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CITIZENSHIP UNDER NEO-LIBERALISM:
IMMIGRANT MINORITIES IN NEW ZEALAND
1990-1999

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A thesis submitted to University of Auckland in partial fulfilment of the requirements for the degree of Doctor of Philosophy in Politics
University of Auckland
For Graeme and Bridget
Abstract

Ideally, a citizen is an individual who is a formal member of a self-governing political community, with individual rights and freedoms that are equal to those of other citizens, and which are protected by law.

This thesis investigates how closely the citizenship status of non-Maori ethnic minorities in New Zealand approximated this ideal during the 1990s. Its particular focus is on how the neo-liberal ideology of National and Coalition Governments between 1990 and 1999, and those Governments’ understandings of the nature and political significance of ethnicity, affected the ability of those belonging to non-Maori ethnic minority groups to be full and equal members of the New Zealand political community, with an equal capacity for self-governance at the individual level and as members of the political community.

The thesis takes the form of a survey of public policy and law over a period of nine years. Five broad areas or aspects of public policy are examined: the collection and dissemination of official ‘ethnic’ statistics; immigration and citizenship policy; civil rights provided for in domestic and international law; mechanisms for ensuring access to political decision-making; and social policy. The question asked in the thesis is whether the policies developed and administered in each of these areas during the 1990s enriched or detracted from the citizenship status of non-Maori ethnic minorities.
Many people have been involved in the completion of this thesis. First thanks go to my principal supervisor, Professor Andrew Sharp of the Department of Political Studies of the University of Auckland for his astute and stimulating guidance during the writing of the thesis. Thanks also go to Dr Rian Voet, of the Department of Political Studies at Auckland University who supervised me for a short period in Professor Sharp’s absence. Special thanks go to John Martin of the School of Public Management at Victoria University of Wellington who, in an unofficial capacity, provided invaluable guidance and support while I completed the thesis in Wellington.

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Lastly, I thank all the members of my family, particularly my parents, Nancy and Stuart McMillan for their kindness and their faith in me, and for their proof-reading; my mother-in-law Bernice Acton for her kindness, my sister Natasha McMillan, for her support and friendship; and, most importantly, my husband Graeme Acton, for his love and support.
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Introduction

My subject in this thesis is the treatment of non-Maori ethnic minorities by New Zealand governments and government agencies between late 1990 and 1999. During this time New Zealand was governed by a series of National Party-dominated Governments enamoured with the economic and philosophical arguments of neoliberalism. The main theme of this thesis is the impact of these liberal, and at times extreme liberal, ideas as expressed through Government policy and practice during this period, on the citizenship status of non-Maori ethnic minorities in New Zealand.

By the mid-1990s New Zealand had a small but significant non-Maori ethnic minority population. Traditionally New Zealand had received the great majority of its migrants from Great Britain or Northern Europe, with the result that for the first 150 years after European settlement New Zealand’s population was composed almost entirely of Europeans and Maori. In 1961 an overwhelming 98.7 percent of New Zealanders were either Maori or European. By 1984 this number had dropped only slightly to 94.5 percent. But after changes to immigration laws in 1987 and 1991 New Zealand suddenly began receiving significant migrant flows from North and East Asia. At the same time existing Pacific Island populations grew more quickly than the national population as a whole, due both to the higher birth rates of their youthful population and immigration. As a result of both factors – immigration and natural increase – by 1996 non-Maori ethnic minority groups constituted 14 percent of the total population. (see Figure 1.1).

Furthermore, population projections based on the 1996 census data predicted that both the Pacific Island and Asian populations would continue to grow as a percentage of the national population into the foreseeable future. Population projections released in 1998 put the expected growth of the Asian population at 99 percent in the twenty years from 1996 to 2016,¹ by which time they were expected to make up nine percent

¹ This figure is based on a medium projection, which assumes a net gain of 4,000 Asian immigrant per year over the long term, and a natural increase (birth rate) that will contribute 54 percent of this growth. Other projections using different immigration rates put the growth at between 76
of all New Zealand residents, while Pacific Islands people would comprise about eight percent, and the NZ European percentage would have dropped below 65 percent of the national total. By 2051 Pacific Islands people were expected to constitute 12 percent of the national population. (Asian population projections were not done beyond 2016).

The categories used in Figure 1.1 disguise an internal diversity that becomes apparent when a further ethnic breakdown is provided. As Figures 1.2 and 1.3 show, the ‘Pacific Island’, ‘Asian’ and ‘Other’ categories are used to describe a very diverse range of ethnic groups.

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1 Asian population projections were not done beyond 2016.
3 Also significant was a fifteen percent drop in the number of people who considered themselves to belong to a single ethnic group between 1986 (94.6 percent) and 1996 (81.0 percent) Statistics New Zealand, Ethnic Groups. 1996 Census of Populations and Dwellings, Wellington, Statistics New Zealand, 1997, p. 15.
It is these non-indigenous ‘ethnic minority’ groups which are the focus of this thesis.

(Source: Department of Internal Affairs, *Ethnic Diversity in New Zealand: A Statistical Profile*, based on 1996 census data)

(Source: Department of Internal Affairs, *Ethnic Diversity in New Zealand: A Statistical Profile*, based on 1996 census data)
Clearly by 1996 New Zealand’s population was ethnically diverse and set to become much more so in to the future. Yet because this rapid ethnic diversification of the population was so recent, and because many ethnic minority groups tended to keep a comparatively low political profile, the social, political and economic implications of the growing ethnic diversity were given little attention by governments and academics until the 1990s. New Zealand did not, for example, develop a range of ‘multicultural’ policies designed to meet the specific needs of ethnic minorities in the way that other immigrant-accepting states as did the United States, Canada and Australia. Nor, with some notable exceptions, did the political concerns of non-indigenous ethnic minorities seem to be of much interest to academics.

This is not to say, however, that the great burgeoning of international interest in ‘ethnic’, ‘cultural’, and ‘indigenous’ issues in the 1980s passed New Zealand by. On the contrary, from the early 1980s onwards New Zealand politicians and academics focused growing attention on the moral, political and social claims presented by an increasingly activist Maori population. These claims, and governments’ responses to them, became the subject of an extensive local and international literature on the subject as well as a complex and evolving jurisprudence relating to the Crown’s responsibilities under the Treaty of Waitangi. Increasingly this literature tied analysis

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4 For a comprehensive bibliography of books, articles and theses relating to New Zealand immigrants and immigration policy up until 1989, see Andrew Trlin and Paul Spoonley, New Zealand and Immigration: A Digest and Bibliography, Palmerston North, Department of Sociology, Massey University, 1986 (Number 1) and 1992 (Number 2).


7 The Treaty of Waitangi was signed by the British Crown and Maori Chiefs in 1840. As a result of the Treaty, the British Crown claimed sovereignty over New Zealand.
of Maori issues into analysis of ‘indigenous’ issues internationally, with the effect that non-indigenous ethnic issues came to be understood as quite separate from and different to indigenous ones. This separation, and the much higher profile of Maori political issues, largely explained why the political issues concerning non-Maori received so little attention from academics and policy makers. Arguments in favour of ‘biculturalism’, for reparative justice via Crown settlements with various tribes, and for greater levels of Maori self-determination, were forcefully put by Maori and their supporters during the 1980s and 1990s. The moral and legal strength of such arguments precipitated significant changes in the way in which New Zealand governments thought about and dealt with its relationships with Maori, and greatly increased the awareness within government of the need to be sensitive to ‘ethnic’ and ‘cultural’ differences.

While this increased sensitivity towards different cultures had some benefits for members of non-Maori ethnic groups, the attention focussed on Maori issues by politicians and political commentators alike seemed to crowd out the possibility that the issues and concerns of other ethnic minorities would receive much attention. Indeed, it was often part of the Maori argument that any attempt by government to deal with the problems of other ethnic minorities should wait until Maori themselves were in a much more favourable and secure position within New Zealand society. Thus ‘multicultural’ policies of the type pursued in other countries with significant immigrant minorities were often placed in opposition to the policy of ‘biculturalism’.

Influential as Maori-Crown relations were on the way in which ethnic issues were considered by the National Governments of the 1990s, perhaps even more important were those Governments’ broad ideological convictions. Each of the Governments elected and formed in 1990, 1993\(^8\) and 1996 was committed to the economic, moral

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\(^8\) Although National won the 1993 election, between 1994 and 1996 it governed mainly as the major partner in a series of minority coalitions, albeit generally with coalition partners consisting only of single MPs. In 1994 the defection of National MP Ross Meurant forced National into a coalition Government with Meurant’s new Right-of-Centre Party. In the run up to the 1996 election - the first under the new Mixed Member Proportional electoral system - several more National MPs left to join small new parties. National found itself alternating between single party minority, coalition minority, and coalition majority government: with the Right-of-Centre party (between May and August of 1995), as a single-party minority government (between August 1995 and February 1996), then, for a short period, a majority coalition with the United Party (February-March 1996) and then in a minority coalition government with the United Party, reliant on support from the Christian Democrats,
and philosophical arguments of neo-liberalism, although National's coalition partner
between December 1996 and 1998, the New Zealand First Party, exerted something of
a moderating influence, particularly in social policy. (That coalition lasted until late
1998, when the New Zealand First Party left the coalition, after which a minority
National Government governed with the support of various right-leaning independent
MPs.) Neo-liberalism of the type pursued by National during its period in office
spoke of the economic and moral benefits of removing the state from many aspects of
individual's lives. Central to this conviction was the classical liberal view that
individuals were self-interested utility-maximisers who, if given a free market within
which to exercise consumer choice, would pursue their own vision of the 'good life'
based on the economic and social information spontaneously provided by the market.
Neo-liberalism was thus profoundly individualist and materialistic.

