THE EDUCATION AMENDMENT ACT 1979 - A STUDY OF THE NEW ZEALAND LEGISLATIVE PROCESS

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"The less people know about how sausages and laws are made, the better they'll sleep at night."

Otton von Bismarck[1]

The New Zealand Parliament passes a vast amount of legislation each year. These legislations are purported to govern the life of the people. Does the legislative process give the public or the pressure groups a fair say in the formulation of legislation or is it merely a Bismarck type of dictatorial legislative process? It is therefore important to evaluate the respective influence of various groups in the legislative process. The paper examines the Education Amendment Act 1979 so as to evaluate the respective influence of (i) Minister (ii) the Education Department (iii) Cabinet (iv) Pressure groups in the Select Committee (v) Parliamentary Debate. A chronological approach is followed in this paper illustrating the influence of different groups at different stages.

[I] DRAFTING STAGE

The Education Act 1964 is administered by the Department of Education. There have been amendments to the main Act each year (except 1973) since 1964. The Department, in administering the Act, is in an appropriate position to recommend changes because they are experts in the field of education and are in daily contact with the administrative difficulties. On the other hand, when the Department initiates legislative change and at the same time administrates the legislation, it would mean that the Department may accumulate excessive power. This may go against Dicey's first principle of the Rule of Law who states that

> "The absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the Government."[2]

Nevertheless in the light of modern New Zealand Government, the conferral of wide power onto the executive arm of Government seems inevitable. The Government needs a huge bureaucratic machinery to carry out its welfare role. Specialisation is necessary for different Government departments to fulfill their different roles. The more specialised the department is the more power is usually conferred. It is typical that nowadays legislations are usually initiated by the Department, endorsed by the Cabinet. It also requires more discretionary power to deal with a kaleidoscopic variety of daily problems.

Every year around March a legislative programme is submitted to the Minister of Education by the departmental officials, usually the Legal Section. In 1979, the legislative programme included several Bills, one of them was the Education Amendment Bill 1979. It was originally intended to implement the

Marshall Report (Registration and Discipline of Teachers) and other provisions. In April, departmental instruction was given to the Parliamentary Counsel to draft the Bill. In May, the initial draft of the Bill was sent back to the Department. The Department commented on the initial draft and sent it back to the Parliamentary Counsel. At this stage, the Cabinet decided in May 1979 that a charge of $1500 per annum for private overseas students who commence a new course of tertiary study. The South Pacific students were exempted. This Cabinet decision was put into the Bill too. Meanwhile the implementation of the Marshall Report was expected to receive lots of submissions and involved much controversy. The Minister of Education, in consultation with the Attorney-General, decided to delay it.

Another Cabinet decision was the new bursary scheme and was also put into the Bill in June. The Department intended the Parliamentary Counsel to draft section 193 in a way that the Bursary Appeal Authority is set up by Order in Council.

In June, another provision on an amendment of secondary school zoning was also included on departmental request.

Throughout the drafting stage, the office solicitor was in close contact with the Parliamentary Counsel to give instructions as clearly as possible, and to add or delete certain provisions as appropriate. The final form of the Bill before introducing into the House was emerged in late September. As in normal practice, this Bill went to the Cabinet Legislative Committee for further consideration before introducing into the House. The Parliamentary Counsel and the Departmental representatives attended for discussion and advised the likely areas of contention.

In this drafting stage, various influences were set in force competing with the departmental influence over the Bill.

Firstly, the Cabinet's role was very influential because of its dominance of the Parliamentary process in New Zealand. Some provisions were emerged from Cabinet decisions, e.g. the payment of fees for overseas private students, the new bursary scheme and so on. It is questionable whether the Parliament has delegated too much power to the Cabinet. This is also related to a further issue: whether Parliamentary debate is useful to improve legislation or improve the quality of Cabinet decision. This will be discussed later.

Secondly, the Parliamentary Counsel has his influence too. He may, if he thinks fit, report any constitutional impropriety to the Cabinet Legislative Committee. The duties and power of th Parliamentary Counsel is governed by the Statutes Drafting and Compilation Act 1920.

Section 4(1) says "The duties of the officers of the Bill Drafting Department shall be

(a) To draft such Government Bills as the Ministers of the Crown may direct ...

(b) To supervise the printing of such Bills

(c) To examine all local Bills and to report to the Prime Minister or the Attorney-General whether and to what extent the provisions of any local Bill affect the rights of the Crown or of the public ...

(d) If and when so directed by the Prime Minister or the Attorney-General, to report as to the form and effect of any Bills other than local Bills introduced by private members into the House of Representatives ..." This provision in practice extends to public Bills also.

The extent of his influence certainly depends on his perception of his Office, the nature of the legislation, the comprehensiveness of departmental instruction. In my opinion, the more controversial the Bill is, there will be more room for his power. In the same way, if the departmental instructions are less comprehensive, he may have more discretion in the choice of words in drafting the Bill.

Thirdly, the extent of Caucus influence in this Bill was not clear. However

> "To discuss Caucus is to enter one of the most difficult areas of New Zealand politics, a no man's land which lies between political scientist and the gossip columnist."[3]

The extent of its influence depends on the actual size of the Caucus, the proportion of Cabinet Ministers in it, the nature of issues, the qualities of the members in it, the attitude of the Prime Minister and so on.

The usual procedure is for the Cabinet to consider the Bill on Monday and the Caucus to consider on Thursday. Then the Bill is introduced. It is unclear whether the National Party Caucus had made any change to the Bill because Caucus minutes are not disclosed and only Members of Parliament of the same party are allowed to attend.

Fourthly, the Minister may be regarded as the key-figure in the New Zealand political system. His influence permeates various stages of legislation. At this drafting stage, the Minister is the co-ordinator of various bodies. The proposal of the Department had to go through the Minister and discussed in the Cabinet. While Cabinet decisions had to go through the Minister to the Department, and therefore departmental instructions

could be sent to the Parliamentary Counsel. In Cabinet meetings, he is responsible to secure the sort of priorities attached to the Bill[4]. The Bill was given Priority No. 1. He is the only figure present in the context of Cabinet, Caucus and Department. In public and in the Parliament, he is responsible for the Bill.

