiment: "When Labour Prime Minister Peter Fraser was asked in Parliament in 1945 about his policy towards "loafers" he replied that such a person should be placed in a tank into which water was poured, and there should be a pump. If it was continuously operated the water would stay down. If the man did not pump he'd drown. Fraser's Minister of Works, Bob Semple, put the same basic sentiment in biblical parlance: "he who shall not work, neither shall he eat." M. Bassett, "Sowing the Wind and Reaping the Whirlwind."
- <sup>136</sup> D. Thomson, "Society and Social Welfare," in *The Future of the Past: Themes in New Zealand history*, ed. C. Davis and P. Lineham (Palmerston North, 1991), 98-120 cited in M. Bassett, "How Ideal was the Savage Ideal?" "M.J. Savage Memorial Lecture," La Trobe University, 4 September (1998).
- <sup>137</sup> M. Bassett, "How Ideal was the Savage Ideal?"
- <sup>138</sup> M. Bassett, "How Ideal was the Savage Ideal?"
- <sup>139</sup> M. Bassett, "How Ideal was the Savage Ideal?"
- <sup>140</sup> Consider Hugo Grotius' formulation of objective and subjective rights, which situates subjective rights in the context of a person's participation in a prior objective right. This might be thought of as a person's right to their community, or to pursue the good of human sociability. Cf. H. Grotius, *De iure belli ac pacis*, I.I.3-9.
- <sup>141</sup> P.D. Miller and D.P. McCann, *In Search of the Common Good*, 5.

## SECTION 4

# The Responsibilities of the Government

---

The burgeoning size of the government, the range of incentives it is offering to people to rely more on the state and the way taxpayers' money is being redistributed are clearly open to serious criticism in light of the framework which has been presented. When government sticks to its proper functions, and observes the boundaries of its authority, it leaves the communities of civil society free to flourish without interference. As well as subsidiarity, custom and tradition also indicate the parameters in which government may exercise its authority. Custom and tradition disclose the characteristics of the social fabric which make a society strong and harmonious, and therefore indicate where government should not tamper or intervene, lest it destroy those complex relationships which sustain society. This also means that custom and tradition have an important role in limiting government power, since a prudent government would look to custom and tradition to show what habits and practices sustain the associative communities and institutions of civil society. In this way, the government would only respond to harm when the community could not, reducing the possibility of the social fabric being eroded. All of this is to reiterate that custom and tradition indicate the common good, and that the government, as one institution that is part of the wider community and has a measure of responsibility for caring for it, should only ever protect the common good from harm, so that the social fabric is strengthened against the future harm.

The discussion so far has also suggested that the need for government is anchored firmly to the mutual notions of authority and allegiance. This means that proper government should only carry out certain functions to ensure the peace and security of a community and protect the common good. For

example, this means that it may be right for the government to provide certain non-rival and non-excludable public goods, which everyone contributes to and benefits from, if there is a need for them and the community cannot provide them. This section therefore examines what government should be responsible for, with reference to a conservative vision for society, as well as the development of modern liberal democracy and the centralised nation-state. The list of responsibilities described is not exhaustive, but instead highlights the way that the government should approach society so that it functions in a way that protects the common good and does not promote it. It makes the case that to protect the social fabric, and therefore the common good, government responsibilities include fostering association and community, enacting public justice, fostering an entrepreneurial culture and providing certain public goods.

Again, the premise that government's task is to defend the common good is critical for defining the proper responsibilities of government. Nonetheless, the idea that society is a whole in which various associative communities exist is also critical to understanding how to get the balance right between government and community responsibility.

### **GOVERNMENT IS RESPONSIBLE FOR FOSTERING ASSOCIATION AND COMMUNITY**

Robert Nisbet, mentioned before, is one theorist who has described society in terms of associative communities. It is in these terms that the role of government becomes clear in democracies. Nisbet argues that government should not "sterilise" the normal authority of associations, by taking over their functions, depriving them of their authority or

holding a monopoly on the allegiance which would traditionally be due to the local community. Instead its role should be to reinforce associative communities to provide for the normal competition of group differences, within bounds, and "an environment of law within which no single authority, religious or economic, shall attain a repressive and monopolistic influence."<sup>1</sup>

Nisbet arrived at this vision of society by building on the legacy of the political thought of Edmund Burke and Alexis de Tocqueville. He saw that the emergence of the sovereign state had a profound influence upon the organisation of society in the West. His argument is that the state became powerful as a consequence of war, as this spurred central government to collect taxes to finance the military and to coordinate the nation behind the war effort. That being the case, Nisbet also noted that people are always in a "quest for community [that] will not be denied."<sup>2</sup> What he meant was that people need to belong somewhere so that several basic needs of human nature are met, these being a sense of "cultural purpose, membership, status and continuity."<sup>3</sup>

The tragedy of life in the twentieth century for Nisbet was that the state began to meet people's need for community. It did so by absorbing the functions which associative communities performed which existed before the rise of the state. The state promised to perform their tasks more efficiently and to alleviate the isolation of the individual by meeting people's material needs. One of the consequences is that the state has become an ideal. The danger is that people look to the state first to meet their needs before they look to themselves and the people around them. Nisbet wrote about the consequences of this for the integrity of local communities:<sup>4</sup>

We may regard the people as simply a numerical aggregate of individuals regarded for political purposes as discrete and socially separated, an aggregate given form and meaning only by nature of the State and its laws. Or alternatively, we may regard the people as indistinguishable from a culture, its members as inseparable from families, unions, churches, professions and traditions that actually compose a culture.

Further, Nisbet argued that the power of the state had actually been enhanced by the spread of popular sovereignty. This is because it had allowed the state to widen its support base to the entire population by

convincing people that they needed the state to lead fulfilling lives and to realise their potential. Hence, he was suspicious of the growth of the modern welfare state, which he saw as eroding people's sense of mutual responsibility and expanding government control over people's lives.

Nisbet's solution to the problems created by the growing power of the state was a pluralist vision for society where the intermediate associations of society, such as the family, the church and the local community, were revitalised. He believed in a view of man and society which:<sup>5</sup>

... stressed not the abstract individual and impersonal relations of contract but personality inextricably bound to the small social group; relationships of ascribed status and tradition; the functional interdependence of all parts of a society, including its prejudices and superstitions; the role of the sacred in maintaining order and integration; and, above all, the primacy of society to the individual.

This meant that in Nisbet's framework the intermediary associations and groups which emerge spontaneously are the social institutions which deserve primary theoretical and practical consideration.<sup>6</sup> Nisbet also claimed that people's freedom depended upon the vitality of small associative communities, since he believed that all of these associations exist prior to the individual and so "are the indispensable supports of belief and conduct."<sup>7</sup> If individuals become cut off from local communities they lose their sense of heritage and become isolated from each other. He argued this was what created the faceless masses which the state had won over. According to Nisbet, only the "groups and associations which we are given in experience" could properly fulfil people's social needs.<sup>8</sup> In short, social pluralism should prevent the government from controlling all aspects of life, leaving it to preserve "the setting of human life, not human life itself."<sup>9</sup>

Even though Nisbet wrote in the 1950s, his diagnosis of the causes and consequences for society of the growth of government are still valid today. More importantly, Nisbet's observation that associative communities are prior to the individual and to the state is a helpful place to start building a theory of responsible government intervention to foster association and community. If the identity of a people is inextricably linked to the various associative communities to which they belong, it means that the

centralised state does not have any prior claim to people's allegiance. According to Nisbet, this means that the government is "but one of the associations of man's existence."<sup>10</sup> It is reasonable to say that society should be treated as a whole, rather than an ordered hierarchy, as according to Nisbet each natural community is equally as important as the others for sustaining the social fabric.

As these groups have traditionally sprung up to meet human needs and to solve problems, Nisbet's framework stipulates that associative communities have specific functions.<sup>11</sup> This belief is stated clearly in one of his most important works, *The Quest for Community*. Nisbet wrote that:<sup>12</sup>

Because of our single-minded concentration upon the individual as the sole unit of society and upon the State as the sole source of legitimate power, we have tended to overlook the fact that freedom thrives in cultural diversity, in local and regional differentiation, in associative pluralism, and above all, in the *diversification of power*. Basically all these are reducible, I believe, to the single massive problem of the relation of political government to the plurality of cultural associations which form the intermediate authorities of society. These are many: religious, economic, professional, local, recreational, academic, and so forth. Each of them is a structure, often large, of authorities and functions. Each of them is an organisation of human purposes and allegiances related to some distinctive institutional end. Each of them is, apart from the checks provided by the existence of other and competing forms of association, potentially omniscient in its relation to its members.

Nisbet also holds that diversity or a plurality of sovereignty is the single greatest barrier to liberal democracy turning into totalitarianism.<sup>13</sup> The key implication which can be drawn from Nisbet's framework of social pluralism for defining the core responsibilities of government is that each associative community has a unique kind of private sovereignty. This is because each associative community has a particular structure and authority over the people who belong to it.

Extrapolating from Nisbet's position on the nature of associative communities, it may be argued that each community has its own principles of internal order, distinguishing it from other communities according to its primary function.<sup>14</sup> In practical terms, this means that it should be possible to identify the

distinctive nature of the family, schools, voluntary associations, the church, businesses and government, and to indicate the appropriate set of rights, duties and powers which they possess. By looking at the proper function of each associative community in its particular sphere of authority, it may be possible to demarcate each one's proper sphere of activity, distinct from the others.

This reasoning explains why the examples of government intervention discussed previously are such clear cases of government assuming tasks which are unrelated to its leading function. For example, the family has leading functions in exercising compassion, nurturing children, teaching people how to relate well to one another, and instilling character and virtue in people. This should have been sufficient reason for Parliament to have avoided passing the legislation which amended section 59 of the Crimes Act 1961 to criminalise parents who use reasonable non-abusive physical discipline.