In contrast, the 'ethnic' or 'cultural' forms of identity on which the Maori based many
of their claims, and on which policies of 'multiculturalism' are usually based,
emphasised the collectivist roots of individual identity, and the continuing importance
of the collective for the individual's sense of self and well-being. For the National
Governments of the 1990s the challenge of responding to the various Maori claims to
justice lay in finding responses which fitted both with their own liberal, individualist
view of the economy and politics, and with the collectivist views embodied in many
of the Maori demands.

In this thesis I am interested in how the interaction of these two factors -- neo-
liberalism, and the sort of thinking about ethnicity that emerged from the
Government's interactions with Maori -- affected the citizenship of non-Maori ethnic
groups in New Zealand.

'Citizenship' is a complex and, in many respects, problematic term, but it remains a
central concept in the discussion of modern democracy. In its narrowest sense the
term is used to describe the formal status accorded legal members of a particular
political community, and distinguishes between those who are legally members of a

Levine, Elizabeth McLeay, and Nigel S. Roberts, New Zealand Under MMP. A New Politics?,
political community (citizens) and those who are not. In its wider sense the concept of citizenship is used as an analytical and descriptive tool with which to better understand the nature of political membership and identity. Citizenship discourse in this second sense focuses on the rights, freedoms and obligations that accrue from membership in a particular political community. It is with citizenship as it is understood in this wider sense that this thesis is concerned.

In the 1990s the concept of citizenship enjoyed something of a renaissance within the social sciences. Sociologists and left-leaning political theorists found the concept useful in mounting a defence of the social benefits of citizenship that were being undermined during a period of neo-liberal, anti-welfarist governance. Political philosophers were particularly interested in its ability to facilitate a reconciliation between a liberal insistence on individual rights and justice, and the community-based justice demands of ethnic and other minority groups. Political scientists and democratic theorists from both the right and left became interested in the relationship between the personal qualities of a citizenry and the strength of their democracy.

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9 Idem.
Although citizenship theorists seem to agree on very little — except, perhaps that 'citizenship' is an essentially contested term — some underlying assumptions are common to all the literature. For a start, there is the assumption that citizenship entails membership of a self-governing political community, and, as members of that political community, and not another one, citizens share at least some aspects of their identity in contrast to those who are not members. Citizens of a state are also generally considered to be equal in some politically important respects to their fellow citizens — usually in that there is an equal distribution of rights and responsibilities among them. From these common themes a cluster of eight key elements of citizenship are discernible: identity, membership, political community, equality, rights and responsibilities, participation and representation. It is around these eight elements that this thesis is structured.

In the first chapter it is argued that ideally a citizen is an individual who is a formal member of a self-governing political community, whose individual rights and freedoms are equal to those of other citizens and are protected by law. Using the eight elements of citizenship identified above this thesis investigates how closely the citizenship status of non-Maori ethnic minorities in New Zealand approximated this ideal during the 1990s. In particular it investigates how the National Governments’

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neo-liberalism, and their understandings of the nature and political significance of ethnicity, affected the ability of those belonging to non-Maori ethnic groups to become full and equal members of the New Zealand political community, with an equal capacity for self-governance at the individual level and as members of the political community.

In undertaking this study I make a connection between several bodies of literature in a way that has not, to date, been done in New Zealand. As already pointed out, Maori have been the focus of most domestic and overseas literature concerning ethnic politics in New Zealand. However, since the late 1980s academic interest has begun to focus also on New Zealand's growing non-Maori ethnic populations. Much of this interest has been stimulated by, and relates to, changes in New Zealand's immigration policies during the past two decades,¹⁵ (although a number of studies have also been done on the social and economic organisation of immigrant communities in New Zealand).¹⁶ This is one body of literature on which I draw.


Another is the extensive domestic literature about the effects of neo-liberal ideology on the policies and practices of New Zealand governments since 1984. Not so much has been written about the ideology and experience of citizenship in New Zealand, although there are indications that it is a growing field of scholarship. My aim in this thesis is to apply the theory of citizenship to a study of the experiences of non-indigenous ethnic minorities in New Zealand during a period of neo-liberal governance strongly influenced by the moral, legal, and philosophical arguments of the indigenous people of New Zealand that they were a distinct 'ethnic', 'racial', sometimes 'national' group (or groups), deserving of and entitled to special treatment as such.

The thesis takes the form of a survey of public policy over a period of nine years. The main resources used were government policy statements and documents, combined with the responses from the media, academics, and other interested parties that those statements and documents stimulated. Throughout the thesis the attempt is made to assess the impact of government policies on the social, political and economic status of non-Maori ethnic minorities, using statistical data to back up those assessments where possible and appropriate.

Structure of the thesis

The thesis is divided into two sections. The first section, constituting two chapters, is intended as a theoretical and political scene-setter for what follows.

Chapter One sets up a normative ideal of citizenship against which the citizenship status of non-Maori ethnic minorities in New Zealand may be measured. It begins by

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17 See Chapter Two of this thesis.
tracing the development of the concept of citizenship from its origins in ancient Greece to its contemporary social-liberal and neo-liberal versions, examining the challenges that ethnic diversity presented to each model. It queries how well equipped these contemporary liberal models of citizenship are to deal with issues of ethnic difference. It then focuses on the specific citizenship needs of immigrant minorities (in contrast to ‘national’ minorities), and identifies a range of policies which modern states need to implement if ethnic minorities are to access their legally equal civil and political rights.

Chapter Two provides a sketch of the historical, political, social and economic context in which the National and National-Coalition Governments of the 1990s developed and implemented their policies relating to non-Maori ethnic minorities. The main aim of the chapter is to map out the way in which New Zealand governments from the mid-1980s onwards moved towards a neo-liberal understanding of the relationship between the state and its citizens. It begins with a very brief look at New Zealand’s political history, focusing particularly on the social-liberal consensus that emerged after the Great Depression of the 1930s and given practical expression in the social welfare state established by the first Labour Government of 1935-1949. A second section examines the main administrative and economic changes put in place by the fourth Labour Government of 1984-1990, along with the economic and philosophical rationales behind such changes. The final section of the chapter outlines the way in which the National Government extended the neo-liberal reforms begun by Labour into the social welfare area, effectively ushering in a new understanding of what it meant to be a citizen in New Zealand.

Having laid out some of the requirements which states must fulfil if immigrant minorities are to experience full and equal citizenship, and given some background to the political context within which National made its policy decisions, in Section Two I move to the central question of the thesis: how was the citizenship status of non-Maori ethnic minority people in New Zealand affected by the policies and actions of National and National-Coalition Governments in the 1990s?

Chapter Three, the first in this section, concerns identity and citizenship. Its focus is the way in which governments in the 1990s conceived group identity, and the impact
of this conception on the citizenship of those conceived of as belonging to 'non-indigenous ethnic minority groups'. In the 1970s the New Zealand government stopped measuring the 'racial' identity of its citizens, and started measuring their 'ethnic' identity instead. The movement from a racial to an ethnic understanding of identity was largely motivated by a liberal desire to reject the insidiously discriminative assumptions which had underlain 'racial' categories in the past. But, the chapter argues, the difference between 'ethnicity' and 'race' was not as great as all that. 'Ethnic' forms of identity, like 'racial' ones, linked together the cultural, physical, and historical aspects of an individual's identity. The more significant change was the use to which those statistics were put during National's administration in the 1990s. Under National, the redistributive justice goals which had justified the collection of ethnic statistics for the previous twenty or so years were largely rejected. Instead, National used 'ethnic' statistics to identify sub-populations that posed social and fiscal risks to government, and then implemented strategies to minimise the costs associated with those risks. One of the central questions of the chapter then, is what effect the collection of 'ethnic' statistics, which – by the mid-1990s – showed increasing ethnic inequality, had during a time when the Government did not see the reduction of inequality as a primary social goal.

