NEW ZEALAND CENTRE FOR PUBLIC LAW
Te Wānanga o ngā Kaupapa Ture ā Iwi o Aotearoa

New Zealand Journal of Public and International Law

VOLUME 6 • NUMBER 1 • JUNE 2008

SPECIAL CONFERENCE ISSUE
FROM PROFESSING TO ADVISING TO JUDGING:
CONFERENCE IN HONOUR OF SIR KENNETH KEITH

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Faculty of Law
Victoria University of Wellington
PO Box 600
Wellington
New Zealand

June 2008

The mode of citation of this journal is: (2008) 6 NZJPIL (page)

The previous issue of this journal is volume 5 number 2, December 2007

ISSN 1176-3930

Printed by Geon, Brebner Print, Palmerston North

Cover photo: Robert Cross, VUW ITS Image Services

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The **New Zealand Journal of Public and International Law** is a fully refereed journal published by the New Zealand Centre for Public Law at the Faculty of Law, Victoria University of Wellington. The Journal was established in 2003 as a forum for public and international legal scholarship. It is available in hard copy by subscription and is also available on the HeinOnline and Westlaw electronic databases.

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Annual subscription rates are NZ$100 (New Zealand) and NZ$130 (overseas). Back issues are available on request. To order in North America contact:

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LAWYERS IN THE POLICY PROCESS

Gary Hawke*

Legal thinking can contribute to policy analysis and policy development, but it is not a substitute. Policies prescribe general rules which have to be applied to individual cases. They are governed by law but have independent existence. Law is more prominent in the public sector than in the private sector because powers are more likely to be legally constrained, but even so it is more important that appropriate knowledge be brought to bear on public decisions, and law is only one of a number of sources of appropriate knowledge. Knowledge should be sought through discussion, and debate should not be foreclosed by opportunistic interpretation of commitments, including tendentious interpretations of international legal obligations. Public sector leaders must be able to select relevant knowledge from across disciplines and modes of thinking. Sir Kenneth Keith's wide and deep range of interests, combined with his legal eminence, to enable him to be a public sector leader.

I INTRODUCTION

When I was asked to contribute to this conference on the topic of the lawyer as adviser, I thought acceptance would pose no problems. I was a colleague of Ken Keith at Victoria University of Wellington for many years. We have talked about education issues inside the university and more widely. We have interacted in the New Zealand Institute of International Affairs. When I was director of the Institute of Policy Studies, Ken was a frequent adviser on the Institute's activities, and I worked directly with him and his colleagues at the Law Commission. Ken is a lawyer, and I have benefited from his advice in many contexts. What could be the problem?

A little reflection showed that it is not so simple. It was not hard to see that I was being asked to comment on the role of adviser to government rather than to me personally. Ken has certainly been an adviser, but in what sense did he exemplify "lawyers as advisers"?

So I did what we all do these days. I googled.

* Emeritus Professor, and formerly Head of the School of Government, Victoria University of Wellington. Without implicating him in any opinions expressed here, I acknowledge with gratitude the useful comments which Matthew Palmer made on a draft of this paper.

"Lawyer as adviser" gets Google excited. My first hit was a story about "Lawyer, financial adviser accused of fraud. 'I can't say any more, on the advice of my attorneys'. A civil case now making its way … ". That was followed by a story about Scooter Libby but his standing as a lawyer was relevant only to the extent that perhaps he should have been better informed. A long list of references about lawyers in United States government offices was no more fruitful, and indeed seemed to be heavily sprinkled with discussions of offending of various kinds. A paper by Edward Cape of the University of the West of England in Bristol looked more promising and I began to explore a learned discussion of the changed role of defence lawyers as a result of the European Convention on Human Rights.[1] I found myself learning the difference between defenders and advisers, but it did not seem to be leading me anywhere and I noticed that the abstract had had 357 hits and no downloads. So with due respect to Dr Cape, I decided to look elsewhere.

An alternative approach was no more helpful. On the instruction "Ken Keith", Google takes us to Wikipedia, closely followed by a "Kenneth Keith Kallenbach band"[2] which has no connection with our topic — our Ken Keith is rightly celebrated for the opposite of mindless noise. And all that proves is that Google is no substitute for thinking even if it is often very helpful in generating material.