Another case in point is the values prescribed by central government in the New Zealand Curriculum. Schools and the communities they serve are in a better position to work out the values which should be taught to children rather than the Ministry of Education. Like the issue of parental authority, virtues and values education is prior to the state, and so should proceed from the family, as education pertains to the well-being of children.

The generous tax incentives included as part of the Working for Families and KiwiSaver packages are causing people to become more dependent on the state, since they foster a culture of entitlement. Working for Families discourages people from earning higher salaries. Such government policies shift the focus of wealth creation away from individual enterprise and corporations, whereas the leading functions of businesses are to create jobs, to pursue economic opportunities and to grow wealth. When governments convince people that subsidies are a better way to become wealthy, they encourage wasteful rent-seeking activity, and growth in the government sector.

These examples are a reminder of the fact that government is an arrangement which serves people. Its basic task is to adjudicate between right and wrong, and to only take responsibility for protecting the goods which contribute to the common good, when individuals and communities simply cannot do this on their own.

By understanding the roles and functions of an associative community, its irreducible characteristics can be determined. Understanding this helps to clarify how it should function in a healthy way in relation to other communities which would contribute to human flourishing.<sup>15</sup> This does not mean that each community can pursue only one purpose, or that purposes do not change in response to changing circumstances in time. Instead it means that wherever and whenever associative communities form, they have a constant inner nature. They act within a framework of underlying normative principles, which are a part of the fabric of people's social nature. Being normative, associative communities do not coerce human freedom, but establish the conditions in which right and proper social activity can occur. They supply the basic goods of life which Nisbet, and Finnis, have identified as important for people to live well in community.

The implication of this understanding of differentiated authority within society for the role of government is that government's core responsibility is a juridical or legal one.<sup>16</sup> This does not mean that the state has license to make whatever law it pleases, since each other associative community has a measure of authority over the rules which govern it. Rather, it means that the state should "allow free and untrammelled action so far as is consistent with the common good and the interests of others," and not "absorb the individual or the family."<sup>17</sup> It is the role of the government to simply watch over these communities of citizens which naturally come together by association. The government should not "thrust itself into their peculiar concerns and their organisation," as "they may be killed by a rough hand from without."<sup>18</sup> A vibrant pluralistic society cannot flourish without government's respect for each associative community's proper sphere of authority, and in particular its respect for the inviolability of family life and private property.<sup>19</sup>

Nonetheless, what makes government's legal function unique is that it has public scope, since this activity helps to ensure that each local community can be free to tend to the well-being and care of the people in its midst. In short, the government alone is responsible for public justice,<sup>20</sup> insofar as government acts within the boundaries defined by its leading function, to adjudicate, such as in maintaining the rule of law. This means that in the majority of matters, the community has primary responsibility because it is

prior to the government, and the government should respect this boundary between the institutions of the state and the communities of civil society.

## GOVERNMENT IS RESPONSIBLE FOR PUBLIC JUSTICE

Before describing what enacting public justice looks like in practice, it is necessary to explain why government's leading function is a juridical one. The government has jural authority because the government is part of the state, which is an organised public-legal community, of the kind conveyed by the term *res publica*. The state's duty is to protect the common good, and to sustain the well-being of the social order. It may do so by compelling people to comply with public law for the goods of social harmony and public justice.<sup>21</sup> It also means that the state is responsible for protecting non-governmental associations, institutions and individual people. By being a citizen of a nation-state, people enter into a community which has a clearly circumscribed purpose to create and maintain a public order of just laws. Only the government can accomplish this task because no single family, group or community all by itself can establish the conditions which can protect liberty or establish justice.

The primary mechanism available to government for resolving disputes and coordinating action is through the law. Law is not arbitrary, as it reflects an absolute moral standard, as well as addressing the processes and rules which people are subject to. The law allows conflicts between the different ends which result from the choices which people make in pursuit of basic goods to be resolved, as well as adjudicating when problems arise from people's irrational or mistaken choices. Indeed, as legal philosopher Robert George says:<sup>22</sup>

Law-making and law enforcement are central functions and responsibilities of legitimate political authority. The justifying point of law is to serve the common good by protecting the goods of persons and the communities of which they are members.

Public justice is therefore about how the government acts according to its leading function as a juridically-qualified institution.<sup>23</sup> It acts to protect the common good of all of the citizens who belong to the state. This means that the basic juridical task

of government is also an act of judgement: that is, enacting right against wrong.<sup>24</sup> The concerns of the government may only ever be related to the public interest, whether that is an ethical, economic or social interest.

These features of public justice deserve some further explanation. Firstly, public justice involves public recognition and protection of the legitimate freedoms, duties and powers of people in their respective communities. This is a consequence of a plural associationist view of society which conceives of society as being differentiated into multiple human relationships, associations and institutions which all function and interact at the same time.<sup>25</sup> It also involves the government being responsible for creating the legal, administrative and fiscal instruments for people and communities to enjoy their legitimate freedoms. This is because the government only has the authority to create the public legal conditions in which people's liberty can be realised. It does not have the capacity to govern the internal affairs of other associative communities.

The government should maintain the right ordering of responsibilities in society, by refraining from violating the sovereignty of each associative community and by making sure that the activities of each associative community do not unnecessarily impinge upon or damage the legitimate sphere of another. In short, the government protects public justice by adjudicating between conflicts among the associative communities of civil society.

Nevertheless, today the role of the state and the role of government are often portrayed otherwise; we are told people need the government to help them to pursue freedom. Instead, as discussed, political freedoms, rights and restraints are not abstract; they are meaningful within the context of lived experience. Further, since common ends can only be achieved in community, the freedoms necessary for people to achieve them are often only secured by relinquishing some freedom to the authority of legitimate government. The important point to note is that there cannot be liberty without order. There is always a correlation between freedom and authority, even though a measure of people's liberty might be denied to them by allowing government to protect public justice.

Secondly, that government is oriented to public justice does not mean that it should be reduced to the smallest possible size, but affirms that government

should only perform functions which protect the common good of a community from harm. The implication is that government can intervene in every associative community insofar as an issue of public justice needs to be resolved. The trigger point for government to become involved in the functioning of other communities is when those aspects of a private realm have become public.<sup>26</sup> This point would be reached when private interests threaten the common good, making them a matter of public interest (for example, business fraud or environmental pollution), or when there is a threat to the legitimate liberties of individual people which the government has an obligation to protect (for example, civil rights).

This means that institutions like schools, hospitals and public transport are not governmental in nature. While they perform public functions and vital public purposes, like educating children and keeping people healthy, it does not mean they should be completely subservient to government purposes. Each institution should maintain its independent nature, according to its leading function. All that government may do is to protect the public-legal order by, for example, laying down regulations that will protect the public from harm or otherwise acting to prevent harm to the common good. For example, this could be by setting clear expectations for children's educational achievement in literacy and numeracy, since not being literate puts those children at risk in later life. Another example might be setting certain minimum standards for teachers and other professionals whose jobs, if done poorly, could harm the common good. Exercising its juridical authority to pass judgement, and to lay down laws and regulations, however, does not mean that government is entitled to override or subsume the competencies of the free institutions of civil society.<sup>27</sup>

If government is considered to be the one of the institutions of society which has some responsibility for public well-being, this has several other implications for the core question of the role of government. Firstly, when enacting public justice, government should act in a manner which enhances the opportunities of the other associative communities of society to fulfil their own responsibilities and enjoy their own liberties. This is because the relationship between the government and society is actually complex and reflexive, given that it has a relationship with all of the associative

communities of civil society. Since each of these communities has its own particular structure, it calls for political leaders and policy makers to be careful about which policy instruments they should use, whether they be permissive, regulatory or financial, when government responds to harm.

This framework would also allow debate about the appropriate role of government to transcend the numbing responses from the political left and right for either some version of big or small government, or something in between. This is because the role of the state is to stand among a complex network of social relations, as one sphere among many, whose purpose would be to protect the internal authority of each associative community and the common law.

Further, if the primary role of the state is to be a public-legal community, then this would also avoid the government granting public privilege to specific persons or sectional interests in society, as this could have the effect of eroding the common good. This is because it is difficult for people to conceive of the common good when they think of the needs of their own identity group first. If the common good is protected, the public order would not become the victim of tribalism. What is more, it would be difficult for the state to be just and impartial if government law and public policy took shape because of pressures from sectional groups rather than because they were in accord with the common good. Lastly, if we understand that government is one institution among many, the risk of defining the role of government according to the principle of subsidiarity is reduced. This is because the government could not be conceived of as a self-sufficient authority which can subsume lower, less self-sufficient authorities, since each associative community has its own independent authority which should be respected. The point is the government interacts and cooperates with each independent group; it does not treat them as a subordinate part of the greater whole.

One of the unintended consequences of government intervention is that it may pursue goods which individual people never intended to pursue themselves. Another consequence is that government action binds people. It limits their liberty and brings about conformity to the social order. For this reason, government should only intervene in public life when it can protect the common good from harm better than the associative communities of civil society. In this way, the integrity of the social fabric can be

protected, because the government would not be automatically required to intervene.

## **GOVERNMENT IS RESPONSIBLE FOR FOSTERING AN ENTREPRENEURIAL CULTURE**

A particularly important instance where the government should protect an environment which allows people and communities to flourish on their own terms is the case of fostering an entrepreneurial culture. The role of the entrepreneur is vital to protecting the common good, because entrepreneurs are the people whose "talent, calling, and the aptitude for economic creativity" lead them to supply new goods and services.<sup>28</sup> This activity not only generates wealth, but also creates opportunities for people to enjoy the good of work.<sup>29</sup> The government can best serve entrepreneurs by giving them the space to do what they do well, for example by reducing the regulatory and tax barriers that may prevent people from pursuing new business ventures.