Chapter Four is about the relationship between political community, membership, identity and citizenship. The chapter begins by asserting that historically the New Zealand political community had been built on a strong 'racial' or 'ethnic' understanding of what it meant to be a New Zealander. Successive governments attempted to protect that ethnic 'core' by operating immigration policies which strongly favoured migrants from Britain and effectively discriminated against those from other, particularly non-European countries. But the Bolger/Shipley National Governments, like the Lange/Palmer/Moore Labour Governments before it, rejected such discriminatory immigration policies. Convinced that so long as migrants were well-educated, highly-skilled, proficient in English and with sufficient capital to support themselves, their ethnicity was irrelevant, National enacted significant changes to immigration policy in 1991, leading to the arrival of an unprecedented

number of migrants from ‘non-traditional source’ countries, especially Asian countries. The arrival of these new migrants challenged the existing conception of New Zealand as a political community comprising ‘Pakeha’ (as those New Zealanders of European, particularly British descent were increasingly known) and Maori, and perhaps a few Pacific ‘cousins’. The chapter investigates how National dealt with the cultural, linguistic and political issues that this new migration stream raised, and considers whether the immigration and settlement policies enacted by National assisted new ‘ethnic minority’ migrants to become a part of the New Zealand political community.

Chapters Five, Six, and Seven concern the rights of citizenship, and whether these rights were enjoyed equally by non-Maori ethnic minorities and other New Zealanders. Chapter Five examines the civil rights accorded to ethnic minority citizens under New Zealand and international law. The main aim of the chapter is to ascertain whether New Zealand law and practice during the 1990s provided non-Maori ethnic minorities with equal access to the civil rights of citizenship enjoyed by other New Zealanders. Using the arguments in favour of ‘assistance rights’ advanced in Chapter One, the chapter asks whether New Zealand law gave ethnic minority individuals equal access to the civil rights of citizenship.

Chapter Six is an examination of the political rights enjoyed by non-Maori ethnic minorities during the period. Again, using arguments advanced in the first chapter – that minority groups sometimes need assistance to access their rights – the chapter looks at the barriers to political participation and representation that may be experienced by ethnic minorities, and presents arguments in favour of political systems which facilitate minority group participation and representation. The chapter then goes on to look at how the political participation and representation of ethnic minorities was enhanced during National’s administration by the introduction of the proportional voting system, Mixed Member Proportional, in 1996. Finally the chapter assesses the Ministry of Pacific Island Affairs and the Ethnic Affairs Service as agencies designed to facilitate the participation and representation of ethnic minorities in the policy-making process.
Chapter Seven is a discussion of the relationship between socio-economic status and citizenship status. It begins by looking at the socio-economic status of non-Maori ethnic minority groups five years into National’s term. For Pacific Islands people in particular, the picture painted by the 1996 census (the most recent census from which figures were available at time of writing) was a grim one. Pacific Islands people were disproportionately represented amongst New Zealand’s poorest, sickest, worst-housed, most-unemployed and least educated. Comparisons between the Pacific Island peoples’ statistics and those of other New Zealanders (except Maori) made it clear that the reduction and tight targeting of welfare assistance in the early 1990s (detailed in Chapter Two), had the effect of greatly increasing ethnic inequality in New Zealand. The chapter then goes on to assert, in opposition to the neo-liberal position, that socio-economic status does indeed affect citizenship status, and that the disadvantage experienced by Pacific Islands people and some other ethnic minorities undermined their status as equal members of the political community.

This growing disparity or ‘gap’ between rich and poor in New Zealand, and the ethnicisation of the gap, was clear to the National Government by the mid-to-late 1990s. Its response – influenced by a combination of economic liberalism, moral conservatism and Maori ethnic nationalism – was to more tightly target social assistance to specific disadvantaged ethnic sub-populations, partly by contracting out the delivery of social services intended for those populations to ‘ethnic’ providers. The final chapter, Chapter Eight, details the logic and practice of this response across five social policy portfolios. While allowing that contracting out had positive effects on the ability of government to provide culturally appropriate and sensitive social services, the chapter questions the wisdom of its implementation in a political context of under-funding, growing ethnic inequality, and a transferral of risks from government to individuals and communities.

The six chapters that make up Section Two of the thesis thus constitute a study of the way in which government thinking and policy affected various aspects of the citizenship status of non-Maori ethnic minorities. In the concluding chapter the findings of these six chapters are pulled together to make an overall assessment of the effects of neo-liberalism, and of the ‘ethnic politics’ developed in response to Maori political demands, on the citizenship status of non-Maori ethnic minorities. It is an
assessment that points towards the pitfalls of pursuing policies which assume 'ethnic' understandings of identity to be very significant at the same time as pursuing neo-liberal policies. It also points towards the continued need for partially universal social rights if the normative ideal of equal citizenship, presented in Chapter One, is to be pursued.
PART ONE:

THEORETICAL AND HISTORICAL BACKGROUND
Chapter One

Liberal Citizenship and Immigrant Minorities

Introduction

It is from Aristotle’s Politics that we inherit what Michael Ignatieff calls the ‘noble myth’ of citizenship.1 In Aristotle’s description of citizenship in the ancient Greek city-states, citizens were equal (exclusively male and property-owning) members of small, self-governing political communities, ruling and being ruled by turn. When these citizens came together qua citizens in the public realm, they left behind the specific and selfish interests of their households and were obliged instead to deliberate on the interests of their community as whole. As rulers they were required to sustain and direct their political community; as subjects they were bound to accede to the decisions made by their fellow citizens. On both activities relied the cohesion, stability and security of the community, and proper participation in each activity was the duty of the virtuous citizen.

Citizenship was thus an unceasing practice or activity: to fail in one’s duty as a citizen was to cease to be a citizen.2 While the demands of citizenship may have been high, for Aristotle, and for civic republicans who followed,3 the effort was worth it, for it was only through the political activity of citizenship – the act of self-government – that humans would achieve their highest potential. Men, for Aristotle, were kata phusin zoon politikon, political creatures, who reached their fullest capacities as

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humans when determining their own affairs. As J.G.A Pocock puts it, for Aristotle 'Citizenship is not just a means to being free; it is the way of being free itself'.

What distinguishes citizenship then from other forms of political identity, and the citizen from other classes of individuals, is the claim that citizens are free to govern themselves both as individuals, and as members of a political community. Both aspects of self-government are critical to citizenship, and are, in some crucial ways, mutually reliant. In order for individuals to be free to govern themselves as individuals – to choose what kind of life they want to lead, and to go about trying to lead it – their individual rights and freedoms need protection. They need, in other words, to be recognised as legally independent beings, not as 'chattels, indentured servants or minors'; and for this they must be a member of a political community competent and willing to protect their legal identity. Only when their rights and freedoms are protected may individuals truly understand themselves as free and autonomous agents. We need only look to the terrible vulnerability of those who for reasons of natural or man-made disaster find themselves 'stateless' to see how reliant individuals are upon membership of a stable political community for the protection of their individual rights and freedoms.

Individual rights also protect the individual's ability to participate in the act of collective self-government – to decide the conditions under which they will live with others as a political community. Several conditions must be met before political self-government may occur. First, a self-governing political community requires a group of people who conceive of themselves as such. The stability, cohesion and cooperation necessary to a functioning democracy rely on a community of individuals who are both desirous and capable of self-government. Any polity comprising individuals unable or unwilling to conceive of themselves as a political community will be hard pressed to provide the legal and political institutions necessary to protect the rights and freedoms of its members. Thus, a second condition of a self-governing

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political community is that those differences and disagreements that exist within the political community be not so great as to threaten the ability of the community to conceive of itself as such.

All political communities are, of course, to some degree internally diverse, and experience any combination of religious, class, economic, social, ideological, linguistic, national, ethnic, cultural differences, to name but a few. While states may include very diverse populations, there is a risk that the more extreme differences become within those populations, and the more one type of difference correlates with another, (ethnic identity with economic, class, linguistic and social differences for example) the greater the stresses placed on cohesion, stability and tolerance within that community. As evidenced by the former communist states of Eastern Europe⁶, attempting to govern hugely diverse and unequal populations as one political community requires a great deal more state force and persuasion than in those countries where the units of political governance easily conceive of themselves as political communities. At the extreme end differences may lead to demands for autonomy within or even secession from that political community. To avoid the divisiveness of such claims prudent democratic communities will resist policies which create or sustain extreme inequalities between citizens.

A third requirement of self-governing political communities is that the political community be composed of individuals who are in fact free to make choices about the way they will live together. A political community in which only some members are permitted to participate in political decision-making cannot truly claim to be a self-governing – that is, democratic – community, in the sense that every adult member of the political community is able to participate in decision-making. Thus we may see that the self-governing political community is as dependent upon individuals whose civil and political rights are fully protected, as self-governing individuals are on the political community which provides protection of those rights.