So I thought more about what I knew of Ken's role as an adviser to governments and the general principles it exemplified. I thought especially about public management and policy development and concluded that the case I wanted to argue is essentially that a policy adviser should not be a lawyer — or exclusively a practitioner of any other discipline or occupation, but should be able to use and absorb knowledge relevant to an issue from wherever it comes.

II LAW IN PUBLIC MANAGEMENT

There is no doubt about the importance of law in public management. One of the key early lessons for public servants is that all public sector actions must be lawful, with its corollary that it is the responsibility of the public service to carry out the instructions of ministers, provided they are lawful.[3]

Ken Keith has commented several times on his total rejection of the behaviour implied in a report that an American political leader, on being advised that the legal advice of the British

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1 Edward Cape "From Advisers to Defenders: The Changing Role of Criminal Defence Lawyers and the Educational Implications" papers.ssrn.com/sol3/papers.cfm?abstract_id=1120231 (accessed 20 June 2008).

2 The Kenneth Keith Kallenbach Band www.myspace.com/thekennethkeithkallenbachband (accessed 20 June 2008).

3 For example State Services Commission *The Senior Public Servant* (2 ed, State Services Commission, Wellington 1995) 8, which lists as the first "desirable attribute" of a professional public servant, "obeying and upholding the law". Similarly, the first question is deciding whether a public service action should be reviewed is: "Was it contrary to law?" (ibid, 10).

government was that some proposed course of action was illegal, responded that in that case it should find some new legal advisers.[4] Ken's thinking in any context is the reverse of that; its hallmark is concern with principle.

Challenges to good public management have usually been more subtle. A strong case has been made by Sir Christopher Foster that successive British governments have undermined conventions concerning the roles of ministers and officials in managing public business. Foster, originally a transport economist and a declared Labour voter, has been a long-time adviser to governments of various political complexions. He argues that the traditional relationship between public servants and ministers was undermined by the Thatcher government, further undermined by the Major government, and virtually destroyed by the Blair government.[5] His argument puts particular weight on a decline in acknowledgment of the role of the public service, through its independent and neutral advice, in ensuring the coherence of policy and its consistency with the law. Foster quotes Bagehot:[6]

> An ancient and ever altering constitution is like an old man who still wears with attached fondness clothes in the fashion of his youth; what you see of him is the same; what you do not see is wholly altered.

His argument is that the Blair government did not value policy-making as a professional activity, and although government appeared to operate in familiar ways, it was really fundamentally changed — to the disadvantage of democracy and honest public management.[7]

Foster's principal target is reliance on public relations advisers and techniques. In his view, a proper concern with principled, coherent public policy has given way to preoccupation with presenting government decisions and actions in a way that promotes party political support.[8] He argues that in the course of this change, which occurred progressively over more than twenty years,

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4 A recent example was in remarks to the annual dinner of the NZ Institute of International Affairs, 25 July 2007: Sir Kenneth Keith "Foreign Policy and the Law: Sir Kenneth Keith Comments on the Origins and Role of Foreign International Affairs Institutes" (2007) 32 New Zealand International Review 64.

5 Christopher Foster *British Government in Crisis* (Hart Publishing, Oxford, 2005).

6 Ibid, 238.

7 There are signs that as Prime Minister, Gordon Brown is restoring some of the conventions Foster values. Even before the change of Prime Minister from Blair to Brown, there were clear signs of growing concern within the political and policy institutions about the preservation of conventions, for example House of Lords Select Committee on the Constitution *Relations between the Executive, the Judiciary and Parliament* (The Stationary Office Limited, London, 2007) www.parliament.uk/hlconstitution (accessed 20 June 2008).

8 *British Government in Crisis*, above n 5, 233–234.

concern with legality was lost. He nevertheless is not unqualified in his support for the importance of legal thinking in public management:[9]

> Its strength is that this thinking is based on wide, international experience of the ways in which government activities may be juridified and political decisions disciplined by courts. Among its difficulties is that the development of this thinking has been almost entirely by lawyers to persuade lawyers; that it tends to be sceptical of the value and redeemability of politics and politicians; and that it concentrates too exclusively on lawmaking and the courts as the instruments needed to contain and control the Executive.