[II] FIRST READING

The Bill was introduced into the House by the Minister of Education, Mr Wellington, on 6 November 1979. He introduced the Bill by summarising various provisions of it.[5]

> "It contains six clauses, which make various changes to the Education Act 1964. One clause repeals the Timaru High School Act of 1878. Clause 2 relates to the payment of fees by private students enrolled at tertiary institutions ... Clause 3 relates to enrolment schemes for secondary schools ... At present, bursaries and scholarships are established by the Ministers, but must be awarded in accordance with and paid at annual or other rates specified in regulations made under the principal Act. Clause 4 amends this provision by providing that bursaries, scholarships, ... are now to be established by regulation and awarded in accordance with and at such annual or other value as provided in the regulations. Clause 5 provides for the establishment of a Tertiary Assistance Grants Appeal Authority to hear and determine appeal ... The authority is to be established under Regulations ... Finally, clause 6 repeals the Timaru High Schools Act 1878, at the request of the Timaru High Schools Board..."

On the whole, this is a valid summary of the Bill.

The Labour Party concentrated on cl. 2 and made two principal criticisms. The Opposition party's view was best summarised by Mr Palmer:[6]

> "Clause 2 is bad, for two fundamental reasons. First, it is a blatant interference with the independence of universities, and, secondly, it creates discrimination between categories of overseas students. In the first category of overseas students are those who do not come from South Pacific countries who must pay $1500... In the second category are students who will not have to pay that amount... Section 48 of the University of Canterbury Act is typical of a provision that appears in all university statutes. It states "There shall be payable by students of the University or any of them such fees as the Council from time to time prescribes" - the Council is the University Council - "provided that scales of tuition and of examination fees may be so prescribed only with the concurrence of the University Grants Committee."

In supporting his second argument on discrimination of different category of overseas students, Mr Palmer said,[7]

> "The Government, in its wisdom, ratified the United Nations International Convention for the elimination of all forms of racial discrimination. Article 5 of that Convention states: "In compliance with the fundamental obligations laid down in Article 2 of this Convention, State parties undertake to prohibit and to eliminate racial discrimination in all its forms, and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, equality before the law, notably in the enjoyment of the following rights ... the right to education and training." National origin is precisely what the Bill discriminates against... Further, I ask him [the Minister] whether the Bill purports to override the Human Rights Commission Act or whether the principles laid down of discriminating between certain classes of overseas students can be reconciled with the principles of Human Rights Commission Act?..."

In replying to the argument of university autonomy, Mr Wellington (Minister of Education) said:[8]

> "Although the Government has no direct legislative authority over the universities, it can conduct a review of the financial provisions of the universities in the same way that it can conduct a review of the financial allocation of public moneys in any other sector of its activities."

In relation to the argument of racial discrimination Mr Wellington replied,[9]

> "Section 92(2) of the Human Rights Commission Act 1977 states: "Except as expressly provided in this Act, nothing in this Act shall limit or affect the provisions of other Acts." Thus the authors of that Act anticipated the need to provide for overriding provisions in other Acts... We are making overriding provisions for the imposition of a fee of $1500."

However the main argument for the Government to impose the $1500 fee was given by Mr Elliot:[10]

> "It costs twice as much as $1500 or more, to put each of these overseas students through a New Zealand university, so even with $1500 the New Zealand taxpayer will still be subsidising students to a very great degree. Most other countries, including more recently Australia and Fiji, have brought in a charge of this sort to offset the costs to their Governments of educating overseas students. Certainly in Britain, the United States, and Canada, charges are very much higher than the $1500 a year the Government intend to introduce. It is a fair and reasonable proposition..."

Then the Minister of Education moved that the Bill be referred to the Education Committee, and that the proceedings of the Committee during the hearing of evidence be open to accredited representatives of the news media.

In this first reading debate, the members argued on the general principles behind the provisions, instead of the specific working of them. The quality of the debate was diminished by some irrelevant criticism on other members' personal quality. For instance, Mr Muldoon said:[11]

> "The comments of the member for Christchurch Central are typical of the insufferable arrogance of certain university academics..."

Mr Rowling (Leader of the Opposition) also side-tracked and said:[12]

> "One of a number of hang-ups that the Prime Minister has clearly emerged this afternoon is that he cannot bear anyone who has made a success of an educational career. To talk about insufferable arrogance is about the last straw for most New Zealanders."

These comments on the other members' personality were irrelevant to the Bill. The debate was used as a forum of scoring political points rather than scrutinising the provisions of the Bill. However, it is arguable that the detail consideration of the Bill should be done by the Education

Committee.

In the debate, the members of the Opposition also missed the other aspect of the Bill: the new bursary scheme. At this stage, no member of the Opposition raised any objection on the setting up of the Bursary Appeal Authority by regulations. This was first spotted out by the New Zealand University Students' Association submission. This may be due to the fact that the Members of Parliament did not have sufficient time to prepare for the debate.

[III] THE BILL BEFORE THE EDUCATION SELECT COMMITTEE

The Education Committee was the most appropriate one to consider this Bill because of its nature. At the time of considering this Bill, the membership was composed of:

National	Labour
Mr Elliott (Chairman)	Mr Burke
Hon M.L. Wellington (Minister)	Mr Marshall
Mr Gray	Mr Terris
Mr N.P.H. Jones	

During the sitting of the Committee, departmental officials, Parliamentary Counsel, representatives from the University Grants Committee were present normally. There were massive submissions relating to this Bill. For analytical purposes the submissions will be grouped under three topics:

(A) Payment of fees by private foreign students

(B) Entrolment schemes for secondary schools

(C) Bursaries

There were 30 submissions touching on different aspects of the Bill. Fifteen of them were written submissions; the other fifteen were also written submissions plus their representatives appearing before the Committee.

(A) Cl. 2 Payment of fees by Private Foreign Students

There were 24 submissions on this clause. All of them opposed the imposition of the $1500 on certain private foreign students. They are grouped under three categories:

(1) The interest of the members or some of the members of the pressure group are directly at stake (i.e. they are liable to pay the $1500 fee).

The Malaysian Singaporean Students' Association rejected the notion that overseas students are coming from wealthy families. The imposition, they maintained, will ruin the goodwill between Malaysia and New Zealand and tarnish N.Z's overseas image.

The Malaysian Students' Association of Wellington submitted that the family background of Malaysian students is not wealthy, and if the fee had been imposed, only 3% of the present overseas population would have come.

The Auckland Malaysia-Singapore Students' Association in its submission made five points. Firstly, they purported to rebut the Government's justifications to impose the fee. It was submitted that Malaysians are not from wealthy families; they do not remain in N.Z. after graduation; they do not get more than they are entitled to get. It stated that 75% of the University Budget is on staff salaries and other overheads regardless of the admittance of overseas students. Such imposition, it was maintained, would harm N.Z's relationship with the Third World Countries. Secondly, the submission stressed the contribution of overseas students: their spending in N.Z., their post-graduate research work, their cultural contribution, their enhancement of trading ties between the two

countries when they return home. Thirdly, the discriminatory nature of the fee (only certain categories of overseas students have to pay) is in breach of the International Covenant on Economic, Social and Cultural Rights. Fourthly, N.Z. has a moral responsibility to educate students from under-developed countries in the light of colonial exploitation in the past. Fifthly, it was submitted that the Government did not consult various interested bodies before formulating the policy.