It should be in the interests of the government to respond in this way, because it will help to protect the common good, and the social fabric. By making it easier for entrepreneurs to acquire capital and pursue ventures in the marketplace, there should be less need for the government to provide welfare or subsidise business. The beauty of entrepreneurship as an institution of civil society is that it is most successful when government leaves it well alone. Because it is sustained by the work of creative people who have the capacity to turn their ideas into reality, it does not depend on government programmes, "low-interest loans, special tax treatment, or public subsidies" to spark it.<sup>30</sup> According to Father Robert Sirico, who has written extensively on the vocation of the entrepreneur, this is because "Entrepreneurship is an institution that develops organically from human intelligence situated in the context of the natural order of liberty."<sup>31</sup> It is another example where the government should not interfere in the activities of the associative communities of civil society, unless there is a threat to the common good which they cannot deal with themselves.

Entrepreneurs serve the community by taking risks that grow the economy for everyone.<sup>32</sup> Those who would criticise entrepreneurs for the personal gains which they make perhaps forget the many personal risks and sacrifices these individuals take to

provide not only for themselves and their families, but for countless other people and charities in the community. As Sirico explains, before entrepreneurs can realise a return:<sup>33</sup>

... on their idea or investment, they must surrender their time and property to an unknown fate. They pay out wages even before they know whether their forecast has been accurate. They have no assurance of profit. When investments do return a profit, much of it is usually reinvested (though some of it goes to charities and religious institutions). Sometimes entrepreneurs make errors of judgment and miscalculations, and the business suffers financial loss. The nature of the vocation is such that entrepreneurs themselves must accept the responsibility for their losses without shifting the burden onto the public. For the person with a true vocation to be an economic agent of change, he or she must remain vigilant, for economic conditions are ever changing.

Entrepreneurs therefore have a keen understanding of the value of money and wealth, and the good which this provides for people. As Sirico describes:<sup>34</sup>

They speak of making money, not collecting it; of producing wealth, not redistributing it. Entrepreneurs must consider the needs, wants, and desires of consumers, because the only way to meet their own needs peacefully—without relying on charity—is to offer something of value in exchange.

What this means is that entrepreneurs understand that the market for goods and services is dynamic. For example, the "Austrian economist Israel Kirzner employs the concept of entrepreneurial alertness to show the significance of cultivating one's natural ability, time, and resources."<sup>35</sup> Kirzner argued that when entrepreneurs embark on new ventures they "pursue goals efficiently, once [the] ends and means are clearly identified, but also with the drive and alertness needed to identify which ends to strive for and which means are available."<sup>36</sup>

Kirzner's argument illustrates that entrepreneurship is not a zero-sum game, where some people win by making money and others lose by not having made as much money. This view of the market is the product of a worldview which sees people as the victims of power. The same worldview would hold that some other power—invariably the government—should step in to address wrong by redistributing the

wealth. However, this view of the market is flawed, as it assumes that the amount of wealth in society is always static. This is not the case, as the economy can always grow. This is where the role of the entrepreneur is vital, as they can do this in a way the government cannot, as they pinpoint and exploit the business opportunities before them in response to people's needs and desires. Furthermore, by creating new enterprises they establish "new options for people to choose from in earning a wage and developing their skills."<sup>37</sup>

The value of the entrepreneur to the material and immaterial well-being of society is therefore incalculable.<sup>38</sup> The government should respect these people's creativity and talents, as they protect the common good in ways which the government cannot, principally by identifying and meeting the specific needs and desires of people in their community. The best thing the government can do to foster a strong entrepreneurial culture is to protect the legal and political order they need to carry out free exchange, rather than, for example, offering subsidies to help people start new businesses. This might encourage rent-seeking behaviour and lead to undue interference by the government in the affairs of business and private enterprise. Instead, when the government steps back, it grants entrepreneurs the liberty they need to create the wealth that can lift everyone's material prosperity.

## **GOVERNMENT IS RESPONSIBLE FOR PROVIDING CERTAIN PUBLIC GOODS**

### **Efficiency arguments for the government provision of core public goods**

Notwithstanding the preceding discussion, in order to reasonably prevent harm, there are certain measures which government can provide by means of regulation, funding or provision more efficiently than individuals or local communities. Some of these have been discussed already, in terms of how governments provide national security and enforce the common law. They also include the areas of welfare, health and education, if the government uses regulation and funding to provide services essential for the well-being of society which the community cannot provide on its own. Broadly speaking, economists have discussed the reasons for government intervention in terms of providing

core public goods.<sup>39</sup> An economic approach to these issues is helpful because it provides a framework for assessing whether there is an advantage to society from government intervention. It can also help to identify the strongest justification for government intervention and to what extent it should be involved in providing public goods. In general, the government should provide these goods when:<sup>40</sup>

- no other producer can produce them besides the state;
- they are non-rival and non-excludable goods from which everyone in society benefits—people cannot be excluded from using them once they are in the public domain, and once they are produced, they can be passed on to others at little cost; and
- goods cannot be produced as efficiently by the private sector as by the state.

The last of these points explains that government programmes may be developed to provide welfare, health care and education, for example, if the private market cannot supply these services. That is, the provision of services being delivered in society is inefficient. The two main reasons why this might be so are:<sup>41</sup>

1. externalities; and
2. capital market imperfections.

An externality occurs when the actions of one person provide benefits or costs to another that are not compensated for through exchange between people in the market.<sup>42</sup> Public health measures, like immunisation and providing compulsory education create external benefits, assisting society to be healthy and to function with a level of literacy and numeracy. Externalities are not always positive, however. Sometimes externalities carry costs. For example, economist Norman LaRocque describes how externalities associated with tertiary qualifications impose costs on others:<sup>43</sup>

- tertiary qualifications are used as a signalling device that identifies but does not develop talent;
- excessive educational requirements are used to restrict entry into some professions (for example, medicine); or

- education is used as a status symbol.

The point is that if the government provides access to more education which identifies people as having high ability and that increases their wages, people who do not possess that degree of education will be identified as having low ability and have their wages reduced. LaRocque continues, "To the extent that the signalling hypothesis is correct, educational expansion will merely result in credential inflation, thus decreasing the significance of educational qualifications and delivering little social benefit."<sup>44</sup>

As economist James Cox has argued, just because the private sector or the community are not providing core public goods on their own does not automatically justify government intervention.<sup>45</sup> Further, the presence of an externality by itself does not justify government subsidies. It is easy to argue that a whole range of services could be public goods, but the mere fact that the private sector is not producing these goods is not sufficient to show that they should be subsidised by the government. Subsidies can only be justified when too little of a public good is being produced or provided, and the subsidies will help more people to have access to it or to undertake certain activities, such as in health care or education. In order to bring the government in, one also needs to demonstrate that intervention will not produce more costs than the potential benefits.

Lack of capital investment is another reason why it might be more efficient for government to be involved in providing services. A prime example is student loans for tertiary study, where it may be difficult for people to provide security to guarantee a loan.<sup>46</sup> The reasons why a government might lend money to these people are so students and families on a reduced income can borrow money which private institutions might not be willing to lend. The benefit is that these people will be able to pay the money back, when they earn a higher income.

This situation might be legitimate grounds for government intervention, but some caveats should also be noted. The first is that workers cannot promise future labour services, and so lenders are justified in taking into account a greater degree of risk with lending to students. Another is that the cost of tertiary education can be met by a number of families.<sup>47</sup> A third reason is that government intervention might not solve the problem. For instance, it is possible that in the absence of competition, monitoring and making people repay loans might not be as efficient

as competition among various lenders. In summary, loans offer a way for government to offer a cheaper, targeted approach to addressing capital market imperfections than subsidies, but they can also lead to instances of over-investment and abuse by the people who access them. This means that even if the private sector or the community is not providing such services, it may still not be a sufficient reason for the government to intervene.

The notion that people do not always choose what is good is partly related to this problem. In other words, people do not always act in their own best interests. For example, some people might not wear safety helmets while riding a bicycle or some parents might not send their children to school. An efficiency argument for government intervention against these kinds of behaviour is based on the idea of merit goods and demerit goods, which are goods that society wants to encourage or deter. This is similar to the idea discussed before that the government has some responsibility to respond to wrong in the form of self-harm, to encourage or prohibit certain activities or forms of behaviour if this helps to protect the common good and if the associative communities of society are unable to meet the threat on their own.

### **Equity arguments for the government provision of public goods**

Besides these arguments, there are also arguments made for government intervention associated with improving social equity. Equity arguments assume that the government should offer public subsidies so that there is equality of opportunity and outcomes. This is different to the argument that the government should provide a basic welfare safety net for people who through no fault of their own have no income, and cannot be helped by the local community. People in this situation should receive a measure of short-term assistance. The issue that deserves closer scrutiny is whether policies which provide assistance above and beyond this minimum level are fair.

As discussed, in New Zealand it has been a widely held assumption that if people do not have all of the material resources to be able to participate in the marketplace, whether that is in terms of human capital, information or finances, then the government should meet the gap so that people are not excluded and prevented from enjoying the opportunities that wealthier people can. However,

there are numerous problems with social equity arguments for intervention. The first is that having a basic level of public services does not necessarily mean that the government has to provide them. Government could step back and merely regulate by imposing minimum standards and target subsidies to help those with legitimate needs.<sup>48</sup> Another difficulty is that the government does not know as much about what individuals, families and communities need as they do themselves. A further intractable problem of redistributive welfare is that it "may make some people better off, but only at the cost of making others worse off."<sup>49</sup> There are also issues about who benefits from redistributive policies, when some groups, for example the elderly, may benefit more than others.

One of the biggest problems though is that equity-based policies are often regressive.<sup>50</sup> That is, less well-off people often support subsidies which people on higher incomes will access: KiwiSaver is a case in point. Further, if the government is subsidising activities which help people to earn higher salaries in the future, such as tertiary education, then in time subsidies are likely to increase social inequality rather than to reduce it. That said, some of the regressivity of equity policies is evened out by the fact that those who benefit pay more taxes than the poor.<sup>51</sup> Nonetheless, equity-based policies contribute to churning, raising costs and reducing efficiency. Further they do not always help those who deserve assistance.