The British experience is not the New Zealand experience, but even before the Madeleine Setchell affair there were suggestions of some similar developments here.[10]

It is easy to be seduced by the notion that things were better in the past. Governments have become more ambitious; we forget too readily that the kind of individualised service now thought appropriate by public services was both unimaginable and technically impossible not long ago. Furthermore, we search continually for more efficiency in government — quite properly, since productivity gain is the only ultimate source of improved living standards — but it is not always easy to distinguish securing economies from cutting corners. It is therefore not unlikely that the importance of some processes should be overlooked. The role of the public service in protecting significant processes is an important one.

The role of law in public management is unusual. Law is what confers legitimacy on the use of the State's powers of coercion. It gives effectiveness to the constraints on individual behaviour that permit reconciliation of private and public interests. I have never taken seriously the rhetoric of "government versus the market"; markets and other private transactions take place within constraints that preserve collective interests. Adam Smith's fame rests not on advocacy of private activity but on fruitfully exploring the conditions in which pursuit of private interest promotes public interest. And those conditions include an appropriate formulation and implementation of the law.

While it can be argued that law is best seen as an instrument by which the State's powers of coercion are exercised, I prefer to see the key instruments as people making decisions and taking

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9 Ibid, 293–294.

10 Suggestions of some similar developments surfaced in discussions within the Institute for Public Administration of New Zealand and can be traced in recent issues of Public Sector. For example Bob Gregory "Bringing Back the Buck: Responsibility and Accountability in Politics and the State Sector" (2007) 30 Public Sector 4; Ross Tanner and others "The Political Neutrality of the State Services: Issues and Principles" (2007) 30 Public Sector 3; and Chris Eichbaum and Richard Shaw "Politics and Administration: Some Reflections on the 'Setchell Affair' (or Boundary Riding in the Purple Zone)" (2008) 30 Public Sector 8.

actions. Nevertheless, I concede that little depends on which description one employs. My essential concern is about the nature of the thinking which lies behind collective decision-making.

Individuals gather in groupings of various kinds, and then there has to be some means of regulating how they relate to one another. Policies prescribe general rules which have to be applied with various degrees of discretion to individual cases. Those of us with historical interests can recall the "rules and regulations" by which banks and other private corporations organised the activities of their staff. Nowadays, they are called policies and are derided as decorative rather than scorned as outdated, but their essential function is unchanged. They are governed by law, but they have a more or less independent existence.

They have their parallel in the public sector. But the law looms much larger. There is likely to be a more precise specification in law of the powers which the entity is exercising, and there will be a specification in law of the purposes for which the entity can spend its funding.

I recall about 20 years ago, sitting in a minister's office waiting for him to arrive for an appointment. He duly entered and tossed to me a thick file of papers. "That is what my colleagues expect me to put through the House this session." I responded, "Don't worry about that. That is only law. Where are you going to get your money and how are you going to spend it?" The different preoccupations of lawyer and economist were starkly shown, and a longstanding friendship imperilled.

It was, of course, a false dichotomy. The government's need for lawful authority to raise and spend money was at the core of our system of government, part of our inheritance from British seventeenth century history. The Minister's concern with the parliamentary timetable and my interest in the economic impact of government activity were alternative ways of looking at the same thing. But there is a different kind of behaviour which flows from the different conceptions of how public management proceeds. One focuses on an interaction between public sector and citizens; the other focuses on the authority for specific actions which add up to the totality of those transactions. Both have their place.

Foster's argument as a whole directs our attention to the general relationship between ministers and public servants, something which has exercised the Institute of Policy Studies and School of Government repeatedly over the last 20 years.[11] What is important is not that ministers listen to qualified advisers on what lies within their lawful powers, although that is important. What is most

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11 For example JR Nethercote, Brian Galligan and Cliff Walsh (eds) *Decision Making in New Zealand Government* (Federalism Research Centre, Australian National University, Canberra, 1993); GR Hawke *Improving Policy Advice* (Institute of Policy Studies, Wellington, 1993); Colin James *The Tie that Binds: The Relationship Between Ministers and Chief Executives* (Institute of Policy Studies and New Zealand Centre for Public Law, Wellington, 2002).

important is that appropriate knowledge be brought to the decisions by which lawful coercive powers are used to influence private behaviour.