The New Zealand Technical Institute Students Association's submission mentioned the invaluable contribution of overseas students to the social and cultural life in N.Z. It also pointed out that there were no consultations and insufficient research when the Government formulated its policy.

The N.Z. Law Students Association's four page submission is rather elaborated. On Cl 2, it was submitted that the proposed fee is in breach of Art. I, Art. 2(1) and Art. 8 of the United Nations Declaration. Art. 1 provides:

> "Discrimination between human beings on the grounds of race, colour, or ethnic or national origin is an offence to human dignity and shall be condemned as a denial of the principles of the charter of the United Nations..."

Art. 8 provides:

> "All effective steps shall be taken immediately in the fields of teaching, education and information, with a view to eliminating racial discrimination and prejudice and promoting understanding, tolerance and friendship among nations and racial groups..."

It was also submitted that Cl. 2(2) which gives retrospective validation to an unlawful act (collection of fees from overseas students by technical institutes) is in breach of the Rule of Law. There are two fundamental bases to the Rule of Law.

Firstly, it means "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power..." (Dicey, Law of the Constitution (10th ed.) p.202.

It was put in another way by Sir John Latham C.J. of Australia in Arthur Yates & Co. v. The Vegetable Seeds Committee (1941) 72 CLR 37 66.

> "It is not the English view of law that whatever is officially done is law... the principle of English law is that what is done officially must be done in accordance with law."

Secondly, it is submitted that it means,

> "Everyone, whatever his position, must be ready to justify his actions by reference to some specific legal rule and be ready so to justify them in the ordinary courts." (Heuston, Essays in Constitutional Law (1964) 2nd ed. p.45).

The New Zealand University Students' Association's submission is the most comprehensive one on this clause, consisting of 72 pages. In summary, it consists of ten points. Firstly, the Government's reason of proposing the fee was not justified: the overseas students were not from wealthy families; they did not stay in N.Z. after graduation and they did not receive more than they were entitled to. Secondly, no consultation was made by the Government in the formulation of policy. Thirdly, Cl. 2 may impede the cultural and educational contribution of overseas students. Fourthly, the principle behind N.Z's foreign aid will be undermined by the proposed fee. Fifthly, the proposed fee is not likely to raise a significant amou of finance to off-set the education expenditure. Sixthly, Cl. 2 may destroy the aspiration of overseas students who intend to do post-graduate work in N.Z. Seventhly, the South Pacific countries exempted from this provision were to be specified by Order-in-Council. It confers the Executive the

potential power to re-write the map of South Pacific and is not a good education decision-making process. Seventhly, the N.Z.U.S.A. alleged that beneath the superficial reasoning behind Cl. 2, there is racist sentiment. Therefore, ninthly, Cl. 2 is contrary to s.93 of the Human Rights Commission Act 1977 which maintains that it is unlawful to discriminate between Commonwealth non-citizens (e.g. between Fijiians and Malaysians) on national origin. Tenthly, Cl. 2 undermines the principle of university autonomy - it alone may have the power to decide the fee charged on its students.

The University of Canterbury Students Association's submission was different in that it deliberately omitted any conclusion. It merely outlined three case-studies of Malaysian overseas students. They maintained that these cases were not 'hand picked'. The cases illustrated that these overseas students were not coming from wealthy families.

(2) The interest of the Members of the pressure group was not directly affected by the Imposition of $1500 Fee

The N.Z. Student Christian Movement stressed the responsibili of N.Z. towards the Commonwealth developing countries. It also claimed that there was imbalance of money-flow between N.Z. and S.E.Asia. If the criteria for overseas students entry being wealth rather than ability, the class structure in S.E. Asia would be rigidised. Polarisation of the rich and the poor may lead to political instability in that region.

The Executive of the National Youth Council of New Zealand emphasised the point that there was insufficient consultation on policy formulation; and educating overseas students is a valuable overseas aid.

The Teacher Trainees' Association of N.Z.'s submission stated that consultation was lacking. The importance of research work done by the overseas students and their cultural and social contribution were stressed. Cl. 2 may create a feeling of hostility among overseas students and the N.Z's goodwill of helping the developing countries through foreign aid may be damaged.

Corso stated that educating overseas students was an important aid; and they provided N.Z. a much broader cultural perspective. They were not from wealthy families.

The International Students' Hospitality (Inc) Auckland in its submission stated that Cl. 2 threatened university freedom because they have a right to set fees. The Commonwealth ties with Malaysian and Singapore may be endangered. As far as foreign aid was concerned, educating overseas students is more altruistic than other aid with some economic and political purpose.

The Association of University Teachers of New Zealand (Inc) criticised the Government that there was no consultation of University Council in formulating Cl. 2 and this may have detrimental effect on university autonomy. In the submission, the benefit of the research work done by overseas students was mentioned. A list of research work done by overseas students was also enclosed. Educating overseas students from developing countries is an inexpensive form of foreign aid and is an effective form to help developing countries.

The New Zealand Combined Education Association shared the view that no consultation had been made. Cl. 2(3)(a) provides

that citizens or permanent residents of a South Pacific Country (declared by regulations) are exempted. It may be construed by some countries as discriminating against their citizens. This submission, as in others, stated that the overseas students were not from wealthy families, and they usually went back home after their graduation. Lastly, it said the overhead cost of running a university was the same even if there were less overseas students.

(3) Academics

Professor B.H. Howard, Biochemistry Department, Lincoln College, submitted that such imposing of fee could drive away the cream of post-graduate overseas students. Their research work, he said, had been beneficial to the New Zealand community.

Professor Willmott, Department of Sociology, University of Canterbury, outlined three harmful effects on the imposition of fees. Firstly, N.Z. students would be more insular and naive in cutting down on foreign students. Secondly, the presence of overseas students encouraged comparison, he said, which was a major methodology. Thirdly, overseas students provided a dimension to the social life of tertiary institutions.

Professor Renwick, Head of Biochemistry Department, Auckland University, in his submission said that overseas students were mostly from "families who can ill-afford to meet the current expenses of living in New Zealand" and the goodwill between N.Z. and S.E.Asian countries could be undermined.