### **Information arguments for the government provision of public goods**

One final area where it is argued the government should intervene is to provide information.<sup>52</sup> This might occur for two major reasons. The first is that the public may have difficulty measuring the quality of specialist services, for example at hospitals or schools. With a lack of understanding about such matters or good information about these services, it could be argued that a free market would not function well in these areas. The government should therefore intervene to set standards and to monitor quality, such as by licensing health professionals through statutory boards in the health sector. The second reason is that there are public good arguments for providing information in the sense that it can be made available to everyone and once done can be

passed on to others at little cost (that is, it is a non-rival, non-excludable good). There is also a chance that providers in the free market might not supply enough information to allow people to make well-informed choices.

But this does not make an automatic case for the government to provide information. A free market is a powerful indicator of quality and the value which people attach to the cost of a product or service. Competition allows people to see immediately who is performing the best, and also to have a choice about the best provider. The power of a good reputation can also speak volumes. Providers should also have an incentive to supply good information about their products or services to people so that they can attract business. A big question then is whether government intervention to supply information can improve upon what service providers can do already.

If there are problems with not enough information being available to people, then government subsidies or government monopolies are not the best answer. A better response would be for government to regulate by setting minimum standards of quality, or to provide information which is not or cannot be supplied by the free market.<sup>53</sup> A good reason for the latter would be when the benefits of providing the information exceed the costs. That said, the case for intervention in the provision of information is weaker. It is better left to people in the market place to demand this information from suppliers rather than to bring government in.

### **Transaction costs of government provision of public goods**

There are a number of possible justifications for government intervention to regulate, fund or provide core public goods. Of the arguments discussed, only those related to the existence of externalities provide a sound justification for government subsidies. Arguments for equity-based policies ultimately use tax dollars in an attempt to deliver compassion through the state, and are fraught with short-comings about who should benefit, and how fairness is decided. Problems with capital investment problems can be addressed by other means, such as loan guarantees or the provision of direct loans. Information failures can be addressed better by requiring the provision of information.

Arguments which support government provision of public goods are used by some to justify unlimited government intervention, on the grounds that the community can always fail to provide public goods. But against this vision of an expansive role for government, the transaction costs of government intervention must be considered before deciding whether there is a sound basis for government intervention. Transaction costs are described in terms of the resources needed to "transfer, establish, and maintain property rights."<sup>54</sup> This approach demonstrates that government has an absolute advantage at the provision of law. Property law, laws of contract and torts cannot be supplied efficiently by entities that do not have the kind of coercive power that the state does. Transaction cost economics is therefore employed by some to justify a role for government limited to the protection and enforcement of private property rights.<sup>55</sup> However, this approach is of limited use because it ignores the wider moral questions of government intervention, questions which a concern for the common good allows us to address. Nevertheless, thinking about transaction costs can be helpful for understanding the practical limits to government action.

### **CONCLUSION**

In summary, the principle that government should enact public justice is a coherent outworking of the principle that the government's role is to protect the common good from harm. To ensure that a differentiated society has a just public space in which association can occur, it is right that the state, through the government, takes responsibility for maintaining the public-legal order. The government should also step back as much as possible, so that the purposes central to the spontaneity and autonomy of the associative communities and institutions of civil society are kept alive. This is nowhere more important than in fostering an environment which encourages entrepreneurship. This is because entrepreneurs can reduce the need for government intervention to address material inequality by helping to lift the material and immaterial well-being of people. This is by virtue of their talent for creating opportunities for employment and producing wealth.

This indicates that the role of government is about creating a political and economic context

within which spontaneous association is the primary source of freedom and order. When society is strong in these areas there should be little need for the government to intervene, beyond the provision of essential public goods. Having said that, there is also a case that government may intervene to adjudicate between the different associative communities and institutions of civil society to prevent harm being done to one sphere by the activities of another, such as regulating to set minimum standards in certain areas that protect people from injury when these standards will not otherwise be met.

Government intervention to protect the public order therefore does not limit freedom; it actually makes an ordered public sphere possible. The personal liberty needed for this kind of society to flourish cannot be brought about by people acting according to their private interests. This kind of government planning is compatible with competition, diversity, rivalry and the freedom of expression necessary to secure cultural creativity.<sup>56</sup> In conclusion, in the interests of a flourishing public order, the government's major responsibility should be to create an environment for "people to make choices for the basic goods, not to force them to do so."<sup>57</sup> In this way, the government maintains public justice and protects the public freedoms which help people to secure their private aspirations.

---

## ENDNOTES

- 1 R.A. Nisbet, *Community and Power (formerly The Quest for Community)* (New York: Oxford University Press, 1962), 270.
- 2 E.J. Feulner, "Robert Nisbet," in *The March of Freedom. Modern Classics in Conservative Thought* (Washington D.C.: Heritage Books, 2003), 194.
- 3 E.J. Feulner, "Robert Nisbet," 194.
- 4 R.A. Nisbet, *Community and Power (formerly The Quest for Community)*, 249.
- 5 R.A. Nisbet, *Community and Power (formerly The Quest for Community)*, 25.
- 6 R.A. Nisbet, *Community and Power (formerly The Quest for Community)*, 250.
- 7 R.A. Nisbet, *Community and Power (formerly The Quest for Community)*, 25.
- 8 E.J. Feulner, "Robert Nisbet," 195.
- 9 E.J. Feulner, "Robert Nisbet," 195.
- 10 R.A. Nisbet, *Community and Power (formerly The Quest for Community)*, 250.
- 11 E.J. Feulner, "Robert Nisbet," 199.
- 12 R.A. Nisbet, *Community and Power (formerly The Quest for Community)*, 265.
- 13 R.A. Nisbet, *Community and Power (formerly The Quest for Community)*, 265.
- 14 J. Chaplin, "Civil Society and the State: A neo-Calvinist perspective." Paper presented at the conference "Civil Society and Christian Social Thought: Three views," Baylor University, 22-23 March (2002), 11.
- 15 J. Chaplin, "Civil Society and the State: A neo-Calvinist perspective," 11.
- 16 J. Chaplin, "Civil Society and the State: A neo-Calvinist perspective," 11. cf. O. O'Donovan, *The Ways of Judgement* (Grand Rapids, Michigan: Eerdmans, 2005), 3-5.
- 17 Pope Leo XIII, *Rerum novarum* (The Vatican: The Holy See, 1891), section 35. On paternal authority, see section 14.
- 18 Pope Leo XIII, *Rerum novarum*, section 55.
- 19 Referring to *Rerum novarum*, O. O'Donovan and J.L. O'Donovan, *Bonds of Imperfection. Christian politics, past and present* (Grand Rapids, Michigan: Eerdmans, 2004), 228.
- 20 So James Skillen writes: "... the differentiated state institution or political community, with all its branches, levels, and departments is qualified precisely by a juridical function; that is, it exists as a community of public justice. It has no other qualification." J.W. Skillen, "The Basis of a Just, Pluralistic Society" (Washington D.C.: Center for Public Justice, 2002), 24.
- 21 J.W. Skillen, "The Basis of a Just, Pluralistic Society," 29.
- 22 R.P. George, "Natural Law," *Harvard Journal of Law and Public Policy* 31, no. 1 (2008): 187.
- 23 J.W. Skillen, "The Basis of a Just, Pluralistic Society," 32, 34; D.T. Koyzis, *Political Visions and Illusions. A survey and christian critique of contemporary ideologies* (Downers Grove, Illinois: InterVarsity Press, 2003), 259-260.
- 24 O. O'Donovan, *The Ways of Judgement*, 3-5.
- 25 J.W. Skillen, "The Basis of a Just, Pluralistic Society," 29.
- 26 J. Chaplin, "Civil Society and the State: A neo-Calvinist perspective," 20.
- 27 J. Chaplin, "Civil Society and the State: A neo-Calvinist perspective," 21.
- 28 R.A. Sirico, "The Entrepreneurial Vocation," *Journal of Markets & Morality* 3, no. 1 (2000): 7.

- 29 Pope John Paul II, *Laborem exercens* (The Vatican: The Holy See, 1981).
- 30 R.A. Sirico, "The Entrepreneurial Vocation," 7.
- 31 R.A. Sirico, "The Entrepreneurial Vocation," 7.
- 32 R.A. Sirico, "The Entrepreneurial Vocation," 8.
- 33 R.A. Sirico, "The Entrepreneurial Vocation," 6.
- 34 R.A. Sirico, "The Entrepreneurial Vocation," 5.
- 35 R.A. Sirico, "The Entrepreneurial Vocation," 16.
- 36 I. Kirzner, *Competition and Entrepreneurship* (Chicago: University of Chicago Press), 33, cited in R.A. Sirico, "The Entrepreneurial Vocation," 16.
- 37 R.A. Sirico, "The Entrepreneurial Vocation," 18.
- 38 R.A. Sirico, "The Entrepreneurial Vocation," 7.
- 39 See chapter two and chapter three of Brian Dollery and Joe Wallis' work for a thorough review of these theories. J. Wallis and B. Dollery, *Market Failure, Government Failure, Leadership and Public Policy* (London: MacMillan, 1999), 9ff, 32ff.
- 40 C. Bagrie, et al., "Defending the Front Line," *Market Focus*, July (2008): 5.
- 41 N. LaRocque, "Who Should Pay? Tuition fees and tertiary education financing in New Zealand" (Wellington: Education Forum, 2003), 4.
- 42 J. Cox, *Middle Class Welfare* (Wellington: New Zealand Business Roundtable (NZBR), 2001), 29.
- 43 N. LaRocque, "Who Should Pay? Tuition fees and tertiary education financing in New Zealand," 5.
- 44 N. LaRocque, "Who Should Pay? Tuition fees and tertiary education financing in New Zealand," 5.
- 45 J. Cox, *Middle Class Welfare*, 27.
- 46 J. Cox, *Middle Class Welfare*, 39.
- 47 N. LaRocque, "Who Should Pay? Tuition fees and tertiary education financing in New Zealand," 7.
- 48 J. Cox, *Middle Class Welfare*, 44.
- 49 G. Dwyer, "Dissecting the *Working for Families* Package" (Wellington: New Zealand Business Roundtable (NZBR), 2005), 48.
- 50 N. LaRocque, "Who Should Pay? Tuition fees and tertiary education financing in New Zealand," 8.
- 51 N. LaRocque, "Who Should Pay? Tuition fees and tertiary education financing in New Zealand," 11.
- 52 N. LaRocque, "Who Should Pay? Tuition fees and tertiary education financing in New Zealand," 11-12.
- 53 N. LaRocque, "Who Should Pay? Tuition fees and tertiary education financing in New Zealand," 12.
- 54 R.O. Zerbe and H. McCurdy, "The End of Market Failure," *Regulation* 23, no. 2 (2000): 11.
- 55 D.C. North and R.P. Thomas, *The Rise of the Western World: A new economic history* (New York: Cambridge University Press, 1973), cited in R.O. Zerbe and H. McCurdy, "The End of Market Failure," 14.
- 56 R.A. Nisbet, *Community and Power (formerly The Quest for Community)*, 277-278.
- 57 S. Gregg, *On Ordered Liberty. A treatise on the free society* (Lanham: Lexington Books, 2003), 73.