Politicians are sometimes criticised for not valuing the contributions of public servants and advisers. This is not a new phenomenon or one restricted to New Zealand. I like the expression used by Benjamin Strong, Governor of the Federal Reserve Bank of New York in the 1920s, in a private letter:[12]

> In their great desire to lay all of the troubles and fancied troubles of this country to the New York Stock Exchange, some of our legislators go to such length that it makes it difficult to decide where ignorance leaves off and willful misunderstanding begins.

I often think that this can be generalised over time and space. But sober reflection forces me to recognise that the large number of ministers with whom I have interacted over the last 30 years have been driven by a sense of public service. I have not always, indeed perhaps seldom, agreed with how they conceived the public to be best served, but their motives have seldom been other than creditable. Of course, they are sometimes short term in outlook and self-interested but such characteristics have not been dominant. Michael Ignatieff was entirely right when he recently observed: [13]

> The philosopher Isaiah Berlin once said that the trouble with academics and commentators is that they care more about whether ideas are interesting than whether they are true. Politicians live by ideas just as much as professional thinkers do, but they can't afford the luxury of entertaining ideas that are merely interesting. They have to work with the small number of ideas that happen to be true and the even smaller number that happen to be applicable to real life. In academic life, false ideas are merely false and useless ones can be fun to play with. In political life, false ideas can ruin the lives of millions and useless ones can waste precious resources.

Conscientious ministers, as most of ours are, face demanding tasks. Behaving at all times with due consideration for advisers, while a laudable ambition, is unlikely to be achieved.

We might well think that our politicians at times are arrogant and dismissive of public servants. Nevertheless, even if Foster is right about trends in the United Kingdom, I am confident that we have not done as much in New Zealand to destroy the traditional partnership of ministers and officials. There has certainly been change, especially as ministers have had to give higher priority to managing their cross-party support in parliament, but capable officials continue to operate with

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12 Quoted in Gary J Santoni's book review of Roger W Spencer and John H Huston *The Federal Reserve and The Bull Markets: From Benjamin Strong to Alan Greenspan* (Edwin Mellen Press, Lewiston, 2006) www.eh.net/bookreviews/library (accessed 20 June 2008).

13 Michael Ignatieff "Getting Iraq Wrong" (5 August 2007) *New York Times* New York www.nytimes.com (accessed 20 June 2008).

traditional independence.[14] Maintaining that position requires the application of both legal and other skills.

III LAW AND POLICY ADVICE

New Zealand's state sector legislation mostly refers to "policy advice".[15] I prefer the term "policy development" because it reminds us that what is involved is a professional activity in which research and judgement are involved. To many people, "advice" means off-the-cuff recommendation based on existing knowledge (or prejudice). Whatever the terminology, resources are used and a great deal of time and effort is expended in preparing plans for government action. And there is a legal element in this.

Sometimes policy development is close to being a legal process. An obvious example, one in which Ken Keith was intimately involved, was the decision and subsequent action by the New Zealand government to challenge at the World Court the legality of France's testing of nuclear weapons in the Pacific.[16] The campaign was essentially like the management of any private lawsuit. Of course, there are always "external" aspects to any legal process and we could investigate the reasoning behind the decision to lodge a legal challenge but my concern is to describe a spectrum in the contribution of legal content to public sector actions, not to assert the existence of anything which is "purely" legal or non-legal.

Usually, there is more interaction between legal and non-legal components than there was in the example just cited. Sometimes the legal is more or less dominant. For example, much policy development is currently being devoted to formulating New Zealand's approach to an international agreement on greenhouse gas emissions after 2012.[17] The end product in view is an international agreement and the policy task is to determine what New Zealand would like to see in the content of that agreement and to decide tactics which make it more likely that international negotiations will generate something congenial to New Zealand. The end point is a legal instrument but the process of policy development includes a great deal of collective decision-making which is not particularly legal in nature. Still further along the spectrum are policy developments which will involve some making of statute law but where that is more or less incidental to the policy issue. For example, the

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14 See above n 11, and R Malone *Rebalancing the Constitution: The Challenge of Government Law-Making Under MMP* (Institute of Policy Studies, Wellington, 2008). Recent symposia at the Institute of Policy Studies (proceedings to be disseminated in forthcoming publications) also explored this issue.