Professor Keith, Dean of Law Faculty, V.U.W. made two points related to Cl. 2. Firstly, he expressed his concern on the effect of Cl. 2 on the power of Universities to impose

fees. Secondly "Cl. 2(2) validates illegal demands which have already been made by technical institutes and community colleges." He found these provisions 'disturbing' because "such action appears to be called for far too frequently."

Mr Brian Lythe, Counsellor for Overseas Students, University of Auckland, submitted that overseas students were not from wealthy families and they did not remain in N.Z. after graduation. Educating them, he said, was a form of foreign aid. He also criticised the Government for lack of consultation.

Similarly, Mr Bill Zika, Student Counsellor, Massey University, maintained that the family background of overseas students was not rich and it was to the detriment of N.Z. students in losing contacts with overseas students.

The submission, Mr P. Hamer, Senior Lecturer of Economics Department, Massey University, Palmerston North, related more to economic aspect of Cl. 2. He looked at the marginal cost of educating overseas students and maintained that educating extra overseas students did not burden N.Z. taxpayers substantiall Overseas students receipt of foreign exchange from their own country had a beneficial affect on the balance of payment.

Mr D.W. Pullar, Registrar, Auckland University submitted that those foreign students trained in N.Z. would be leaders in their countries in future. They would be able to influence trading patterns in favour of the country that nurtured them. Moreover, he suggested that educating foreign students was an effective foreign aid. His cost-benefit analysis indicated that the imposing of fees would create long term disadvantages that outweighed short term monetary advantages.

The Council of Victoria University of Wellington made

two points in its submission. Firstly, in general terms, it stated that overseas students undertook research work and contributed much to intellectual and cultural life of the University community. The Council also regretted the lack of consultation. Secondly, in specific terms, Cl. 2(4) (which says the governing body of a tertiary institution shall not permit a non-exempted overseas student to undertake any course unless the $1500 fee is paid) was an intrusion of the principle that university alone has the power of admission. Moreover Cl. 2(3)(a) (which exempts a citizen or permanent resident of a South Pacific Country) was discriminatory within the Human Rights Commission Act.

The N.Z. Vice-Chancellors' Committee submitted that Cl. 2 enabling the Director-General to issue regulations prescribing tuition fee for certain overseas students was inconsistent with the principle of university autonomy. Staff and students were deprived of the considerable cultural and intellectual benefit of direct association with representatives of other cultures.

All these three groups of submissions have displayed a set of comprehensive and well-thought reasons ranging from N.Z's international obligation to N.Z. Human Rights Commission Act, from the traditional doctrine of Rule of Law to doctrine of university autonomy, from the effect of causing excessive hardship on the overseas students to the long-term effect of international understanding and N.Z's overseas image. They were not successful in persuading the Education Committee to change the substantive provision of Cl. 2. It is because, in the author's opinion, the

submissions were in direct conflict with the policy laid down by the Cabinet. A Cabinet's decision with the support of the Government Caucus is very likely to become law, despite the submissions made in the Parliamentary Select Committee. It is difficult not to come to the conclusion that the call for submissions on an already decided issue to the Committee is nothing but a window-dressing action in the democratic process. It seems that some submissions' criticism on lack of consultation is justified on the ground that if there had been consultation at the initial stage of policy formulation the impact of the pressure groups would have been greater. On the part of the Department, it has not exercised undue departmental influence on this issue because it is only the machinery of the Executive, carrying out the Cabinet decision.

(B) Cl. 3. Enrolment Scheme

Cl. 3 purported to amend s.129A. S.129 has a long history. Briefly, the original s.129 (i.e. before 1978 amendment) provide as follows:

> "(1) ... an Education Board may, with the approval of the Minister, in order to avoid overcrowding at any state primary school ... limit the attendance at the school in such manner as it determines.
>
> (2) Where the accommodation available at any secondary school ... is not sufficient for all the children qualified for free education and applying for admission thereto, ... the Minister may, ... direct ... the school to restrict the admission of pupils to the school ..."

In Auckland Grammar School Board v. Minister of Education[13] the Minister on 22 August 1977 under s.129(2) restricted the intake of students by the Auckland Grammar School from a particular area. The parents of the restricted children brought an action with the Auckland Grammar School Board. McMullin J. agreed with their submissions.

> "That the Minister had used the power vested in him by s.129(2) for the purpose of bolstering the roll of a neighbouring school, Selwyn College, and that purpose was not one which was recognised by s.129(2) ... as a proper basis for his intervention."

This decision attracted legislative intervention i.e. s. 3 of the Education Amendment Act 1978. The old s.129 was substituted by a new one. S.129A, as inserted by s.3 of the 1978 Amendment, provides as follows:

> "(1) Where, in the opinion of the Director-General, two or more secondary schools ... are so situated that some or all of the students residing in the locality might reasonably conveniently attend either of them, ... he may give notice to the appropriate Regional Superintendent of Education that an enrolment scheme should be determined..."

This effectively reversed McMullin J's judgment in the Auckland Grammar Schools Board case.[14] The controversy about the enrolment scheme was vigorous in the Education Committee in 1978. Cl. 3 of the 1979 Bill merely clarifies s.129A of the principal Act. Therefore there were only a few submissions on this clause in 1979.

Cl. 3(1) mainly clarifies s.129A(3), i.e., what should be specified in the enrolment scheme. It provides as follows:

> "An enrolment scheme in respect of each school ...
>
> (a) shall specify either -
> (i) an area the students residing permanently within which are to be entitled to enrol at that school or
> (ii) The number of students who are to be permitted to enrol at that school, and the criteria to be used in selecting them."

Cl. 3(2) provides as follows:

> "Where a Regional Superintendent of Education has purported to notify the Minister of the details of an enrolment scheme ... the Minister may refuse to approve the scheme, ... or approve it, ... or approve it as modified by him..."

Professor Keith, Law Faculty, V.U.W. expressed his concern over Cl. 3(2). He maintained that the use of the word 'purported' in the proposed s.129A(7) was the first attempt in New Zealand to prevent the review of illegal Governmental action by the Courts.

The N.Z. Law Student Association, parallel with Professor Keith's submission, said that

> "The effect of such a sub-section (cl.3(2)) would be to exclude an aggrieved individual or body from a constitutional right of redress... If there are any flaws in the procedure whereby a scheme is formulated (such as the exclusion of natural justice...) then there is to be no redress in the Courts. N.Z.L.S.A. is worried by the proposal subsection 7(b) which can be viewed as a departure from the rule of law..."

The Post Primary Teachers' Association submitted that the whole Cl. 3 ought to be deleted because it tended to legitimate elitist pretensions. According to its submission, a secondary school may specify a small area and then set out criteria to select pupils outside the specified area.