## SECTION 5

# The Role and Responsibilities of the Community

---

People, and the local communities they inhabit, are not contrived. They exist prior to the state. While the government is an institution, created to serve people in a certain way, families, churches and so on are organic communities. What this means is that there is a difference between institutions, like the government, and communities. Institutions like the government, schools or hospitals fulfil specific functions, to serve a large group of people. On the other hand, the family is a form of civil association which is intimately involved in all aspects of life; it has more than one role or purpose. For example, families not only offer care and compassion, they are also involved with the function of education, and provide protection.

Society is complex, and there are many practices, relationships, and customs and traditions woven into the fabric of society which time has proven good for a community. Consequently, the community is better positioned than the government to take responsibility for the well-being of people. The associative communities and institutions of civil society, each occupying their distinct sphere of life, have primary authority and responsibility for the affairs of life which concern them.

As an arrangement in the form of a public-legal community, the government cannot do these things. If proper government is limited government and if associative communities have particular roles and functions which they can pursue better than central government, then it follows that associative communities should play a large role in performing tasks which government may have absorbed. The focus of this section is to begin to explore the role of the community and the ways that associative communities can be a bulwark against the growth of the state. As the previous section has advocated a

limited role for government, by contrast this section contemplates a larger role and set of responsibilities for the community. It suggests that the community should be responsible for those things that the government cannot or should not do. It does so by identifying several ways in which associative communities can take responsibility in ways and areas government cannot or should not.

Although this list is important, it is by no means an exhaustive list, and neither should it be thought of as representing the only matters of life which should be the community's concern. On the contrary, this section points to how community-based solutions should be seriously considered as alternative responses to the kinds of problems which government currently deals with. This would allow the government to step back and focus on creating the environment in which local communities can respond and take responsibility for the care of the people who live in them. In this way, the section contends that if civil association is strong then it should be difficult for government to step in to replace or subsume the responsibilities of the community.

### **COMMUNITY IS RESPONSIBLE FOR HUMAN FLOURISHING**

#### **Community is responsible for people's fulfilment**

One of the most important ways associative communities can prevent unwarranted government intervention is by being responsible for human flourishing. This responsibility pertains to helping people to participate in basic goods.<sup>1</sup> This view implies that people are not isolated; they have mutual responsibilities to one another. Further,

this understanding of people as social beings assumes there is more to human life than being an autonomous, rational, utility-maximising individual, what some have called a *homo economicus*. A complete and proper view of humanity can only be understood in the context of "the sphere of culture, through language, history and the position one takes towards the fundamental events of life, such as birth, love, work, and death."<sup>2</sup>

Following Alexis de Tocqueville, Samuel Gregg states that a plurality of self-organised communities also helps to show people how they should relate to one another outside of the family, and to acquire the moral habits which people require for participating in a democracy.<sup>3</sup> In this way, people can resist the creep of soft despotism because through association they can maintain the social links which the power of the central state can erode. It would also help to create "the independent eye of society,"<sup>4</sup> as de Tocqueville called it, to moderate the plans of political leaders, and keep them accountable.

Robert Nisbet also wrote in similar terms about how government should step back to allow communities the freedom to develop. This is important because it is difficult for the state to obstruct the capacity of people to pursue their own endeavours when there are free interactions and transactions occurring between people, such as in the commercial marketplace. Associated with this is the security which private ownership of property gives to people, as ownership makes people less dependent on the government. Over the course of history, it is in societies where commerce and ownership have been allowed to flourish that government power has been more limited.

This is because allowing people to conduct business and trade with one another helps people to pursue their integral fulfilment. Faced with a market, people are encouraged to be independent, to take risks and advantage of opportunities and to make choices about how best to use their resources. The gain from this activity not only has private material benefits, but public ones, too, as commerce fuels relationships and habits of trust and mutual self-respect. Each of these habits is critical for sustaining the social order and a free society. An example of this process at work is the law of contracts. Contracts have become the medium by which commercial relationships are subject to the common law, binding the individuals who bring them into being.<sup>5</sup>

It may even be argued that for people to enjoy genuine liberty, they should have the opportunity to take responsibility for themselves. The Italian philosopher Rocco Buttiglione makes this observation in the context of market exchange:<sup>6</sup>

The smallest element of the free market is a contract, the encounter of the free will of two human beings. They must both be free, for if they are not there can be no contract, and thus no free market. In this way the law on contracts ... presupposes human freedom.

This is not to say that there are no risks for society associated with personal liberty. Since people suffer from limitations to their reason and their ability to conduct right relationships, they may use personal liberty to pursue their own self-interest, undermining their capacity to pursue the basic good of friendship. Further, commerce and exchange in the marketplace are not the same kind of relationship as other relationships, like marriage, which involve self-giving and self-sacrifice for another. In business, it is possible for people to cooperate while pursuing different goods.<sup>7</sup>

The point is that when government shores up the associations of society, principally by providing justice, order and enforcing contracts, social and material gains can be made which contribute to the common good. In other words, the common good cannot be realised unless people come together to pursue shared goals. In this way the realisation of liberty is a process and not an end.<sup>8</sup>

### **Community is responsible for cultivating virtue**

To fulfil mutual obligations to each other in community, each associative community is also responsible for cultivating virtue in citizens. A virtuous citizen is one who possesses the habits and skills to fulfil the responsibilities of securing a community's goods. Habits like trust, cooperation and a sense of responsibility have already been mentioned, and others like hard work and dependability are also vital for supporting integral liberty. As political analyst Ryan Messmore has written, how freedom is secured and limited government is sustained "turns on how virtue is cultivated and which communities and institutions are most appropriate for this task."<sup>9</sup> Alexis de Tocqueville also considered self-interest, rightly understood, as important for instilling a sense

of virtue in people, which is developed when people volunteer some of their time and property to protect the common good:<sup>10</sup>

The doctrine of self-interest properly understood does not inspire great sacrifices, but every day it prompts some small ones; by itself it cannot make a man virtuous, but its discipline shapes a lot of orderly, temperate, moderate, careful, and self-controlled citizens. If it does not lead the will directly to virtue, it establishes habits which unconsciously turn it that way. ... I am not afraid to say that the doctrine of self-interest rightly understood appears to me the best suited of all philosophical theories to the wants of men in our time, and that I see it as their strongest remaining guarantee against themselves. Contemporary moralists therefore should give most of their attention to it. Though they may think it incomplete, they must nonetheless adopt it as necessary.

The point which de Tocqueville makes is that when we act together, it helps to perfect the habits of civic community, and acts as a guarantee against individualism. Even people whose natural inclination is to be self-interested "get used to the idea of association" in this way.<sup>11</sup>

The family is also a particularly important community for cultivating virtue. This is because the family is an important community for the formation of character. Messmore identifies four ways in which the family fosters character by:<sup>12</sup>

1. exercising authority and discipline necessary for pursuing the good;
2. motivating members to seek the good for its own sake;
3. offering personal goods worthy of pursuit; and
4. involving people directly with one another for intrinsically communal purposes.

The family imparts the vital virtues described above, as well as teaching people how to show compassion and care for others. By not interfering in the life of the family, and by securing in the law the basic good of marriage, government can support a civil institution which fosters strong personal bonds and encourages people to look beyond themselves to the common good. Other institutions in society, such as school sports teams, neighbourhoods,

churches and voluntary organisations carry similar responsibilities, but the family is the primary community which supports the development of these habits.

Another virtue is service or voluntary sacrifice for one another. In contemporary Western society, with the expansion of the welfare state, the government has challenged voluntarism by cultivating an entitlement culture.<sup>13</sup> This means that people do not see their rights in terms of reciprocal rights, obligations to each other, or common goods (such as the protection of basic liberties, like ownership, freedom of speech and security). Instead, abstract individual rights have separated people from the communities they live in and the responsibilities they should have to others within them.