15 This is shown most readily in the "output classes" used in the estimates for any of the major departments.

16 Malcolm Templeton *Standing Upright Here: New Zealand in the Nuclear Age* (Victoria University Press, Wellington, 2006).

17 For example, Jonathan Boston "Global Climate Change Policies: From Bali to Copenhagen and Beyond" (2008) 4 Policy Quarterly 50; Gary Hawke "Internationalisation and the Future of the School of Government" (2008) 4 Policy Quarterly 3, 5–7.

government is currently seeking to reform the basic system by which it finances tertiary education. Key decisions are being formulated and made about the balance to be struck between central steering decisions and the autonomous decisions of tertiary education organisations. The system of funding tertiary education is being shifted in the direction of enhancing capability to deliver quality learning at the expense of increasing participation in tertiary education. A quality assurance process involving self-evaluation and external review is being constructed.[18] Much of this will eventually have to be expressed in statutory amendments (despite a wish to do as much as possible without engaging in the lengthy and unpredictable bargaining among political parties which necessarily precedes legislation by the current Parliament). In this process, we will probably revisit some statutory drafting issues in which Ken Keith played a role in 1989–90,[19] and we will certainly revisit the less than ideal drafting of the Education Act 1989 (for which Ken was not responsible). Some decisions in recent years about the interaction between government statements about priorities for tertiary education with statutory provisions about the purposes of tertiary education institutions will require careful consideration, but the fundamental issue is not legal. It is about what we seek from the tertiary education sector as a matter of collective political decision-making.

When he chaired the Legislation Advisory Committee, Sir George Laking was heard to say in several contexts: "Get the policy clear first. Then ask me about the quality of the proposed legislation."[20] He knew perfectly well that this was not a complete statement. There are always questions of judgement about when one should call in legal expertise to begin the drafting; the most convenient mechanism for clarifying the precise issues on which policy judgements are needed may be to start writing down the Bill which Parliament will be asked to consider. But the underlying message was right: legal drafting is not a substitute for a good policy process. If one does seek clarification by seeing how a Bill can be expressed, the focus should remain on what judgements are being made about how we should collectively seek to influence or direct behaviour rather than on whether clear rules are being made about how disputes will be settled.

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18 I chair the Quality Assurance Expert Advisory Group, which issued *A Report to the Education Sector Leadership Group and Minister for Tertiary Education* (November 2007) www.nzqa.govt.nz/for-providers/tertiary/ (accessed 20 June 2008).

19 Sir Ken Keith was an important intermediary between universities and officials as the Bill was drafted, especially on appropriate wording for institutional autonomy and academic freedom.

20 His statement can still be traced in the Legislation Advisory Committee Guidelines. Those who interacted with him as the chair of the committee cannot read the opening passage — "1.1.1 Outline of issue: An essential first step is to clearly define the policy objective/s" — without hearing his intonation: Legislation Advisory Committee *Guidelines on the Process and Content of Legislation* (Ministry of Justice, Wellington, 2001). When Ken was at the Law Commission, he was a major influence on the Legislation Advisory Committee, working closely with Sir George Laking.

All of this is familiar, but it is a lesson which needs constant reiteration. Current policy decisions have to be made within the law; decisions about how policy should operate in the future have to be accompanied with care about creating the appropriate legal framework in which future decisions can be made.

The contemporary leading edge is usually found in relation to international law. Greater international interdependence in many fields is making domestic policy-making interact more with international legal instruments. Policy-making in New Zealand has to be consistent with New Zealand's international obligations. The policy-making process in New Zealand has to encompass more effort towards making international commitments congenial to the collective decisions we wish to make — even if we dislike having to use our resources for international effort rather than for direct contribution to well-being in New Zealand. The Police Commissioner, for example, has to resolve a tension between participating in international police efforts and satisfying community demands for local police patrols, and a similar statement could be made about other policy areas and other areas of interaction between policy-making and public management. The conference for which these articles were prepared covered a great deal about the interaction of international and national laws from the early foresight of Ken in the 1960s to significant problems preoccupying some fine legal minds now.[21]