However these submissions could not change the view of the Education Committee on this clause. It appears that the Government was determined to confer a wider power to the Minister in relation to the secondary school enrolment scheme. This clause went through the Committee without any change to its provision.

(C) Cl. 4, 5. Bursaries

There are eight submissions on these two provisions. Cl. 4 purported to substitute s.193 of the principal Act, and provides as follows:

> "193(1). For the purpose of enabling persons to pursue courses of primary, secondary,... technical, community college, university, or higher education, or courses forming part of their training as teachers ..., the Governor-

General may make regulations establishing bursaries, scholarships, grants, awards, and allowances ..."

Cl. 5 provides as follows,

"The principal Act is hereby further amended by inserting, after Section 193, the following section:
"193AA(1). The Governor-General may make regulations for all or any of the following purposes.
(a) providing for the establishment of a Tertiary Assistance Grants Appeal Authority ...
(b) prescribing the manner in which the member of the are to be appointed ...
(d) prescribing the manner in which -
(i) Appeals are to be made and
(ii) the Authority is to deal with appeals, and conduct its proceedings ...
(2) Decision of the authority shall be final and binding on all parties ..."
(3) The Department of Education shall provide for the authority such administrative and secretarial services as may be necessary to enable it to perform its function."

The New Zealand Educational Institute submitted that the word 'allowances' should be deleted from s.193, otherwise teacher trainee would be subject to s.193. It believed that "all matters relating to the employment of teachers, either during or after training should be subject to the provisions of the State Services Conditions of Employment Act 1977, with a consequent right of appeal to an independent tribunal.

The same view was echoed by the New Zealand Free Kindergarten Teachers' Association, the Teachers Trainees' Association of N.Z. and the Post Primary Teachers' Association. The P.P.T.A. also made the point that Cl. 4 purported to fix the teacher trainees' allowances by regulation; which conferred the executive an undesirable degree of power.

But these submissions were not accepted because the new s.193 did not change the old s.193 in this aspect. In other words, the term 'allowance' existed in the old s.193. The Government's intention of including the teacher trainees under

s.193 was clear in the phrase "courses forming part of their training as teacher" in s.193.

The New Zealand Educational Institute, alongside with the submission of the Council of V.U.W., N.Z. Law Students' Association, N.Z. University Students' Association, the Post Primary Teachers' Association, Professor Keith, stated the constitutional impropriety of setting up the Tertiary Assistance Grants Appeal Authority by regulations. The principle was well expressed by Professor Keith:

> "The issues should be resolved in the Act passed through the normal public processes of plenary legislation and not through the confidential processes of executive regulation making ..."

In the light of heavy opinion against setting up the Appeal Authority by regulations, the Committee accept this submission. A new clause 5 was drafted setting up the Appeal Authority by statute. Despite the end-result would be similar (no matter the Appeal Authority was set up by Statute or Regulations), the important point is that what is done officially must be done in accordance with law. The Education Committee did provide a chance for the pressure groups to voice their dissatisfaction and change it. Nevertheless, the procedure of the Appeal Authority was still to be prescribed by regulation.

Professor Keith's submission on this issue was both technical and insightful. Many of the recommendations were accepted by the committee.

Firstly, he submitted that the Appeal Authority may take one of the two models: Tribunal or Ombudsman. He suggested that the tribunal type was better because there would be the possibility of administrative review. The power of the Authority,

he said, was to decide, not merely as with the Ombudsman to advise. The Social Security Appeal Authority followed a court like procedure. The subject matter, like income level, was best resolved by a Court like procedure, he said. This suggestion was accepted by the Committee.

Secondly, he submitted that the Chairman of the Appeal Authority should be a lawyer and the membership should not be representational because of the independent nature of the Authority (similar to the Equal Opportunities Tribunal). Although the Committee did not share the view that the Chairman in the Appeal Authority must be a lawyer, it accepted Professor Keith's view that the Authority should not be representational.

Thirdly, he suggested that the members should be appointed with a minimum term and should be removable only for cause. This recommendation was fully accepted by the Committee as the new Cl. 5 provides:

> "(2) ... the authority shall be appointed by the Minister for a term of 3 years from the date of his appointment, but shall be eligible for reappointment.
> (3) The member may ... be removed ... by the Minister ... for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister..."

Fourthly, he cited the first report of the Public and Administrative Law Reform Committee and suggested that neither the premises at which the tribunal sits nor the secretary be connected with that Department. This was accepted, as the new Cl. 5 said:

> "193AB
> (3) The Department of Justice shall provide for the authority such administrative and secretarial services as may be necessary to enable it to perform its functions."

Fifthly, he outlined the procedure that should be followed by a tribunal. He quoted the sixth Report of the Public and

Administrative Law Reform Committee. However the Education Committee preferred the procedure to be prescribed by regulations. (s.193AB).

Sixthly, he criticised the finality clause set out in Cl. 5(2) was redundant. He stated that "this provision is not needed because it has no effect. If it is intended to exclude or limit the common law review powers of the courts it is ineffective since the courts have long held that a finality provision has no impact, e.g. R. v. Medical Appeal Tribunal, ex parte Gilmore [1957] 1 QB 574 C.A." The Committee accepted this point and Cl. 5(2) was deleted.

Seventhly, he suggested that there should be a statutory right of appeal on question of law. However the Committee did not accept this suggestion on the apparent ground that there was already the Common Law power of review by the courts.

It is not surprising that Professor Keith's submission was having much influence. He himself has no personal interest involved, and the submission was the work of such an experienced academic lawyer directing both at a general principle level and at specific provisions

The New Zealand University Student Association also had a good scoring rate. It was submitted that the Appeal Authority should be independent of the Department of Education. The Committee accepted this suggestion. The submission also recommended that the tenure of appointment was fixed for 3 years and the member may only be removed on standard ground. This was exemplified in the new Cl. 5.

A two tier system was also suggested: students who were

dissatisfied with the decisions of the tertiary institutions or the Department of Education could firstly apply for a review of decision by the Director-General. If that decision was still unsatisfactory, that student may appeal to the Authority. The Authority may either confirm, vary or set aside the decision.

This was a feasible idea and was accepted by the Committee therefore in the new s.193AA it provided:

> "(7) Where any person enrolled ... at a tertiary institution is aggrieved by a decision ... that person may request the Director-General to review that decision
> (8) Where any person is aggrieved by
> (a) The decision by the Director-General ...
> that person may appeal against that decision, and in that case the Authority shall consider that appeal ... and shall either -
> (a) confirm that decision, or
> (b) substitute for it any other decision that the Director-General might have made."