One strategy for resolving this problem, presented by political theorist Stephen Backhouse, is to encourage a sense of neighbourliness among people.<sup>14</sup> This is important because often governments have fostered loyalty to the state not only through entitlements but also patriotism. One of the consequences of patriotism is that it presents an ideal form of national identity which, while providing a rallying point, can also exclude some groups of people. This may have deleterious effects for social cohesion and for citizenship. For example, if New Zealand is considered a bicultural country, immigrants from other cultures who form a part of local communities and contribute to the country's life and identity can be artificially excluded from being New Zealanders. By contrast, the idea of neighbourliness grounds allegiance and mutual obligation in the web of relationships that exist in our immediate vicinity, and which are prior to the state. This is because they are connected to real people, rather than an abstract essentialist notion of the nation. Backhouse argues that this can be a stronger foundation for building a "cohesive, secure and content" civil society.<sup>15</sup> In the context of the United Kingdom, Backhouse has written:<sup>16</sup>

The neighbour is not defined primarily by shared culture, language or race, thereby easy to dismiss if she does not satisfy such criteria. Rather, she is tangible and present, her needs understandable, her contribution to society observable, for the simple fact that she lives nearby. At its most basic, the neighbour is literally that—the one who shares the geographical space next door. ... To recognise the neighbour is to recognise the fact

that individuals have a common stake in their shared, multifaceted society, without demanding that they affiliate heart and soul with a particular facet of that society.

In short, the bonds engendered by being in community together in the same place give people, no matter what their background, a common point of reference for their identity. Compared to the model of citizen as a neighbour, the nationalist model of citizenship has the potential to erode civic life, because nationalism can lead to a splintering of civil society.<sup>17</sup> This creates tension with the values of being a neighbour.

Neighbourliness therefore acts as barrier against the state being able to absorb local communities into itself, because it is an expression of civil association. Backhouse suggests that neighbourliness could even be celebrated through a national day, with activities such as running neighbourhood projects, or allowing employees to have the day off to serve their community.<sup>18</sup> A neighbour's needs can be recognised by people in a local community, whose lives are connected by sharing a place. Moreover, neighbourliness fits with how custom and tradition have shown that it is good for people to live together side-by-side, and not as isolated individuals.

By contrast, when people come to rely on the government, and not on their local communities, it does not encourage them to give of themselves or show compassion. Voluntary society suffers as a result. There is also a loss of human dignity when the community stops taking responsibility for meeting the needs of people, since compassionate care is a kind of suffering with people.<sup>19</sup> Government agencies cannot suffer with people in the same way as people either, because they cannot offer the same kind of care and love that communities like the family or the church can. A government cheque also disconnects the giver from the receiver, and carries with it little or no act of goodwill. Further, because taxation pays for government programmes it may cause some taxpayers to resent people in need since they are forced to contribute to their handouts.

When associative communities take responsibility for the well-being of the people in their midst, they can provide better long-term support for people in the form of personal accountability, role models, emotional support, and perhaps most important of all for human well-being, hope.<sup>20</sup> Moreover, voluntarism "has the potential to bind the giver and receiver in a

more personal relationship."<sup>21</sup> When someone gives personally they have a motivation to make sure that money is put to the right purpose. Similarly, those who benefit from voluntarism, recognising the sacrifice involved on the part of the giver, may want to steward material gifts well.

Consequently, a fuller understanding of what is good for people is lost when society abdicates its responsibility to show compassion and care for the less fortunate, "the poor, the sick or the elderly" and leaves these things to government.<sup>22</sup> As painted by de Tocqueville and Nisbet, such a society becomes one where the state directs people to the common good, and some approaches to democracy and individualism weaken the connection between people. Democracy and individualism have therefore been thought to pose a serious risk to civil association because they can encourage people to look primarily to the state or themselves, separating them from the communities of civil society.<sup>23</sup> When this happens, for example in a Rousseauian democracy where the state absorbs the community, people look more to the government to meet their needs for community and material well-being. Civil association loses its efficacy in people's minds. As government assumes a wider social role then it is also likely to assume "more responsibility for fulfilling the moral obligations among citizens,"<sup>24</sup> undermining the role and responsibilities of associative communities.

## COMMUNITY IS RESPONSIBLE FOR PUBLIC LIBERTY

The responsibilities of the community might be summarised as a general responsibility for the well-being and care of people so that public liberty does not become the responsibility of government. Public liberty stands for the range of voluntary non-governmental activities which people may undertake in pursuit of the common good.<sup>25</sup> That is, associative communities should tend to people's needs before government should become involved, since government's primary function is a jural one concerned with creating the conditions where community is free to do what it does best. By doing so it stimulates the possibilities for people to pursue voluntary activity which can contribute to the common good.

In *On Liberty* (1859), John Stuart Mill outlined several principles related to government provision

of services which would arguably allow associative communities today to be free, government intervention to be limited and would create opportunities for voluntary societies to assume some of the tasks of big government. These principles were:<sup>26</sup>

- when private individuals could provide a better service (for example in healthcare or education) the state should not be involved;
- even if government could do a better job, it was still important to favour privately provided services in order for people develop their character by learning the habits of voluntary cooperation;
- government should help communities by sharing information about how people have succeeded or failed at providing services so to "enable each experimentalist to benefit by the experiments of others; instead of tolerating no experiments but its own"; and
- the government's powers should not be added to because of the greater potential for it to cause harm.

These principles do not mean that government should never intervene. They help identify whether government intervention would protect the common good by providing the means for people to pursue private interests. They point to fostering competition, devolving provision of services, and avoiding government monopolies. If the role of government is to be extended into other spheres of society, those making the proposal need to demonstrate that government can do better. While arguments for efficiency can be compelling, those considering government intervention would also be wise to think about the costs to the social fabric which might not be obvious. This is to say that government intervention, no matter how well-intended, carries the risk that it becomes an unnecessary intrusion, stripping associative communities of their leading functions. Further, once government is involved in public affairs it can be difficult to reduce its involvement.

The need for government intervention should be gauged carefully because of three risks associated with central government control of services and welfare.<sup>27</sup> The first is that when the state provides these services, it suppresses experimentation with

alternatives. The second is that no difference or competition in the provision of services means that improvements would not occur as readily, as less information is generated about which approaches work and which do not. In this way, errors can persist in the provision of public services and power can be abused. Lastly, there is less opportunity for people's personal development as those with ambition and entrepreneurial skills have fewer opportunities. Nevertheless, when government does provide legitimate services, such as for national security, the police and a basic welfare safety net, the community also has a responsibility to pay taxes to fund them.

The common denominator here is that government should institute law and cultivate an environment in which citizens are free to run their own affairs. Consequently, a positive alternative to big government which promotes human flourishing is not to roll back the state according to some theories of economic reform, but to pursue limited government complemented by a network of associative communities. This creates the space for the community to care, and take up responsibility, for what it provides best: public liberty.

In practice what this means is that plural, unforced systems of government can help foster association and voluntarism.<sup>28</sup> This may find practical expression, for example, in the flourishing of private philanthropy and mutual aid in the form of friendly societies (cooperatives which provide mutual aid). This was the case in Britain in the eighteenth and nineteenth centuries, where people were granted the liberty to follow their private inclinations for improving life, in medicine, engineering, agriculture and industry.<sup>29</sup> For instance, better healthcare was provided by charitable hospitals and primary care was organised by friendly societies.

Education is another example where voluntarism and parental concern met the responsibility of providing children with an education. The historian E G West published research in 1965 which showed that local demand from parents for education in Britain meant schools developed long before the state assumed control of education.<sup>30</sup> West's examination of the provision of schooling in England and Wales challenged the view commonly held today that the state is the only institution which can organise the delivery of education. He argued that before the state became involved in education in 1870, the year the Education Act came into effect, the great majority of

children were in school, that literacy and numeracy rates were very high, and that parents contributed the largest proportion of school fees.

West came to these conclusions by reviewing the records of workhouse children, workplace literacy returns and the number of people signing the marriage register. Among his specific findings were that 93 percent of school leavers were already literate when the 1870 school boards first began, and that 95 percent of children had attended school for up to six years.<sup>31</sup> What is more, two-thirds of funding came from non-state sources, such as the church, philanthropic funds and parents' own contributions towards fees.

A critic, W B Stephens, claims that there were not as many children in school as West argues and that state intervention was necessary to improve the quality of schooling, which included teachers, buildings, curriculum, inspections and enforced attendance.<sup>32</sup> However, these assertions fly in the face of West's research which shows that local communities were providing education before the state became involved. What is more, the Education Act's purpose was to provide education for children not covered by such voluntary initiatives.<sup>33</sup> Supporting West, educational researcher James Tooley argues that Britain's experience of minimal state involvement in education proves that families and communities can provide their children with educational opportunities without needing the support of the government; with the caveat that a small amount of state funding is justified so that the most seriously disadvantaged families can have access to education.<sup>34</sup>

These examples suggest that independent voluntary organisations like friendly societies, as well as local communities, have a clear role to play in providing public services. Further, they can do so in a way which is more personal and can be tailored to the specific needs of local communities. Local provision also provides a positive alternative to the tried, tired models of state-delivered welfare and services or those delivered purely by the market.<sup>35</sup>

While voluntary organisations (along with the family) are vital for sustaining a free society, and are central to realising vibrant associative communities, they should not be seen as the complete cure for complex problems found in the provision of public healthcare or education. Providing these sorts of services raises issues like access, since the government

at some point is likely to play a role in guaranteeing, if not directly assisting with, the supply of an adequate level of service in these areas because of their complexity and implications for protecting the common good.<sup>36</sup> Hence, it may be wrong to assume like social commentator David Green that voluntarism along with the free market are the solution to such public policy questions on their own. It would be extremely difficult to have welfare without politics.<sup>37</sup> Notwithstanding this criticism, when the community takes responsibility for its members' well-being it stimulates innovation, experimentation and community ownership of problems in society and limits the role of government to the functions and tasks which it can perform best.

## CONCLUSION

In summary, the community has a key role and certain responsibilities which are important for limiting government and sustaining a free society. The community should be responsible for providing for "the needs of citizens" and for cultivating virtue so that citizens and groups can fulfil "the moral obligations which sustain a free society" and inhibit the growth of government.<sup>38</sup> The family, the entrepreneur, and each other associative community of civil society are better placed than the state to treat people as complete social beings, in need of relationship, care and compassion, because they bind people to each other through the authority and allegiance created by belonging to a community. When this occurs—when people see themselves as one another's neighbour—civil association is strengthened. In turn, this makes it more difficult for government to expand its activities when people look to each others' needs first before turning to the government. Associative communities also build the virtues of trust and mutual responsibility which reduce the need for the government to intervene to solve social conflicts and keep the peace. In short, the community is responsible for fostering virtue and a sense of mutual responsibility, that outworks itself in practical expressions of compassion. This in turn makes public liberty possible because of the moral citizenship it creates, which helps limit government to its rightful tasks of defending the common good and enacting public justice.