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⁶ See, for example, Margarita M. Balmaceda on the obstacles faced by the former Communist states in their attempts to adopt liberal models of citizenship in linguistically and ethnically divided countries. Balmaceda, 'Recreating Identity After Homo Sovieticus: Language and the Definition of
It follows then that threats to citizenship may take two forms: threats to the individual rights and freedoms which citizens need in order to be self-governing individually and in community, and threats to the political community which provides protection of citizen's rights and freedoms. Furthermore, protecting each requires a critical balance be maintained between their sometimes opposing demands: individual rights must not be emphasised to the total detriment of the political community, but nor may the needs of the political community be emphasised at too great a cost to individual rights. Those who live in democratic regimes need to be vigilant on both counts, for erosion of either rights or political community will inevitably decrease the quality of what it means to be a citizen in that polity.

Despite the balancing act it involves, Aristotle's 'noble myth' of citizenship as self-government by a community of political equals has proved to be an enduringly attractive vision. Citizenship remains for democrats the most desirable of political identities because no other form of political identity holds out quite the same promise: membership in a self-governing community of legal and political equals whose individual rights are protected by law. In its contemporary liberal form the promise of citizenship is that of a post-enlightenment political community, in which all citizens, armed with their equal civil and political rights, are free to pursue their own versions of the good life. The assumption of individual rationality, autonomy and foundational equality central to this promise may be contrasted with the rigid fatalism of a pre-enlightenment era, during which an individual's rights and roles were largely determined by their birth into a certain position within the social hierarchy.

But modern democratic citizenship has patently failed to live up to this promise. At the dawn of the 21st century liberal democracies are characterised at least as much by racial, ethnic, class and gender inequality as they are by the genuine liberty and equality of a diverse citizenry. The provision of equal legal civil and political rights has not managed to close the gap between rich and poor, nor has it altered the fact that ethnic and national minorities tend overwhelmingly to be concentrated on the poor side of that gap. To be born a member of racial, ethnic or cultural minority in many

democratic societies often means being born into a situation of inter-generational social and economic disadvantage. Combine this social and economic disadvantage with social and structural discrimination, and the fact of being a numerical minority, and the result is that ethnic, cultural and racial minorities frequently experience a diminished citizenship status compared to those who belong to majority or dominant groups.

This chasm between the promise of equal citizenship and its fulfilment for minorities may be attributed to an almost universal failure of liberal democracies to fully protect the individual rights of all of those who live within their political communities. And this failure may in turn be traced back to the conundrum contained in Aristotle’s description of citizenship: self-governing communities of political equals are to be created out of communities characterised by inequality and difference. How is this to happen? Civic republicanism’s classical answer to this question was, of course, to largely avoid the dilemma by denying most individuals in society access to the status of citizenship. Male citizens acting in the public sphere\(^7\) were presumed to be equal, (at least equal enough for political purposes,) but back in the private sphere languished an array of unequal non-citizens: women, slaves, resident aliens, and manual workers, all existing in a relationship of subservience to and dependence on the householder-citizen. This public-private division, crucial to the republican vision, functioned to deny the great majority of individuals living in the polis access to the activity of self-government. Only such exclusion made it much possible for civic republicans to maintain the fiction of equality and community within the republic.\(^8\)

Exclusion and domination remained strategies for creating politically equal communities out of socially unequal ones right up until the mid-twentieth century,

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\(^7\) By the ‘public sphere’ I refer here to the arena in which all those qualified to be citizens met to deliberate on issues of public significance, and in which rules affecting all those within the jurisdiction of the polity were debated and decided upon. A similar use of the term public sphere is used for the contemporary political context throughout this chapter, differentiating the ‘public’ or ‘political’ sphere from those arenas where decision-making is not open to all those who are citizens within that jurisdiction, or when the decisions made do not bind all of those within the jurisdiction.

\(^8\) Iris Marion Young and Ruth Lister are among feminist critics, for example, who have argued that civic republicanism exalted a false universalism which acted to exclude women from the realm of citizenship. See Iris Marion Young, ‘Politics and Group Difference: A Critique of the Ideal of Universal Citizenship,’ Ethics, Vol. 99, 1989, pp.250-74, and Lister, Citizenship. Feminist Perspectives, London, MacMillan, 1997.
(and indeed persist in countries such as Fiji, Zimbabwe, Japan and Germany), but in most liberal democratic states it has become morally unacceptable to exclude members of a political community from full citizenship on the basis of their race, ethnicity, culture, gender, or religion. Yet whether the ideal of citizenship – of a community of political equals – can ever fully escape its roots in exclusion remains to be seen. As all the differences which exclusion kept hidden in the private realm have been made public and visible we see just how reliant upon exclusion the ideal of citizenship was, and how contradictory are the twin demands now placed on it: that it be both inclusive of, and impartial to, difference. Undeniably, there are tensions between the demand for political equality and the demand for a recognition and accommodation of difference, but without both demands substantially being met, full democratic citizenship for all members of diverse societies remains unattainable. And, in recognising and accommodating difference, care must be taken to maintain those levels of tolerance, co-operation and respect necessary to nourish a sense of political community. Thus, a central task for political theorists and practitioners now is thus to retie this Gordian knot; to somehow pull respect for both equality and difference into a political bond strong enough to hold a political community together, but not so tight as to strangle all disagreements within that community.

In this chapter I shall examine how liberal citizenship theorists have met this task mainly in respect of one set of demands for both equality and respect of difference: those that emanate from groups who form a cultural or ethnic minority within a state as a result of their, or their ancestors, having migrated to that state. Such groups may be contrasted with indigenous and national minorities, and will be referred to throughout the chapter as ‘immigrant’ minorities, even though some of those referred to as such will be the descendants of immigrants, and not themselves immigrants. Immigrant minorities face a variety of burdens and barriers in accessing the citizenship rights they hold in common with all other citizens. In addition, they may have a number of distinct needs, resulting from their experiences as members of a cultural minority, which would not be met even were they to gain equal access to the citizenship rights held in common with other citizens.

In New Zealand, as in a number of other liberal democracies, the debate about how to foster equal citizenship in culturally diverse societies took place in a period during
which the social-liberal model of citizenship, dominant after World War II, has gradually lost credibility in the face of a sustained neo-liberal critique, which placed little emphasis on equal citizenship at all. As a result, theories of 'multicultural citizenship' and 'minority rights' have gained currency (at least in some circles) at the very time when the idea of 'social' rights has struggled to maintain respectability, and when many individuals belonging to minorities are becoming more economically and socially disadvantaged because of an overall decrease in the social rights of citizenship. Any theoretical consideration of how to foster equal citizenship in diverse societies must therefore be placed in the context of the debate between social-liberalism and neo-liberalism. For this reason, I turn now to explore the liberal tradition and its social- and neo-liberal variants, asking how close each model can take us towards formulating a conception of a community of political equals. I will then move to a discussion of the specific citizenship needs of immigrant minorities, arguing that these require states to provide a combination of civil, political, social and cultural rights to be found neither in the welfare democracies of the post-war period, nor the neo-liberal states of the 1980s and 1990s.

I.

Liberal citizenship

i. Classical liberal citizenship

While there are many variants of liberalism, all share a belief in the moral and political priority of the individual. Individuals, as conceived in the classical liberal tradition, are rational yet fallible, self-interested and competitive, but of equal moral worth. Each should be free to determine for themselves what good they may extract from their lives, and to live in accordance with their own decisions. What concerned the early liberal philosophers therefore was how to maximise individual liberty in a way that was consistent with an equal liberty for others. The answer, which developed
over a period of two hundred years, was found to lie in the provision of ‘negative’ rights or freedoms – those which were designed to protect the individual from the arbitrary and oppressive control of church and monarch, as well as from his fellow citizens. To use T.H. Marshall’s classic formulation, the struggles of the eighteenth century delivered civil rights – ‘liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice’ – while the nineteenth century saw the full development of political rights – ‘the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body.’

So citizenship in the liberal conception came to be understood as a status through which certain legally protected rights inhered in the individual. It was a political identity in which individual freedom and autonomy was protected by means of an array of legal and civil rights, held by the citizen against both the state and fellow citizens. Here the liberal view of man is substantially different to the civic republican view; the individual is self-oriented not community-oriented; he finds the greatest good in pursuing his own, rather than a ‘public’ good, and he pursues it in competition with others in the market realm. Where Aristotle, and after him Machiavelli and Rousseau, saw the public, political realm as superior to the private, economic realm, liberal thought questioned this elevation of the political. For Hobbes, Aristotle’s ‘noble myth’ of citizenship – transcendence of narrow self-interest through public deliberation – was but a ‘fanciful lie.’ Politics was necessary simply in order that self-interested individuals could create the conditions in which they might be free to pursue that which was really important to them: their own version of the good life.