The N.Z.U.S.A., similar to Professor Keith's submission suggested that the finality clause was redundant and unnecessary and that the Authority should not be serviced by the Department of Education, but by the Tribunal Division of the Justice Department. These points were accepted by the Committee.

However, the Committee, did not accept the N.Z.U.S.A. proposals that "A one person tribunal would not sufficiently meet the requirement" and "appointment of members of the Authority would be by the Governor-General on the advice of the Minister of Education after full consultation with interested organisations and with the Minister of Justice."

In fact, the Committee in s.193AA(2) stated that "the authority shall comprise one member". The Committee regarded a one member Authority may yield greater flexibility. This member was to be appointed by the Minister of Education (not

Governor-General).

On the procedural aspect, the N.Z.U.S.A. recommended that: the procedure should be as informal as possible; the authority should not be bound by the rule of evidence; the parties could attend by themselves or be represented; the authority was not to be bound by its own precedents; proceedings should normally be public; immunities should be provided for tribunal members/ and representatives of/ the parties and witnesses. However, the Committee did not intend to put these procedural provisions in the Act. By s.193AB it stated that procedure would be prescribed by regulations.

On the whole, the N.Z.U.S.A.'s submission was technical and very comprehensive. It is the lengthiest submission among others concerning this Bill. Despite "the Education Amendment Bill covers a number of issues of extreme importance to N.S.U.S.A.'s members", its submission was perspicacious, controlled and unemotional.

The Post Primary Teachers' Association maintained that the Tertiary Assistance Grants Appeal Authority had no power on the student teacher allowance. If so, they said they would like to be represented on the appeal authority considering student teacher allowances. This submission was not effective at all because the P.P.T.A. failed to appreciate two fundamental points in Cl. 5. Firstly, there was no material difference between the new 193 and old 193. The issue whether a student teacher trainee is an employee is still undecided. Secondly, it failed to appreciate the independent and adjudicative nature of the authority by asking it to be represented.

While the Bill was in the Education Committee, there was no drastic change on its substantive provisions especially those that were decided by the Cabinet e.g. the imposition of fees, the setting up of a new bursary system and the establishment of the Appeal Authority. However, those non-central issues (e.g. whether the authority should be set up by regulation or Act) had been changed. The end result was the same anyway. It appears that the Select Committee stage in this Bill was merely a window-dressing decoration in the democratic legislative process. Nevertheless the pressure groups were given an opportunity to air their opinion or grievances even though they had not been consulted at the stage of policy formulation. By making submissions, the pressure groups may furnish the members of the Opposition with arguments in the Parliamentary debate. At this point, we now turn to another stage: the debate when the Bill was tabled on the House.

[IV] EDUCATION SELECT COMMITTEE REPORT BACK TO THE HOUSE

The Bill as amended by the Education Committee was tabled in the House by the Chairman, Mr Elliot, on 7 December 1979. He moved that the Bill be allowed to proceed as amended.

Mr Elliot's introductory speech was relatively short but it was a good summary of the Bill as reported back to the House. He said that:[15]

> "This is a short but important Bill... Clause 2 enacts the $1500 fee for foreign students at New Zealand tertiary institutions the principle behind the fee remains unchanged... A number of submissions stated that clause 5, which sets up procedures for bursary appeals, should be in the Act rather than in regulations, and the Committee discussed this in a very non-partisan way... Clause 5, we agreed, should be incorporated in the Act..."

Four members of the Opposition spoke on the Bill. They were Mr Marshall (Wanganui); Mr Terris (Western Hutt); Mr Jonathan Hunt (New Lynn); and Mr Palmer (Christchurch Central). Two of them were on the Committee: Mr Marshall and Mr Terris. Their arguments were merely a repetition that had been raised in the submissions in the Committee.

Mr Marshall argued that[16] the Government's three major reasons for imposing the fee were not valid: firstly most Malaysian students were not from wealthy families; secondly, they did not remain in New Zealand after their graduation; thirdly, they did not give more than they were entitled to. They also claimed that Cl. 2 would undercut the Government's overseas aid policies for S.E. Asia.

Mr Palmer emphasised that[17] the Bill discriminated between students from Pacific Island countries and students from elsewhere. He maintained that many valuable research were undertaken by overseas students. He also criticised Cl. 3(2)(b) that "if the Minister approves the enrolment scheme for secondary schools his approval shall have effect accordingly notwithstanding that the scheme may have been determined otherwise..."

On the other hand, four Government members spoke to defend the Bill. They were Mr Elliot (Whangarei), Mr Wellington (Minister of Education), Mr Gray (Clutha), Mr Templeton (Deputy Minister of Finance). Their arguments were best summarised by the Minister of Education. He stated:[18]

> "I shall now summarise the position. First, in imposing the fee, we have simply followed the line set by comparable Western societies. Secondly, the level of the fee is half or less than half of the average cost of educating

> a university student. Thirdly, the Malaysian Government has no argument with the fee... Fourthly, ... the Malaysian Government has said that it will consider introducing a loans scheme to assist quality private students to study overseas. Fifthly, as a result there will be no impediment to the flow of such students to universities in New Zealand... Finally, I reiterate that there has been no infringement upon our overseas aid programme."

At the end of the debate, Mr Elliot moved that the House would consider a petition of Daniel Ngieng and 11,000 others "praying that the House request the Government to rescind the decision to impose a fee on private foreign university students."[19] There was a vote: 44 votes against it; 28 voted for it. Accordingly, the petition was dismissed.

It is obvious that the members in the debate support or oppose purely on party lines regardless of content. There were only 8 speakers and 5 of them were in the Committee. It appears that the members were over-loaded with Parliamentary work at this stage.

[V] THE SECOND READING DEBATE

The second reading debate took place on 13 December 1979. It may be expected that there might be more speakers in this debate. But in fact, there were only six. Three from each side. Messrs Wellington, Elliot, Jones from the National Party; Messrs Marshall, Terris and Palmer from the Labour side. The other contributions to the debate were either extremely short or irrelevant to the Bill.

First of all, Hon. M.L. Wellington (Minister of Education) moved that the Bill be read a second time. He gave a summary of the Bill[20].

Then Mr Marshall, the spokesman of Education for the Labour Party started off the debate by criticising that the Government had not consulted the interested organizations in formulating the policy. He once again[21] stated that the Government's justificatio of imposing the $1500 fee on overseas students were not valid. He "want to reaffirm that it is the intention of the Labour Government to remove the $1500 fee being charged to private overseas students." He also pointed out the contribution of overseas students, for instance, their research work and cultural contribution. He quoted[22] a statement made by the Association of Commonwealth Universities:

> "...this general meeting requests the chairman and the secretary-general to take appropriate steps to bring to the attention of the Governments concerned the need to consider the potentially harmful effects of such financial deterrents."