At the same time, we should be well aware that international obligations can be used opportunistically. If one can establish that New Zealand is bound by its ratification of an international instrument to provide something to all New Zealanders as a matter of right, then an argument over whether there should be a particular transfer from taxpayers to a class of beneficiaries has been foreclosed. It should not be without conscious reasoning; one person's benefit is balanced by somebody else's tax. The language of "rights", like that of "social justice" before it, can be a piece of political activism, a device for shortening consideration of what social redistribution is appropriate. While we should participate in international efforts, we should not allow overseas activism to pre-empt our own reflection. The notion of international customary law therefore has to be watched to ensure that it does not become an instrument of anti-democratic authoritarianism.[22] The interpretation of international instruments can be puzzling. I find it hard to establish the logic by which an agreement to provide freedom of association becomes a duty to promote membership of trade unions. The opening statement on the International Labour Organization (ILO) website is:[23]

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21 For the full collection of papers, see Claudia Geiringer and Dean R Knight (eds) *Seeing the World Whole: Essays in Honour of Sir Kenneth Keith* (Victoria University Press, Wellington, 2008, forthcoming).

22 For a different view, see Matthew Palmer and Claudia Geiringer "Human Rights and Social Policy in New Zealand" (2007) 30 Social Policy Journal of New Zealand 12.

23 About the International Labour Organization (ILO) www.ilo.org (accessed 20 June 2008).

> The International Labour Organization (ILO) is devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Its main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues.
>
> In promoting social justice and internationally recognized human and labour rights, the organization continues to pursue its founding mission that labour peace is essential to prosperity. Today, the ILO helps advance the creation of decent jobs and the kinds of economic and working conditions that give working people and business people a stake in lasting peace, prosperity and progress.

That is entirely consistent with the Constitution of the ILO, including its provisions that delegates should include members of the organisations "most representative of employers or workpeople".[24] However, in practice, promotion of "freedom of association" becomes promotion of collective bargaining without qualification. This is apparent in comments from ILO delegations and commentators on New Zealand industrial relations law in the 1990s.[25] My comment is not about the desirability of trade unions. It is about the way in which international organisations are used to foreclose debate.

The extent to which we want collectively to foster trade unionism is an entirely proper subject for political debate. I see no reason to foreclose the debate by a particular reading of an international agreement. We should remember that a pervasive feature of the whole bibliography of Ken Keith's writing is a consistent advocacy of both openness to international influences and conscious debate about where the public interest lies.

I am not suggesting that only international commitments pose problems of this type. Political rhetoric in many contexts can take the essential form:

(a) Parliament has prescribed certain requirements for the executive;
(b) as an activist and enthusiast for this cause, I have no doubt that in our modern society, that requirement should be understood in the way I favour;
(c) therefore, government expenditure should be increased as I suggest.

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24 ILO Constitution, art 3 para 5.

25 The interpretation by the ILO of "promoting freedom of association" is long-standing. A Declaration Concerning the Aims and Purposes of the International Labour Organisation (the Philadelphia Declaration) was adopted in 1944. It repeats the provision of the constitution of the ILO for promoting "freedom of association" but asserts (in cl III) the responsibility of ILO to promote "(e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures": www.ilo.org/ilolex (accessed 4 August 2008). Reports of Committees of Experts on the Application of Conventions and Recommendations are routine ILO publications, and they show a dominant motivation of promoting trade union engagement rather than deliberation about optimal provisions for "freedom of association".

The fundamental policy issue of how costs should be shared between taxpayers and private beneficiaries is thus evaded. For some people, the argument looks even more impressive when it is made by qualified lawyers. A pseudo-legal argument preempts political and policy debates.

Reflections like this quickly lead us into identifying tensions among modes of thinking which become instinctive to members of particular disciplines. I frequently find myself thinking that lawyers resort much too quickly to the idea of collective institutions as protectors of individuals but then others think that economists are too ready to assume that we have institutions — rules and processes — which enable us to be sure that pursuit of individual self-interest will generate a social optimum. That is a rather obvious contrast, but its reach is deep. I was struck by other contributions to the conference, those of Professors Benedict Kingsbury and Janet McLean which set legal conceptions in wider perspectives. Professor Kingsbury's notion of "publicness" is especially attractive as a tool of policy analysis.[26] But then Benedict implicitly identified "funded access" with "publicly-funded access" and never stopped to ask who among the public should contribute. Professor McLean did ask who was on the other side of the Crown, but did not follow it through far enough to find taxpayers.[27]