11 Pocock traces this legal and materialist (as opposed to political) understanding of citizenship back to the Roman Jurist Gaius, writing about five centuries after Aristotle. In the Gaian formula, individuals became citizens through the possession of things. ‘The status of “citizen” now denotes membership in a community of shared or common law’ (Pocock, p. 32.) For another outline of the historical development of citizenship from the ancient to the modern world, and a comparison of its development in different European states through till the eighteenth century, see Bryan Turner, ‘Outline of a Theory of Citizenship’, in Turner and Hamilton, 1994.
12 Ignatieff, 1995, p. 53.
13 This is probably more true of the British and German concepts of citizenship than the French. The ideal of citizenship generated in revolutionary France was a highly active one, and influenced by Rousseau’s conception of the general will, involved active participation in the state. See Rousseau’s,
Significantly, this was as likely to be a life experienced entirely in the private and market spheres as one spent pursuing the public good in the political sphere. Thus, rather than being a good in its own right, politics came, in the liberal tradition, to be seen as an instrumental good, serving the interests of the individuals who made up the political community. This emphasis on citizenship as a status – as a collection of individual rights rather than an activity – stemmed from liberalism’s prioritisation of the individual over the community. It had the effect of sometimes obscuring or downplaying those obligations considered a necessary corollary to individual rights, but such obligations were in fact crucially important to the liberal vision of citizenship. Civil rights, for example, imposed upon citizens the obligation to obey the law, to respect other citizen’s civil rights, and to serve on a jury when called upon, while political rights required, at a minimum, political loyalty to the state in which they were a citizen.

The classical liberal concept of citizenship developed over a period when the feudal economic order was gradually dissolving, replaced progressively by the competitive, contractual relations of the market. A form of possessive individualism was necessary for capitalist social and economic relations. The new demand for labour during the industrial revolution, for example, required that the individual ‘owned’ their labour, and be at liberty to contract it out as a commodity. The idea of individuals as holders, or possessors, of rights and freedoms, just as they could be of property, developed hand in hand with the contractual and legal requirements of market capitalism. The other development, absolutely central to the modern concept of citizenship, was the rise of the nation-state. The nation-state which emerged as the dominant form of political organisation in the centuries following the Treaty of Westphalia in 1648 provided the politico-legal institutions capable of imposing a common law over a territorial population, and investing that population with a sense of common identity. As Ernest Gellner\textsuperscript{15} has pointed out ‘nationalism’ was an ideology ideally suited to the requirements of early capitalist industry, which required a large, literate and

\textit{The Social Contract} (1762), which may be contrasted with Edmund Burke’s more cautious, conservative and private view of citizenship in \textit{Reflections on the Revolution in France}, (1790).


linguistically united, technologically competent workforce. Only the modern state which provided a compulsory, public, standardised education system, was capable of delivering such a workforce to industry. As new ‘nations’ were born, they absorbed pre-existing social structures and cultural groups, and through the social integration afforded by a sense of ‘nationalism’, the economic integration afforded by capitalism, and the political integration afforded by the concept of citizenship, new ‘national’ political communities were rendered governable. It was these nation-states that were to be the self-governing modern democracies. Thus did industrial capitalism, the nation-state, and liberal citizenship come to be seen as inextricably linked.16

Yet, linked as they were, liberalism, nationalism and capitalism contained inherent contradictions. While individual liberty was the ‘core value’17 of classical liberalism, it was poised in eternal tension with another crucially important value: equality. Liberalism’s belief that all humans (at least male ones) were of equal moral worth, committed liberal theorists to a concept of basic legal equality among citizens. This was an ideal of revolutionary appeal and one that was to radically shape European social and political arrangements from the eighteenth century onwards. Working men, and later women, were to hammer on the door of the exclusive club of citizenship: they too wanted to be granted this foundational equality, via the raft of individual civil and political rights which membership in the club of citizenship endowed. And liberalism, with its emphasis on individual rights and equality, provided the ammunition with which they could mount this assault. The challenge was for the rights of citizenship to become ‘universal’ in the sense that no individual within a polity would be excluded from citizenship on the basis of their identity.

But in a market society, in which each individual was engaged in the competitive pursuit of self-interest, liberty was prioritised over equality. It was the experience of many previously excluded groups that they gained the status of full citizenship, after great struggle in the eighteenth and nineteenth centuries, only to discover a very real disjunction between the promise and the reality of equal citizenship. Equal civil and

political rights may have protected individual freedoms, and done much to break down the inequalities of the feudal order, but they did not usher in an era in which all individuals were in a position to make real choices about the types of lives they wanted to lead.

To understand why it is that classical liberalism tolerated, indeed desired, a certain degree of inequality we need to look to the conceptual demarcation it drew between the private and public spheres. Some of the civil and all of the political rights which were to be protected in the public sphere provided a form of public equality wherein every person was to be treated equally before the law or political authority. However, many of the rights and freedoms associated with civil rights protect the individual's freedom in the private sphere. It is in the private and civil spheres – in the home, the family, in clubs and with friends – that people were free to pursue the interests, lifestyles, beliefs, cultural or religious practices that differentiated them from one another. These were not the places, according to liberal thought, for the state to pursue equality. Indeed, it was the purpose of civil rights such as freedom of thought, religion, and association to ensure that individuals were free from state intervention in these spheres. But the price of such freedom – and according to classical liberalism it was a price worth paying – was that inequality and difference, not equality, would characterise those spheres. Individual equality would be preserved so long as private sphere inequality did not contaminate the public sphere and lead to inequality of treatment before the law.

Holding fast to this distinction between the private and public spheres of citizenship left the classical liberal model, (like the civic republican one before it) open to the criticism that liberal citizenship really only protected the interests of a privileged few. Socialist critics labelled liberal citizenship hollow, its promises empty, as long as the majority of citizens in democratic societies were prevented by their lack of education, literacy, health or decent housing from exercising the freedoms which liberal citizenship promised. Citizens might be free to choose their own life paths, but without the ability to follow those choices it was an empty freedom. The negative

18 Foremost amongst whom was, of course, Karl Marx, especially on the 'Jewish Question', and, with Engels, in The German Ideology (1845).
liberty to not be prevented from starving or from being homeless held little charm, nor did legally equal rights hold much water, when a citizen was born or made penniless, hungry and homeless into a society characterised by hereditary privilege. Despite the legal extension of equal citizenship, in other words, societies remained highly unequal and divided along class, gender, racial and ethnic lines.

What was needed, therefore, was a recognition of the connection and permeability between the public and private spheres; a recognition that inequality or ‘difference’ in the ‘private’ sphere could affect an individual’s ability to access equal civil and political rights in the public. Also needed was an acknowledgement that the protection of private realm freedoms by public law was of little help to those whose life choices were severely limited by their economic impoverishment. Freedom needed to be accompanied by agency. Without agency, there was no real freedom. Ultimately classical liberalism’s inability to acknowledge this inter-connectedness and thus to effectively marry the promise and the reality of equal citizenship in conditions of universal (or nearly universal) suffrage – created the political pressures which were to lead in the twentieth century to the establishment of the social welfare state and a social-liberal model of citizenship.

**ii. Social-liberal citizenship**

It was T.H. Marshall who, in the Alfred Marshall lectures in Cambridge in 1949, most influentially presented the idea that in order to solve the morally and politically unacceptable contradiction between freedom and equality the state would need to extend its repertoire of citizenship rights to include social rights. Only by so doing would those civil and political rights which already existed actually have any content, and would the assertion of equality of opportunity be justifiable. By social rights Marshall said he meant ‘the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society.’

The institutions through which these social rights would be delivered were primarily the

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‘educational system and the social services’,\textsuperscript{20} publicly funded and delivered via a redistributive welfare state. Significantly, the provision of such services involved the state in areas previously been considered largely ‘private’: family income, health, education, children’s welfare and housing.

Social democracy taught that in order for individuals to be free they must live in a democracy built on a community of political equals, and it insisted on making the connection between social and political equality – between the private and public spheres – arguing that a community of political equals was simply not possible in society where social and economic divisions were deep and enduring. Thus, individual liberty was crucially reliant upon a society in which the health and welfare of all citizens was maintained. All citizens were responsible for ensuring that this occurred.

While emphatically a liberal vision of citizenship, the Marshallian concept of ‘social citizenship’ thus combined elements of Christian humanism and civic republicanism, evoking notions of ‘civic duty’ not found in the staunch individualism of classical liberalism. As Ignatieff puts it:

\ldots modern politics [through the welfare state] made a crucial marriage between the liberal and civic ideals, thus hoping to have the best of both worlds. From liberalism came the idea that the state exists to enable individuals to be “free from”; from the civic tradition came the ideal of “free to”. By using common resources to create common entitlements, the formal freedom promised by liberalism was to be undergirded by the real freedom. Thus we have a polity formally neutral on what constitutes the good life, yet committed to providing the collective necessities requisite for the attainment of that good life, however individuals conceive it.\textsuperscript{21}

Social citizenship was to establish a ‘civic bargain’\textsuperscript{22} between citizens: comparatively high taxation in return for the universal provision of social rights. ‘Social rights’ imposed upon citizens concomitantly ‘social’ responsibilities. For Marshall, the primary obligation of social citizenship was that of engaging in paid work. The provision of health, education and housing services was, after all, dependent upon the taxation revenue which flowed from a situation of full or nearly full employment. But

\textsuperscript{20} Idem.
\textsuperscript{21} Ignatieff, 1995, p. 66.
\textsuperscript{22} Ibid, p. 67.
it was primarily through the institutions of the welfare state that the obligations of social citizenship were to be discharged. Social responsibility was to be achieved collectively by pooling financial resources (via a system of progressive taxation) in order to share, and thus minimise, individual risk across the national community.23

The universalism of this endeavour was to serve two functions: on the one hand it would ensure that all citizens enjoyed Marshall’s ‘modicum of economic welfare and security’ and were enabled, therefore, to participate in society. On the other hand, it was to create a sense of solidarity amongst citizens, each of whom bore some responsibility, via the taxation system, for the welfare of their fellow citizens. Moreover, because each citizen, over their lifetime, would likely be both a recipient (of public education, health, family benefits and so on) and a contributor (via taxes) the unequal class relationships which had built up under systems of voluntary charity – where some only gave while others only took – would be replaced over time by relationships of comparative social equality.