On Clause 5, he said that the authority should be set up by statute rather than by regulation and he preferred a 3-person tribunal rather than a 1-person one.

Supporting his colleague's argument, Mr Terris (Western Hutt), another Labour M.P., said[23] that the Bill tended to allow the Government greater executive power.

He went on citing examples like the encroachment of university independence by imposing the $1500 fee, the role of the Minister in the composition of the appeal authority. He stated that the Bill was inconsistent with the United Nations Convention on the Elimination of Racial Discrimination and the Human Rights Commission Act and the spirit of the Race

Relations Act. He cr icised clause 3 because "it does not allow the people most directly affected and have any say for at least 12 months." He also spoke for teacher trainees and said cl. 4 ignores the fact that student teachers are salaried career State servants. He said that Cl. 5 further enhanced executive's power because they could prescribe the procedure by regulations.

The last Labour speaker on this Bill was Mr Palmer (Christchurch Central). His speech may be regarded as the best summary of the Opposition's attitude to this Bill. Speaking on Cl. 2, he outlined nine reasons to object it.[24]

> "The first is that it discriminates between classes of foreigners... secondly, the measure is designed to raise revenue. It is a tax on certain types of foreigners... thirdly it interferes with the independence of our universities... Fourthly, it discriminates against students on the grounds of national origin... it is contrary to the international commitments entered into by the New Zealand Government... Fifthly, it is contrary to provisions in our Human Rights Commission Act. Sixthly it will discourage foreign students who often undertake research which is very valuable to New Zealand. The seventh problem of the policy is that it will change the composition of the student body from those who may be deserving people without money to those who have money and money only. The eighth point is that it will reduce New Zealand's overseas reputation... The ninth point is that our own students will not benefit from the contact they formerly had with students from many different cultures - an enriching experience which is the very life blood of University education."

He went on criticising that the Bill had left the definition of South Pacific and the amount of fee to be prescribed by regulations.

Speaking on clause 3(2) he criticised that the word 'purported' which was used to eliminate the possibility of reviewing the legality of the administrative action. In conclusion, he urged the House to "keep in the forefront of

its mind when trying to restore the position of Parliament to prevent the unbridled actions of the Executive."

On the Government side, Mr Elliot, the Chairman of the Education Committee, spoke to defend the Bill[25]. He started off by stating the Government has decided to recover part of the cost of educating private foreign students in New Zealand. He ensured the House that most New Zealanders will support the imposition of the fee. Speaking on Cl. 3 relating to the enrolment scheme, he said "the Government will keep that area under careful review." Clause 4 related to the establishment of and awarding of bursaries and scholarships and allowances. He said that whether student teacher's allowances would be under the State Services Employment Act was still an open question. Cl. 5 had been amended to set up the appeal authority by statute. This change, he said, was typical of the bipartisan approach adopted in the Committee.

Mr Jones (Invercargill), the last Government speaker on this Bill, spoke more on a personal level. He said,[26]

> "I have a son who is at Manchester University, having attended a New Zealand University. It costs him NZ$2,554 for a year's fees, and he also had to guarantee NZ$3,500 for the board and lodgment at the hall of residence..."

He also avoided strict legal and technical argument. He said:[27]

> "We have heard a lot about discrimination and the Human Rights Act. I am not going to argue the point with the venerable professor of law, now a politician, who has given up the noble profession to join the ignoble profession".

He could have tactfully avoided the mentioning of racial discrimination but he did not. In the last paragraph of his speech he said:[28]

> "The Government has been accused of infringing the Race Relations Act, the Human Rights Commission Act or some other Act by excluding students from the South Pacific. The inference is that we are discriminating against Malaysian students, which is true."

The Debate in the second reading did not really change the provisions of the Bill. The same result would have been achieved by sending the Bill from the Education Committee to the Governor-General for his assent. The quality and value of the debate was also diminished by irrelevant remarks and comments. For example:[29]

> "Mr N.P.H. Jones: The member for Wanganui quoted Professor J.D. Stewart of Lincoln College. I do not think he is the Stewart who has anything to do with football
>
> Rt. Hon. W.E. Rowling: Yes, he has. He will probably be the next All Black coach."

Nevertheless the debate may be of symbolic, if not real, importance. First of all, the debate was broadcasted through mass media. This may secure more public attention and awareness of legislative preparation. If there were any strong feelings emerging from the public against the Bill, the Government would bow to public opinion. Afterall, is it not the symbol of the democratic process? The Bill was drafted by the Parliamentary Counsel. Submissions were received by the Education Committee. The Bill was expected to be debated thoroughly in the second reading by the elected members of Parliament. The departmental officials were kept very much in the background at this stage of public debate.

Analysing objectively the speeches articulated by both sides of the House, it is the author's opinion that the Government had performed reasonably well to defend the Bill

at various stages. However the arguments prepared by the Opposition were more potent and substantial. Mr Palmer's speech and his rhetoric skills are worth mentioning in this context. The Government side tended to avoid legal argument in this Bill and resorted to political and economic realities e.g. the revenue aspect of imposing the fee, and also the other Commonwealth countries have done it. Nevertheless, the voice of the pressure groups was heard in the public debate. Perhaps, they might feel that their interests had at least been considered.

[VI] COMMITTEE OF THE HOUSE

On the same night, i.e. 13 December 1979, the Bill was discussed by the House in Committee. This was merely a formality. The heat of the debate did not exist any more. Cl. 1 and 2 were agreed to. The Minister of Education moved to insert a new subsection in Cl. 3. The new subsection was merely a technical one and was agreed to. Then Mr Terris, a member of the Opposition, moved to insert "the Minister shall not approve the scheme until one month from the day when he received the details of the scheme" to new s.129A(7). This was negatived.

Cl. 4 on bursaries and scholarships was agreed to.

Mr Marshall made the final attempt to insert various procedure of the authority in Cl. 5. But this was negatived.

Cl. 6 was agreed to.

Then the Bill was reported with amendment.

One point worth mentioning is that it was late at night when the House Committee considered this Bill. It started 10.28pm and finished by 10.48pm. It might be inevitable because the House was pressurised by the massive amount of legislation, yet this may lead to deteriorating quality of Parliamentary work. It could be possible to extend the length of Parliamentary sessions and reduce night work, so that M.P.s may not be fatigued in considering the Bill which would affect every New Zealander. The House adjourned at 2.37am next morning. It is not surprising that some of the M.P.'s could have been sleeping at that time.