---

## ENDNOTES

- <sup>1</sup> S. Gregg, *On Ordered Liberty. A treatise on the free society* (Lanham: Lexington Books, 2003), 94.
- <sup>2</sup> John Paul II, *Centesimus annus* (The Vatican: The Holy See, 1991), section 24.
- <sup>3</sup> S. Gregg, *On Ordered Liberty. A treatise on the free society*, 93.
- <sup>4</sup> S. Gregg, *On Ordered Liberty. A treatise on the free society*, 93.
- <sup>5</sup> S. Gregg, *On Ordered Liberty. A treatise on the free society*, 97.
- <sup>6</sup> R. Buttiglione, *The Moral Mandate for Freedom: Reflections on Centesimus annus* (Grand Rapids, Michigan: Acton Institute, 1997), 4, cited in S. Gregg, *On Ordered Liberty. A treatise on the free society*, 98.
- <sup>7</sup> S. Gregg, *On Ordered Liberty. A treatise on the free society*, 100-101.
- <sup>8</sup> D. Green, *From Welfare State to Civil Society. Towards welfare that works in New Zealand* (Wellington: New Zealand Business Roundtable (NZBR), 1996), 6-7.
- <sup>9</sup> R. Messmore, "A Moral Case Against Big Government: How government shapes the character, vision and virtue of citizens," *First Principles Series*, 9 (Washington D.C.: The Heritage Foundation, 2007), 1.
- <sup>10</sup> A. de Tocqueville, *Democracy in America*, vol. 2, (New York: Vintage Books, 1835), Volume 2, Part 2, Book VIII, 527.
- <sup>11</sup> A. de Tocqueville, *Democracy in America*, vol. 2, Part 2, Book VII, 520.
- <sup>12</sup> R. Messmore, "A Moral Case Against Big Government: How government shapes the character, vision and virtue of citizens," 2.
- <sup>13</sup> R. Messmore, "A Moral Case Against Big Government: How government shapes the character, vision and virtue of citizens," 9.
- <sup>14</sup> S. Backhouse, "Red, White, Blue ... and Brown? Citizens, patriots and the Prime Minister" (London: Theos, 2007).
- <sup>15</sup> S. Backhouse, "Red, White, Blue ... and Brown? Citizens, patriots and the Prime Minister," 57.
- <sup>16</sup> S. Backhouse, "Red, White, Blue ... and Brown? Citizens, patriots and the Prime Minister," 57.
- <sup>17</sup> S. Backhouse, "Red, White, Blue ... and Brown? Citizens, patriots and the Prime Minister," 19.
- <sup>18</sup> S. Backhouse, "Red, White, Blue ... and Brown? Citizens, patriots and the Prime Minister," 59.
- <sup>19</sup> R. Messmore, "A Moral Case Against Big Government: How government shapes the character, vision and virtue of citizens," 11.
- <sup>20</sup> Citing M.N. Olasky, *Compassionate Conservatism: What it is, what it does, and how it can transform America* (New York: Free Press, 2007). R. Messmore, "A Moral Case Against Big Government: How government shapes the character, vision and virtue of citizens," 10.
- <sup>21</sup> R. Messmore, "A Moral Case Against Big Government: How government shapes the character, vision and virtue of citizens," 11.
- <sup>22</sup> R. Messmore, "A Moral Case Against Big Government: How government shapes the character, vision and virtue of citizens," 9, 10.
- <sup>23</sup> R.A. Nisbet, *Community and Power (formerly The Quest for Community)* (New York: Oxford University Press, 1962), 251-252.
- <sup>24</sup> R. Messmore, "A Moral Case Against Big Government: How government shapes the character, vision and virtue of citizens," 5.
- <sup>25</sup> David Green, citing Michael Polanyi's use of the term "public liberty." D. Green, "Recalibrating the Right. From the provider state to the membership state" (London: Civitas, 2006).
- <sup>26</sup> David Green, citing J.S. Mill, *On Liberty* (1859). D. Green, "Recalibrating the Right. From the provider state to the membership state," 13.
- <sup>27</sup> Cf. D. Green, "Recalibrating the Right. From the provider state to the membership state," 11.
- <sup>28</sup> D. Green, "Recalibrating the Right. From the provider state to the membership state," 8.
- <sup>29</sup> D. Green, "Recalibrating the Right. From the provider state to the membership state," 19.
- <sup>30</sup> E.G. West, *Education and the State: A study in political economy*, Third ed. (1994; repr., Indianapolis: Liberty Fund, 1965).
- <sup>31</sup> E.G. West, "Nineteenth-Century Educational History: The Kiesling critique," *Economic History Review* 36 (1983): 427; E.G. West, *Education and the State: A study in political economy*, 167, 177.
- <sup>32</sup> W.B. Stephens, *Education, Literacy and Society 1830-70: The geography of diversity in provincial England* (Manchester: Manchester University Press, 1987), 25.
- <sup>33</sup> J. Tooley, *Education Without the State* (London: Institute of Educational Affairs, 1996), 45-46.
- <sup>34</sup> J. Tooley, *Education Without the State*, 48.
- <sup>35</sup> D. Green, "Recalibrating the Right. From the provider state to the membership state," 19.
- <sup>36</sup> J. Chaplin, "Civil Society and the State: A neo-Calvinist perspective." Paper presented at the conference "Civil Society and Christian Social Thought: Three views," Baylor University, 22-23 March" (2002), 19.
- <sup>37</sup> J. Chaplin, "Civil Society and the State: A neo-Calvinist perspective," 19.
- <sup>38</sup> R. Messmore, "A Moral Case Against Big Government: How government shapes the character, vision and virtue of citizens," 12.



## SECTION 6

### Conclusion and Implications

---

This discussion paper has criticised the degree of government intervention in New Zealand society, questioning the assumption that government action is right all the time. Arguably, the current style of government in New Zealand is positive government, where successive governments have attempted to steer society and have concentrated on policies which use the power of the state and taxpayers' money in an attempt to equalise people. The problem with this approach is that it has politicised welfare and the provision of public services, and absorbed many of the functions of local communities.

In the face of this situation, it has argued that good government is limited government. The legitimate tasks of limited government relate to protecting the common good against threat of harm, which means sustaining an environment where people can pursue the basic goods which contribute to the common good. This means that government has a legitimate task to provide basic public goods like security and peace for people. Its leading function is therefore a jural function, adjudicating among the associative communities and civil institutions which are prior to the state. Its job is to administer judgement according to objective standards of law so that it can impartially adjudicate between these different interests, with a view to what actions will protect the common good.

It has also been shown that the common good is a vital concept for determining the proper limits of government action. The common good is informed and indicated by the custom and tradition of the community that government represents. Custom and tradition guide government as to what conventions and social arrangements have value and warrant protection, and where government should not intervene or only intervene to a limited degree. In

this way, custom and tradition help indicate the boundaries of legitimate government authority. If government respects what custom and tradition indicate is good for a community, government is likely to be more wary of the consequences of implementing programmes and policies which could erode the social fabric. In this way, custom and tradition serve to limit government power.

This view of the role of custom and tradition also suggests that government should not attempt to shape the common good, as at that point it would be exercising powers which are beyond its jural function. This is not to say that government cannot intervene, but that the only legitimate grounds for it to do so is to protect the common good, not to promote it. Further, if each associative community of civil society is considered to have authority over a particular area of life, this also acts as a barrier against the government intruding or interfering in matters which do not relate to its primary task of judgement, or which it cannot perform outside of its capacity as a public-legal community. Consequently, in pursuing its jural function, the government may also protect people and the social order from undue harm, and ensure that people may pursue the basic goods which enable them to be free, like friendship and sociability.

For when government steps in, it erodes the complex relationships which pre-date the state and are expressed through civil association. It is the task of the state to protect the conditions which allow these groups to tend to the people under their care, as the more vibrant civil association is, the less there is a need for government to step in to solve problems of conflict or material well-being. In the associative communities of civil society, people also learn the habits and virtues which foster a moral citizenship.

Government intervention is not without its limitations for a number of practical reasons as well. The risk of government failure is always high, since it never has complete information about people's needs. Moreover, subsidies and welfare programmes can change people's behaviour in unanticipated ways that do not contribute to the common good.

When government centralises control, rather than standing back to let individuals and communities take responsibility, there is also a risk that it can become too powerful. Its potential to cause harm in this case is great. Even limited government is never completely neutral, and so as much as possible power should be divided not only between the institutions of state, but also throughout civil society. These consequences of government intervention should reinforce the important role that custom and tradition and subsidiarity perform in delineating the proper limits of government responsibility and action, as they pay respect to the constitutional and social arrangements which sustain the common good.

From this understanding of government and society, it can be said that the role of government in protecting the common good includes providing peace and security, enacting public justice and creating the public space where people have the liberty to be social and associate. Association is important because it prevents government from absorbing the functions which local communities can carry out better for themselves. As Nisbet wrote:<sup>1</sup>

The road to social peace is the balance of the social institutions, and a wise statesman would strengthen those institutions that seemed to be losing ground, even if he were not addicted to them; for the only way to peace in this world of fallible human nature is to keep all human institutions strong, but none too strong; relatively weak, but not so weak as to despair of their survival.

The responsibilities of community therefore relate to what will help people to take personal responsibility and participate in fulfilling their mutual obligations to others. This involves community being responsible for helping people to lead fulfilling lives by cultivating virtue and care and compassion for others. Associative communities are therefore responsible for pursuing public liberty, as this contributes to the common good.