And in none of this were civil or political rights to be breached, nor was a fundamental challenge to be issued to market capitalism itself. The role of the interventionist state was to soften the blow of capitalist-generated inequality, not remove it. Marshall acknowledged that civil and social rights existed in a relationship of tension with each other, but for him this tension would be eased when merit came to replace hereditary class privilege as the basis for social and economic inequality.

Something like this civic bargain, in the form of the welfare state, became the political norm in liberal democracies during the post-war period.24 But the social and political

23 Marshall also viewed considerate exercise of what he described as the rights of ‘industrial citizenship’, to be a crucial obligation of citizenship, and more implicitly, the Marshallian vision of social citizenship assumed that the family would continue to be a stable social institution in which children were inculcated with the morals and mores of good citizens. In discussing trade union strikes Marshall argued that the duties of citizenship require that those organising strikes ‘should be informed by a lively sense of responsibility towards the welfare of the community.’ And referring to those situations where leaders of unofficial strikes justified breaches of industrial contracts by appealing to the rights of industrial citizenship he argued that ‘if the obligations of contract are brushed aside by an appeal to the rights of citizenship, then the duties of citizenship must be accepted as well.’ Marshall, 1964, pp. 112-3.

developments which made the welfare state possible were heavily dependent upon the post-war economic boom. Keynesian demand-side economics, reliant in particular upon full employment, was historically suited to the stage of industrial expansion experienced by western economies between the end of World War II and the 1970s. It was not until the oil and inflation crises of the 1970s hit the welfare states that the effective inter-party consensus over the desirability of an interventionist state began to falter.

As western economies experienced declining levels of economic growth and rising inflation, and as they progressively made the transition from an industrial to a post-industrial society, underlying antagonisms between the market and welfare became increasingly transparent. The spiralling cost of welfare provision in an environment of high unemployment, high inflation and declining levels of capital accumulation raised critical questions as to whether the welfare state could any longer maintain its historic compromise between capitalism and social-liberalism.

Nor was the crisis faced by the welfare state purely economic. The large bureaucratic institutions spawned by it were criticised by those on the left for failing to meet democratic requirements. Dominated by middle class professionals, insensitive to gender and cultural differences, the welfare bureaucracies had, according to the left, become unaccountable, unresponsive and beyond democratic control. Rather than discharging the collective responsibilities of citizens for each other’s welfare, the welfare state had come to exert an oppressive rather than benevolent force over vulnerable citizens. Moreover, the emphasis on individual rights had occurred at the expense of the political community: access to rights without a concomitant emphasis on obligations had led citizenship to be a largely passive status, and citizens were participating less and less in politics.

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25 For a discussion of the social and economic conditions on which the welfare state depends see Maurice Roche, 1992, Chapter 2.


27 Robert Putnam, lamenting Americans’ declining rates of membership and participation in political and civil organisations has called his most recent book *Bowling Alone: The Collapse and Revival of American Community*, U.S., Simon & Schuster, 2000. Also see MaryAnn Glendon, *Rights*
constructing an argument uncomfortably close to that pushed by conservative critics: that the welfare state induced moral turpitude and dependency in welfare dependants and distorted the moral and economic signals transmitted by the market. Cultural and ethnic groups also joined the fray, condemning the education, welfare and justice systems for being racist and oppressive. Cumulatively these critiques severely undermined the legitimacy of the welfare state, creating an ideological vacuum into which a nascent neo-liberalism stepped. From the early 1980s on, neo-liberalism launched a fundamental assault on the values of social-citizenship, seeking to reassert the primacy of property rights over social rights, and to replace the interventionist welfare state with the free markets so esteemed by classical liberal economists.

Social-liberalism and ethnic minorities

During the period in which social-liberalism formed the dominant paradigm in western liberal democracies, (generally dating from the end of the Second World War) ethnic difference posed two distinct challenges to the social-liberal citizenship model. The first was the anti-discrimination movement, which represented the culmination of the historical battle by disadvantaged ‘racial’ (as they were then defined) and ethnic minority groups to gain the equal status, rights and freedoms of full citizenship. This movement gathered strength after the horrors of the Jewish holocaust made overt racism even less politically palatable to many liberal governments than it had hitherto been.

Granting racial, religious and ethnic groups the equal rights of citizenship was usually seen as requiring the liberal state to become effectively ‘colour-’ or ‘difference-blind’ by purging its legal and political rules and institutions of overt discrimination on the grounds of race, ethnicity or culture. It was to be achieved through secure protection of the individual civil and political rights of those belonging to minority groups, and, by extension, making it unlawful to limit or deny an individual’s access to their civil

Talk: The Impoverishment of Political Discourse, New York, Free Press, 1991 on the attitudes to politics and political participation rates of young Americans.

For a discussion of some such critiques as they occurred in New Zealand, see Christine Cheyne, Mike O’Brien, Michael Belgrave, Social Policy in New Zealand: A Critical Introduction, Auckland, Oxford University Press, 1997. For an example of such arguments made in relation to the Maori within the New Zealand social welfare system see Puao-Te-Ata-Tu, Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, Wellington, 1988.

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or political rights on the basis of race or ethnicity. Achieving such legal equality seemed perhaps to be the fulfilment of the enlightenment promise: individuals, liberated from a fate pre-determined by birth would instead be delivered into a society where their non-voluntary identities would be irrelevant in the face of the law.

Extending the equal legal rights of citizenship to various minority groups was an achievement of profound political significance and remains an achievement to which many minority groups in developing countries still aspire. (Even in western liberal democracies such as Australia and the United States, minorities such as the Australian Aboriginals and African Americans were not granted full and equal citizenship until the 1960s and 1970s.) Yet the persistence of ethnic inequality in these and other democratic states, even after the extension of legal equality, led many to question whether an approach which purported to be 'colour blind' was sufficient to meet the equality demands of ethnic minorities. Some, like Vernon Van Dyke, argued that the state was not equally blind to all colours but, rather, simply blind to the cultural (or 'colour') bias inherent in those institutions and rules which governed society. Legal and educational systems, political institutions, and models of welfare all derived their logic and legitimacy from the cultural values and norms of the dominant group or groups in society, conferring an unfair advantage on those who shared these values, while conversely imposing a variety of 'burdens, barriers, stigmatizations and exclusions' on those who did not. This analysis formed the basis of the second real challenge presented to the social-liberal model of citizenship, requiring liberal polities to consider how treating different people 'the same' might not translate into treating people 'equally'.

The range of burdens placed on minority group individuals by 'colour-blind' policies were multifarious. Those who did not speak the public language or languages were

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disadvantaged in terms of accessing public services, law and education. Health, welfare and education services might be delivered in ways that were culturally inappropriate to minority group members, leading to health, welfare and educational disadvantage for minority individuals. Moreover, minority groups were continually threatened with the loss of their languages and cultural practices, and hence of their sense of cultural identity, unlike majority culture individuals, who could take the perpetuation of their culture for granted. Failure to symbolically recognise the existence of minority cultures within the polity led many to feel a sense of exclusion from the national community, and politically, minorities were disadvantaged by majoritarian democratic systems, permanently unable to gain representation. Each of these disadvantages was compounded by the discrimination and stigmatization experienced as a result of being culturally or ethnically different from the majority population.

Awareness of minority concerns such as these grew throughout the 1970s and 1980s, and most post-war welfare states introduced a variety of policies designed to ameliorate the disadvantages that minorities faced. Given social-liberalism’s concern with the public and private realm consequences of economic inequality, many of these remedies were designed to reduce the economic disadvantages suffered by minorities. An early example of such a policy in New Zealand may be found in the Race Relations Act of 1971, which allowed for those acts of ‘positive discrimination’ designed to bring a disadvantaged group up to the economic and social position of other groups in society. Quotas facilitating Maori and Pacific Islands people’s access into medical and law schools, and Equal Employment Opportunities legislation in the public service were introduced, with precisely this purpose: to bring Maori and Pacific Islands people in New Zealand up to an economic and thus social position commensurate with other New Zealanders.