To put it simply, and perhaps simplistically, the legal presumption is not only that if there is a legal right, then there should be a legal instrument for enforcing it; but also that the legal instrument is a collective one and we do not need to investigate who pays for it. Policy analysis cannot proceed on such an incomplete basis. Presumption that collective action is the only available instrument is becoming increasingly inadequate. One of the key trends of the last 40 years has been a realisation that security and protection of individual rights can often be done through market transactions. There is a long history of changes in the role of governments which have come about through ideological and political struggles, but those struggles were themselves influenced strongly by other social and economic trends. In the last 50 years, we have experienced a change which may eventually be recognised as commensurate to the effect of municipalisation in the early 20th century. Whereas until the 1960s the obvious way of managing risk was to socialise it, learning how to price options on future activity has shifted a great deal of risk management to private institutions.

IV DISCIPLINES AND SPECIALISATION

I trust it is apparent that I respect the role of lawyers in public management and policy development. Most of my argument has been the inadequacy of reliance on any single discipline or related sets of disciplines.

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26 Benedict Kingsbury "Global Administrative Law: Implications for National Courts" in Geiringer and Knight (eds), above n 21.

27 Janet McLean "'Crown Him with Many Crowns': The Crown and the Treaty of Waitangi" (2008) 6 NZJPIL 35.

Furthermore, I have not wanted to argue against the importance of disciplines. Disciplines are appropriate vehicles for learning specialised and advanced knowledge. The day of the amateur in public management and policy development is over. Challenges now require sophisticated knowledge, and sophisticated knowledge tends to come through advanced learning in disciplines. New knowledge often comes from the boundaries and interactions of existing disciplines, but the knowledge which is most important for practical applications mostly comes from the body of existing disciplines.

I do not subscribe to belief in a golden age where generalists managed public affairs.[28] I do subscribe to a belief in liberal education but there is nothing about a liberal education which produces amateurs. Liberal education enables the acquisition of ability to engage in conscious critical reasoning. And the essence of a liberal education rests on a style of learning, not on a narrow subset of subjects.

It is certainly true that deep training in a discipline inculcates habits of mind as well as giving familiarity with a specific knowledge content. Historians are predisposed to search for the balance of continuity and change in any situation and to take for granted that their task is to establish knowledge in the face of incomplete information. Economists will instinctively conceptualise a problem in terms of constrained maximisation. Lawyers are also members of a club. So are those who think of themselves as practitioners of other disciplines.

Deep knowledge is to be valued. But we all find ourselves from time to time in the position of Richard Dawkins when he found himself disagreeing with Fred Hoyle without appreciating the irony of the champion of scepticism using the argument usually employed to justify religious indoctrination of children:[29]

> At an intellectual level, I suppose he understood natural selection. But perhaps you need to be steeped in natural selection, immersed in it, swim about in it, before you can truly appreciate its power.

While we need to employ the knowledge that comes from ability instinctively to deploy professional competence, we cannot engage in public debate without accepting the challenge to explain to those who are not members of the profession or who are not trained in a particular discipline why specific knowledge is valid and relevant.

My argument is that public management and policy development usually require a bringing together of knowledge in several fields, one of which is likely to be the law. One of the least valuable — but not infrequent — comments in public debate is, "it is not my field". Significant issues seldom lie in any particular field. It is the job of policy analysts to know enough about

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28 Michael Lind "In Defence of Mandarins" (2005) 115 Prospect 34.

29 Richard Dawkins *The God Delusion* (Bantam Press, London, 2006) 117.

whatever is relevant to the issue before them to do their job. It is often especially important to know the limits of their knowledge. The importance of lifelong learning is a very practical issue.

Let me take only one further step. It is the job of public sector leaders to know which of various disciplines and modes of thinking are likely to be especially important to appropriate analysis and management of significant issues. In the management of strategic policy initiatives, this may be the most important of all requisites.

Another way of putting this is that Ken Keith's success as a leader of our public life certainly owes a good deal to his ability as a lawyer. But we should also appreciate the significance of his role in organisations like the New Zealand Institute of International Affairs, his willingness to participate in interdisciplinary debate, and his insistence on engaging with a range of disciplines as he focuses on any issue. These are not optional extras; they are at the core of how he has used his standing as a lawyer to be a public leader.