The implications of this conservative framework

for the role of government and community in New Zealand are profound. It reveals that successive New Zealand governments have strayed into promoting the common good, harnessing the power of the state to meet New Zealanders' expectations for equality of outcomes, and state-sponsored opportunity. For several decades governments have catered to these expectations, meaning the state has grown larger through high levels of taxation and that it has absorbed many of the responsibilities of the community to care for people.

This situation should be reversed. A government which governs with a view to the common good of the community would recognise that people are social creatures, and would protect the basic goods they need to flourish. Consequently, there should be no fear that a limited government which would govern with respect for the common good would eliminate virtually all public services. What it would do is to reduce or eliminate the ones which encroach upon the rightful authority of the various spheres of society, in the family, and the other important spheres of life like schools, businesses, the arts, charities, clubs and societies. Programmes like Working for Families and KiwiSaver would come under the severest scrutiny because they give government a big hand in dictating choices to people and incentivise welfare, rather than encouraging individuals and families to pursue work or investment opportunities.

Further, it would mean that in the areas of social welfare, health and education the government would step back, and allow more opportunities for communities and providers to come together to provide the kind of services that particular communities need. For example, schools and businesses could have the flexibility to partner together to provide facilities, scholarships or schemes to help pupils transition from school to work. In healthcare, voluntary societies could help provide in-community care. Nonetheless, there may still be an argument for the government to provide essential public infrastructure where market competition does not work well, where there is not enough demand to support more than one operator. However, this does not mean that people or the government should assume these kinds of services should be provided by the government indefinitely. If there is a way to encourage flexibility, diversity and competition in the delivery of services without causing public injury then this course of action should be pursued.

If the community can take responsibility in some way, this is better for recognising human dignity and preserving the social fabric. It would also help to avoid the problems of government intervention associated with monopoly provision. When making a decision about whether to intervene, governments should also pay heed to the notion that each sphere of society has a certain specific function. When government responds to harm, and intervenes, it should avoid absorbing these functions, but shore them up and support each community in its task, as these communities exist prior to the state. A model of government which allows more responsibility for the community to respond to harm, and only a limited one for government, also poses implications for how much taxation the government needs to collect and how individuals and communities should keep more of that money in the first place to care for people.

In summary, this discussion paper has described how the size of government has been expanding dramatically in recent years in terms of the amount of taxation being collected. In spite of running large surpluses for several years, public expenditure is not limited to a level which would be necessary to fund the tasks that government should properly perform. Instead, fiscal policy is used to manage people's lives. The tax system is used to distribute benefits and create incentives for people, as seen through recent policy initiatives such as Working for Families and KiwiSaver. The role of the government has also been expanding in the affairs of the associative communities and institutions of civil society, as a result of new welfare programmes like Working for Families and the amendment of section 59 of the Crimes Act 1961 which reduce people's liberty and personal responsibility. This highly regulatory, tax and spend approach to government deserves serious scrutiny in light of the framework for the role and responsibilities of the government and the community outlined in this discussion paper.

The role of government should be limited to the tasks which protect the common good, as indicated by the custom and tradition of a community. Since custom and tradition also point to what is good for people, they serve an important role in showing government which social arrangements it should not interfere in to protect the social fabric. This does mean that the government has a responsibility to protect people and communities from harm, in the way that the principle of subsidiarity instructs, by for a time

coming to the aid of the associative communities and institutions of civil society when they cannot protect themselves. However, when the threat of harm has passed the government should retreat, and give back responsibility to the community. In this way, the community would take more responsibility for people's well-being, and the government would be restricted to its primary responsibilities as a public-legal institution; enacting public justice and protecting the common good from harm.

In conclusion, the following two major principles may help describe the relationship between government and community, and what the proper responsibilities of government are with respect to the responsibilities of community.

- 1. Proper government should be limited. It should only intervene as a last resort to protect the common good from harm and secure peace, and the duration of its intervention should be limited to the duration of the threat to the common good. It should govern in accordance with the principle of subsidiarity and with respect for and awareness of the custom and tradition of the community it represents, and foster civil association.**
- 2. The government should be socially-minded. It should create an environment in which public justice is secured so that associative communities and civil institutions can be more responsible for people's well-being. It should secure the conditions which allow people to pursue basic goods themselves.**

If these principles were followed by government in New Zealand, then proper limited government would be brought about, and local associative communities would become stronger. In turn, it would ensure that the money which people contribute towards funding government activities is used for just and right purposes; purposes which would truly shore up the communities of civil society, and reduce the opportunity for unwarranted government intervention.

---

## ENDNOTE

- <sup>1</sup> F. Tannenbaum, "The Balance of Power in Society," *Political Science Quarterly* December (1946): 501, cited in R.A. Nisbet, *Community and Power (formerly The Quest for Community)* (New York: Oxford University Press, 1962), 270.



# APPENDIX

## John Finnis' Seven Basic Goods

---

The natural law theorist John Finnis identifies several basic goods vital to the flourishing of people everywhere. They are self-evident, being accessible to human intelligence through observation and human reason. First, Finnis asks what people should do and what explains our actions, reasoning that we should avoid what is bad and should do what is good. Through practical reason, we grasp the goods which we see as valuable. In this way, we make choices about what is good to pursue, by virtue of our insight.

This leads Finnis to identify seven basic human goods which he pinpoints as being good for us: life, knowledge, play, aesthetic experience, sociability (friendship), practical reasonableness and religion (spirituality).

Firstly, life, according to Finnis, is the "vitality (*vita*, life) which puts a human being in good shape for self-determination."<sup>1</sup> Finnis' main concern is that the intelligibly grasped goods of a healthy body and mind, as well as freedom from bodily injury that could lead to a loss of independence, are protected. Finnis says this could be realised by the teamwork of surgeons, road safety laws, famine relief missions, or even watching out as one steps off the kerb.<sup>2</sup>

The second basic good is knowledge. This is not instrumental knowledge, but knowledge "considered desirable for its own sake."<sup>3</sup> The principle that knowledge is worth pursuing or having is underived. To believe the contrary, that knowledge is a good because we desire it, would imply that there is some value of knowledge that needs to be worked out first before we could pursue knowledge. Further, to say that knowledge is not a basic good is indefensible, according to Finnis, because to assert that proposition is self-refuting.<sup>4</sup> It makes the claim that knowledge is not a self-evident good or a good worth pursuing or knowing. Because the principle

remains indemonstrable, it stands as a presupposition of natural law.

The third basic good is play. Finnis sees play as a basic good because it is an irreducible element in human culture. He holds that this is so because everyone "can see the point of engaging in performances which have no point beyond the performance itself."<sup>5</sup> It can be enjoyed for its own sake, even when it enters into "serious" contexts.

Finnis counts the fourth basic good as being aesthetic experience. This is because beauty may be found and enjoyed in nature, and it need not involve one's own action to enjoy. For what is valued for its own sake may be the "beautiful form 'outside' one," as found in the world or "some work of significant and satisfying form."<sup>6</sup>

The fifth basic good, sociability, captures the basic good of human relationships. Finnis describes the value of sociability as peace and harmony which may exist among men, ranging through the other forms of human community, such as for business or play, to its "strongest form in the flowering of full friendship."<sup>7</sup> Friendship has an intrinsic value because it involves acting out of interest for another's well-being.

The sixth basic good pertains to the practical reasonableness of actions. What Finnis means is the good of being able to bring one's intelligence to bear "on the problems of choosing one's actions and lifestyle and shaping one's character."<sup>8</sup> This reflects the process by which a person tries to bring an intelligent and reasonable order to their actions, habits and attitudes, with integrity and authenticity. Practical reasonableness has an internal and an external aspect to it, since it affects other people.

The seventh, and final, basic good is religion. Here, Finnis argues that all of the preceding basic

goods are human initiatives, which are somehow related to "the lasting order of the cosmos and to the origin, if any, of that order."<sup>9</sup> Further, he asks whether the free action of human beings to grasp intelligible goods is not subordinate to something that makes that human freedom possible. Finnis reasons religion is good in itself is because there is value in thinking about whether there is something transcendent to which our actions relate. This is because he believes it is important to bring one's thoughts and actions into harmony about whether life is either subject to the transcendent or to human reason alone.

---

## ENDNOTES

- <sup>1</sup> J. Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980), 86.
- <sup>2</sup> J. Finnis, *Natural Law and Natural Rights*, 86.
- <sup>3</sup> J. Finnis, *Natural Law and Natural Rights*, 87.
- <sup>4</sup> J. Finnis, *Natural Law and Natural Rights*, 73-75.
- <sup>5</sup> J. Finnis, *Natural Law and Natural Rights*, 87.
- <sup>6</sup> J. Finnis, *Natural Law and Natural Rights*, 88.
- <sup>7</sup> J. Finnis, *Natural Law and Natural Rights*, 88.
- <sup>8</sup> J. Finnis, *Natural Law and Natural Rights*, 88.
- <sup>9</sup> J. Finnis, *Natural Law and Natural Rights*, 89.

## ABOUT THE AUTHOR



Steve Thomas is a Researcher at Maxim Institute. He was educated at the University of Canterbury, graduating with a Master of Arts with Distinction. Steve's background is in political science and he researches and writes in a number of areas

including New Zealand politics and local government, New Zealand education and regionalism. He is the author of Maxim Institute's *Roll Play* education report, which looked at how access to schools for families in Christchurch could be improved, as well as two of the Institute's Fisher Memorial Prize-winning series of *Parent Factor* reports, *Information for parents* and *Access to education*. He has also been published in the journals, *Asia Pacific Journal of EU Studies* and *Urban Policy and Research*.

## ACKNOWLEDGEMENTS

We would like to thank Ryan Messmore for offering thorough and insightful comments on draft versions of the discussion paper. His assistance was invaluable, although the responsibility for the final paper and the views expressed in it rests with us.