Such policies did not, however, fully address the types of concerns and demands articulated by minority groups, particularly indigenous groups – and in an increasingly forceful manner – from the 1980s onwards. In New Zealand, for example, they did not respond adequately to Maori demands for greater autonomy and respect for their cultural practices, as well as compensation for the way in which the state had treated them in the past. But by this time social-liberalism was of declining influence and the
state's role in lessening social and economic disadvantage had come under fire from the anti-interventionist arguments of neo-liberalism. Consequently, much of the most detailed examination of the rights and needs of minority groups that has occurred since happened at a time when neo-liberal rather than social-liberal solutions were being sought to any public policy problem. Certainly the social citizenship model never quite developed a coherent response to the specific needs and demands of ethnic minorities, including immigrant minorities, as it its influence was eclipsed by that of neo-liberalism from the 1980s onwards.

iii. The neo-liberal critique of social citizenship

As its name suggests, neo-liberalism\(^3\) was a reassertion of those ideas associated with the classical economic liberalism of the nineteenth century. It was exemplified in the work of Friedrich von Hayek, Milton Friedman, Norman Barry, the early John Gray, James M. Buchanan and Robert Nozick, who rejected the assertion that a happy compromise between individual liberty and social security effected through the welfare state was either possible or desirable. For them, the costs welfarism imposed on individual liberty were economically, politically and even, for those of a more conservative bend, morally, unjustifiable. Rejecting social democrats' insistence on the permeability of private and public spheres, neo-liberals drew a firm distinction between ‘negative’ rights – those necessary to protect the individual liberty from incursions by the state or fellow-citizens – and ‘positive’ rights – those which invested in the individual the right to a particular economic good. For neo-liberals, only civil and political rights could legitimately be protected by the state.

They objected to social rights on a number of grounds. First, they argued, civil and political rights differed from social rights because they were cost-free. They involved the state only in abstinence, not intervention. Social rights, however, always required resources and could only be protected in conditions of sufficient resources. A right

\(^3\) Neo-liberalism is also commonly referred to as ‘market liberalism’ or the ‘New Right’, although this last term more properly refers to those who combine classical liberal economics with a nineteenth century moral conservatism.
should be something held unconditionally, not something which might be rationed according to the level of prosperity in a state.\(^{33}\)

Neo-liberals also took issue with social-liberalism’s attempt to conflate freedom with agency, (or the ability to get, have and do things). They argued that while it was relatively easy to define rights to non-interference, it was very hard to define exactly which social rights were necessary to enable people to exercise too widely-defined freedom. What might be considered a ‘modicum of welfare and economic security’ varied from society to society and period to period. Was it, for example, a social ‘right’ to have a telephone, a television, a credit card\(^{34}\) or even access to the internet, when each of these things was, arguably, now (by the 1990s) necessary in order for families and individuals to ‘live the life of a civilised being according to the standards prevailing in the society’? Social rights were thus mightily expandable. By accepting a responsibility to provide ‘positive’ as well as ‘negative’ freedoms, the state risked being held hostage by an endless procession of groups clamouring for an ever-expanding array of social benefits.\(^{35}\) All that should be asked of the state was that it protect individual freedoms from incursion by either the state or fellow citizens.\(^{36}\)

Another reason for objecting to positive freedoms derived from liberalism’s materialist understanding of human nature. According to this view, individuals who were free to compete in the market sphere would be motivated by self-interest to work hard and do what ever else it took to get what they wanted out of life. But a state that provided individuals with an extensive range of social and economic benefits, regardless of their performance in the market sphere, sapped this motivation and


\(^{36}\) For New Zealand examples of such arguments see Bernard Robertson, Economic, Social and Cultural Rights. Time for a Reappraisal, Wellington, Business Roundtable, 1997; David Green, From Welfare State to Civil Society. Towards Welfare that Works in New Zealand, Wellington, Business
distorted the market signals available to them, thereby compromising their ability to make genuinely self-interested decisions. Social rights were thus argued to be antithetical to the central demand of liberalism: that individuals be free to pursue their own vision of the good life.37

In a reversal of Keynesian economic theory, monetarism38 located the cause of economic decline in the demand-side, deficit-generating Keynesianism of welfare states. Excessive state involvement in the economy, bureaucratic over-reach, and the cost of the by-now extensive programmes of income support, were seen as having stifled economic dynamism, while the high level of taxation necessary for Marshall’s form of redistributive justice was denounced as an intolerable invasion of individual property rights.

Moreover, and perhaps more damningly, critics pronounced that the civic bargain outlined by social-liberalism had failed to achieve the anticipated level of social solidarity and cohesion. Instead, the interventionist state had spawned a ‘culture of entitlement’,39 in which citizens were determined selfishly to wring all they could out of their citizenship status, even if it involved ‘ripping off’ the state, (and thereby their fellow citizens) through benefit fraud, or preferring an easy life on the dole to the rigours of paid work. Nor, the argument continued, had universal provision of social rights prevented the emergence of a poor, ill-educated, inter-generationally welfare-reliant and criminally-inclined underclass. Indeed, the provision of universal social rights was largely responsible for its growth and entrenchment.40

The neo-liberal cure to what was diagnosed as the malaise of Keynesianism and state intervention was to ‘roll-back’ the state: to open up to market forces those areas of

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37 Idem.
38 Monetarism stresses the importance of reducing inflation in order to stimulate economic growth. Friedrich von Hayeck’s The Road to Serfdom, (1948) and Milton Friedman’s Capitalism and Freedom (1962) were among the most influential works advocating monetarist economic theory. Also significant was Robert Nozick’s Anarchy, State and Utopia (1974) in which he argued against redistributive justice, preferring instead a minimalist government able to uphold property rights.
40 Mead; Green; Robertson.
human activity which had been subjected to the 'dead hand' of the state. Desire to unleash the motivating force of competition in areas previously protected by the state prompted neo-liberals to prescribe a raft of market-oriented policies: corporatisation and privatisation of nationally-held productive enterprises, tax cuts, removal of industry protections, and reductions in welfare spending. Such measures were considered necessary in order to increase efficiency and competitiveness in business, to stimulate economic investment and thus economic growth, and to reduce the burdensome cost of welfare payments. Each of these, in turn, would have beneficial effects on levels of employment and rates of inflation. Economic restructuring along these lines became the primary focus of both left and right governments in the United States, Great Britain, Australia and New Zealand throughout the 1980s and 1990s.

The economic and philosophical arguments of neo-liberals inverted the relationship social-liberalism had constructed between the individual and the collective, the state and the market, the public and private spheres, economics and politics, and rights and responsibilities. These inversions had a profound effect on the way in which citizenship was understood.

Because neo-liberalism was based on a materialist view of human nature, it placed faith in the market, and not politics, as the sphere in which humans could most effectively pursue their self-interest. While those of a public choice persuasion saw pursuit of self-interest as efficacious in the market sphere, providing as it did for the spontaneous production of information necessary for actors in this sphere to make rational decisions, in the public sphere it led to rent-seeking behaviour by sectional interest groups, politicians, and bureaucrats, with the effect of unnecessarily and continually inflating the costs associated with government. These convictions led neo-liberals using a public choice theory analysis to believe that self-interest in the public sphere was pursued at the expense of the ‘public interest’.

In this way public choice theory acted to de-legitimate, shrink, and de-politicise the public sphere. Political demands from sectional interests were cast as illegitimate, and it was seen as desirable that decisions be removed from the competitive arena of interest-group politics. They should be handled instead by experts deemed best able to facilitate the operation of the market economy, or transferred via privatisation into the
market sphere. Instead of the site of equality, justice and political participation, the public sphere came to be characterised as the site of dependency, inefficiency and unaccountability, where those who were failing to effectively manage themselves in the private and market spheres came to make claims on their fellow citizens to compensate them for their failure.

Such distrust of public politics produced a distinctly apolitical view of citizenship, which became simply a status of freedom enjoyed by those who possessed the legal and political rights accorded by a liberal polity. Stripped of its active, political, and community-oriented characteristics citizenship came instead to mean little more than the right to largely unfettered participation in a market economy. In fact, because neololiberalism focussed on individual freedom at the personal and not the collective level, it may be better understood as an argument against citizenship than itself a distinct vision of citizenship.

This individualisation of governance was apparent as public choice analyses acted (through processes of corporatisation and privatisation) to reduce the number of sites and arenas over which public decision-making procedures held sway, and the idea of self-government itself acquired a distinctly individualistic, as opposed to public or democratic flavour. Increasingly it was something which occurred largely at the corporate or individual level in the market or private realm. Where the welfare state had conceived of a national community across which risks were shared deliberately, self-government in the neo-liberal mode was no longer a political activity as much as an attempt by individual ‘selves’ to minimise and manage the level of risk they carried as individuals. As Ulrich Beck puts it, an individual needed to ‘learn, on pain of permanent disadvantage, to conceive of himself or herself as the centre of activity, as the planning office with respect to his or her own biography, abilities, orientation, relationships and so on’. In the post-welfarist society some neo-liberals envisaged there would be little or no collectively-provided insurance against risk in the form of welfare. Instead, individuals would each operate careful systems of personal insurance.

in which accumulated assets, capital investments, and a raft of life, employment, health and income insurance policies could be set against the calculable risks of unemployment, illness, relationship breakdown and old age.