[VII] THE THIRD READING

The third reading followed on the same night at 11.46pm. The Minister of Education moved "that this Bill be now read a third time." It effectively became law subject to Royal assent being given.

Royal Assent was given on 14 December 1979.

[VIII] CONCLUSION

What does the Education Amendment Act 1979 tell us about the legislative trend and process of New Zealand?

Firstly, there is a trend of increasing Executive power, as exemplified in this Act. Some central features of the Act are to be specified by regulations: the definition of 'South Pacific', the amount of fee to be charged, the procedure of the appeal authority. This is improper since too much power will

be vested in the Executive, if it has not already been.

It is easy for the Executive to overstep the fine line of impropriety to illegality. It must be remembered that the first Diceyan principle of the Rule of Law is that there should be no arbitrary power.

What is arbitrary power? It is the prerogative or Executive power that cannot be controlled by the ordinary court of the land. The court is after all the protector of individual freedom.

There are various aspects of the Act that attempt to confer arbitrary power onto the Executive. Cl. 5 of the Bill contained a finality clause ousting the Court's power of review. It was removed in the Education Committee. S. 3 amends 129A(7) and it provides:

> "Where a Regional Superintendent of Education has purported to notify the Minister..." then certain things will happen.

The word 'purported' is an attempt to prevent a judicial review over the administrative action under this subsection. How the court will react to this subsection is still unascertainable, since there is no case arising from it yet. However it is probable that the court may exercise its common law power of review if there is any illegal executive action under this subsection.

However 129A(7) provides:

> "If the Minister approves the scheme, his approval shall have effect accordingly, notwithstanding that the scheme may have been determined otherwise."

Therefore the Minister may legalise an otherwise illegal scheme. The scheme may have been formulated in breach of

natural justice, and may still be resurrected by the Minister's approval. But there may be some practical limitations on the apparent wide power.

This subsection may only intend to cure minor procedural technicality. If there is to be a gross and unambiguous breach of natural justice, the court is likely to ignore this subsection.

The new s.9A(2) of the principal Act validates the illegal charge of overseas students in technical institutions as if "S.9A of the principal Act ... were then in force". This patently condones the illegal exercise of arbitrary power of the administrator.

However this trend may be justified on the ground of administrative convenience and the specialisation of each Government department. In many respects, the New Zealand public even welcome bureaucracy given the welfare functions of the state is so extensive.

Secondly, in the legislative process, the Cabinet influence is predominant. Once the policy is decided in the Cabinet, and gets the support of the Caucus, it is quite definite that the policy would become law. The imposing of $1500 fee was decided in the Cabinet and even though there was opposition in the submissions in the Education Committee, it became law accordingly. The spokesman of the Cabinet on this Bill was the Minister of Education. He was constitutionally responsible to introduce the Bill into the House, and defend it at various stages of Parliamentary debate. The influence of the Department was quite strong in the drafting stage. The public servants were very much in the background in the Parliamentary debate.

It is unfair to criticise the Department for its incompetence because very often the legal officers have to work under extreme pressure of time. Frequently the Department receives policy guidelines fairly late and has to give legal instructions to the Parliamentary Counsel within a short span of time. The Parliamentary Counsel's influence is limited to the drafting of the Bill only.

The influence of the pressure group is an essential part of the democratic process. They may exert their influence in three levels. Firstly, they may be consulted in stage of policy formulation. In this Bill, it appears that they were not consulted. Secondly, they may make submissions to the Education Committee. In this regard, they successfully persuaded the Committee to set up the appeal authority by statute rather than by regulations. Finally, their submissions may become arguments made by the Members of the Parliament in the debate.

Parliamentary debate is of more a symbolic importance, giving the public an idea that their elected members of Parliament have considered and debated upon the Bill. However its influence is minimal because most Bills would achieve the same result if they are sent straight from the relevant select Committee to the Governor-General for his Royal Assent, except for some controversial Bills.

The whole N.Z. legislative process is not as dictatorial as Bismarck's sausage legislation that the less the people know how they were made, the better they would sleep at night. The Bill is still subject to the scrutiny of the Parliamentary Select Committee and debate. The voice of the Opposition is

at least heard in public debate. On the other hand, the process is not readily responsive to public opinion and the Parliamentary debate is merely of symbolic importance. In this particular Bill, there was also no consultation in the stage of policy formulation.

It is concluded that the New Zealand legislative process is steering a middle-of-the-road course between a Bismarck's type of dictatorial Government and a democratic Government in a sense that it consults various interested parties and duly considers the arguments of the Opposition in the Parliamentary debate.

FOOTNOTES

1. Readers Digest, June 1980, p. 37.
2. Sir W. Ivor Jennings, "The Law and the Constitution" p.305.
3. Mitchell, Government by Party p.53.
4. Priority I: Bills which must be enacted this year or introduced this year for recess study.

   Priority II: Bills of lesser importance which should be drafted if time permits.

   Priority III: Other Bills approved for drafting but which do not need to be enacted in the current year.
5. 1979 New Zealand Parliamentary Debate p.4060.
6. 1979 N.Z.P.D. p.4061.
7. 1979 N.Z.P.D. p.4062.
8. 1979 N.Z.P.D. p.4066.
9. supra.
10. 1979 N.Z.P.D. p.4063.
11. 1979 N.Z.P.D. p.4062.
12. 1979 N.Z.P.D. p.4063.
13. Unreported (A 1597/77).
14. supra.
15. 1979 N.Z.P.D. p.4603.
16. 1979 N.Z.P.D. p.4605.
17. 1979 N.Z.P.D. p. 4609.
18. 1979 N.Z.P.D. p.4607.
19. 1979 N.Z.P.D. p.4613.
20. 1979 N.Z.P.D. p.4795.
21. 1979 N.Z.P.D. p.4796.
22. 1979 N.Z.P.D. p.4797.
23. 1979 N.Z.P.D. p.4798.
24. 1979 N.Z.P.D. p.4803.
25. 1979 N.Z.P.D. p.4801.
26. 1979 N.Z.P.D. p.4805.
27. supra.
28. 1979 N.Z.P.D. p.4806.
29. 1979 N.Z.P.D. p.4806.

APPENDIX A

(i) The assistance of Mr D.C. McCaskill, Office Solicitor of the Department of Education, in allowing me to work in the library of the legal section of that department is gratefully acknowledged.

(ii) Cleveland L., The Politics of Utopia - New Zealand and its Government (1979).

Levine S., Politics in New Zealand (1978).

New Zealand Parliamentary Debate (1979) Hansard, No. 32, 38.

Palmer, The Unbridled Power? 1979.