Yet even in a society in which risks and responsibilities were almost entirely individualised it was clear that some citizens would fail to adequately provide for themselves. Without a welfare net to catch them, what would happen to such people? Some libertarian writers considered even the provision of a 'safety-net' welfare state morally unjustifiable, but most neo-liberals accepted the need for some modest welfare provisions for those who were genuinely unable to meet their own needs via the marketplace. In contrast to the Marshallian vision, however, this safety net was to be neither extensive nor universal. It would be tightly targeted to meet only the most basic needs. The provision of more extensive assistance was something more properly left to private charity. Targeted welfare benefits available only to those in greatest need and at a considerably reduced level would force beneficiaries off the padded cushion of welfare and back into the marketplace where, faced with the hard economic realities of life with limited or no state support, they would learn the virtues of citizenship in a market society: work, competition, capital accumulation, self-reliance and insurance.

The movement from a universalist model of welfare to a residualist one crucially affected conceptions of what it meant to be a 'good' citizen and of the nature of the civic bond between citizens. Neo-liberals assumed not only that each individual in a market society should attempt to govern his or her own life through processes of prudential decision making and insurance against risk, but also that those citizens who could not support themselves and who appealed to their fellow citizens for financial or other support, imposed a cost and thus a risk on those to whom they appealed. Virtuous citizens of a market society were those who could compete effectively and were able thereby to support themselves and their families. Such citizens were able to leave their fellow citizens alone. Those who failed to compete successfully, on the other hand – who were unemployed, ill, indigent or parenting alone – were viewed not as equal 'citizens', invested with a status independent of their performance in the

market, but as burdens, 'dependants', existing in supplicatory relationships with independent, 'responsible' citizens.

But the targeted system of welfare advocated by neo-liberals in fact posed its own risk: that unvirtuous citizens (the have-nots) would sponge off virtuous ones (the haves) in a non-reciprocal relationship of dependency. The taxes of the middle class would continue to be redistributed to the poor, but the middle classes would no longer receive the health, education, old age and family benefits they might have received under the universal system. Here the neo-liberal argument found much in common with that of social conservatives like Lawrence Mead, for whom the inequality of this relationship required that the obligations and responsibilities of citizenship be seen alongside, even preceding, citizenship rights. Those rendered passive and 'unvirtuous' by reliance on their welfare 'entitlements' needed somehow to be weaned off dependency and taught again how to perform the duties of citizenship. To receive the unemployment benefit, for example, the unemployed should be duty-bound to be engaged in the search for work, perhaps even in 'voluntary' work, during the time when they received an unemployment benefit. Failure to do so should result in the suspension or termination of the unemployed person's entitlement to a benefit. In this morally conservative view, citizenship ceased to be a relationship of equality between members of a common community and came instead to be a means of calculating and discharging a web of obligations between unequal members of a market society.

But targeting, despite rhetoric to the contrary, seemed unlikely to lessen inequality. It invariably set in train a downward cycle of tighter targeting and less generous welfare payments. As universal welfare provisions were progressively replaced with targeted welfare assistance and the rich and the middle classes got less and less in the way of tax-payer funded services they would agitate for tax reduction. (Why, middle and upper-income earners reasoned, pay high taxes if risk is individualised?) If tax cuts ensued, the government had less to spend on social services, leading to further pressure for welfare to become both less generous and more tightly targeted. Under a system of highly targeted welfare assistance, those who were reliant upon state

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43 Mead, 1986.
44 Ignatieff, 1995, discusses this issue very eloquently, p. 75.
support, particularly income and housing assistance, bore the stigma associated with poor citizenship, as their dependence on public welfare differentiated them from those who were 'independent' and made little or no call on public welfare. As the level of public support to which welfare recipients have access declined, and it became more difficult for them to meet the income, housing, educational and health standards common in society, this stigma was compounded by the evident side-effects of their economic disadvantage: poor housing, health, educational achievement, increased family breakdown and criminality.

**Neo-liberalism and ethnic minorities**

Where were ethnic minorities in all of this? Actually, rational choice theory, public choice theory, managerialism, and agency theory, all of which informed the neo-liberal endeavour, were notably silent on the social, moral and political claims of ethnic minorities, but entirely eloquent on the individualised nature of identity. In fact, as Anna Yeatman has argued, rational choice theory conceptualises individual identity in opposition to an 'ethnic' or 'cultural' understanding of identity:

...rational choice requires desire to operate in such a way that it individualizes the actor - that is, it turns this actor... into an intentional unit of action, whose agency in relation to other such units is assumed to be bounded and, in this sense, is independent. This is a self who understands selfhood as his or her separability from other selves in such a way that he or she can be treated and treat himself or herself as a distinct locus of judgement, volition and decision-making. This self's oppositional other is a tribal or patrimonial self: namely one whose selfhood is organically derived from the identity of some kind of communal self.45

Neo-liberalism was not, however, opposed to groups *per se* (the market sphere is, of course, populated with corporate entities), and those who advocated small government frequently praised the self-governing capacities of sub-national groups, especially 'communities'. What neo-liberalism *did* oppose was the active pursuit of self-interest by groups in the *political* sphere, and hence, under neo-liberalism ethnicity was seen as properly relegated to the private and market spheres it occupied in the classical liberal and civic republican understandings of citizenship.

Yet ethnic minorities were critically affected by the changes that neo-liberalism wrought on the welfare democracies. In societies such as New Zealand, where public social services became less generous and more tightly targeted during the 1980s and 1990s, those who were labelled ‘irresponsible’ because they could not support themselves and their families – who were seen as having a problem with ‘welfare dependency’ and were therefore obliged to work in unpaid ‘jobs’ in order to receive income support – were disproportionately members of ethnic or cultural minorities. In such societies the stigma of unemployment, of sole parenthood, of the diseases and other problems associated with poverty, attached not only to the poor as a whole, but, more specifically, to those ethnic groups concentrated in the poorest sections of the community. These ethnic groups increasingly risked being identified in the public mind as somehow less competent citizens: dependent upon, and therefore obliged to, members of ethnic groups more favourably positioned in the economy. This was a long way indeed from the liberal vision of a polity of political equals and from the non-racist vision of a society where individuals are considered equals, regardless of their ethnic or cultural identity.

Perhaps unsurprisingly, however, some ethnic groups saw opportunity as well as disadvantage in the neo-liberal version of citizenship. One advantage of introducing market forces into areas over which government previously had a monopoly was the greatly increased likelihood that competitive social services providers would be responsive to the specific local, cultural and linguistic needs of their client base. Targeted services, freed from the requirement that they be suitable for all citizens, could match more precisely the needs of those they were targeting.

In addition, for those ethnic groups seeking a greater level of self-government (usually indigenous or other national minority groups) the progressive removal of government from the lives of its citizens created greater opportunities for such self-government. As neo-liberal governing strategies placed responsibilities onto individuals, their families, and perhaps their ‘communities’, ‘communities’ (including ethnic groups constituted as such), like individuals, were seen as effective sites for self-governance, bringing into a strange alliance:
the collectivist logic of community...into alliance with the individualized ethos of neo-liberal politics: choice, personal responsibility, control over one's own fate, self-promotion and self-government.46

For those groups frustrated by the powerlessness of being a permanent electoral minority, such strategies held out the promise of greater autonomy. Accordingly, and despite the detrimental impact that neo-liberal policies had on Maori populations in New Zealand, for example, some aspects of the ideology were considered by some Maori to be compatible with the self-governing aspirations of minority ethnic groups.47

Neo-liberal and conservative critiques exerted a profound influence on the democratic welfare state of Europe, America and Australasia in the 1980s and 1990s, seriously undermining the social-liberal understanding of citizenship – particularly with their prognosis of the unsustainability of Keynesianism during the current phase of post-industrial global capitalism. Yet the neo-liberal version of citizenship never completely swamped the social-liberal. Rather, it was as if social citizenship remained the ideological bedrock of modern democratic citizenship, over which the tide of neo-liberal thought repeatedly washed, wearing away a little at the entitlements of social citizenship with each retreating wave.

In the neo-liberal understandings of democracy, individual freedom, protected by civil and political rights, was emphasised, while the social benefits of citizenship were reduced in order to maximise individual freedom. But the private sphere (social and economic) inequality that resulted from this prioritising of individual freedom was destructive of individual agency. Poor people were less able to participate fully in society and the reduction in both equality and individual agency was in turn destructive of the co-operation, tolerance and trust necessary for a functioning political community.

47 While there may be gains in autonomy from these 'non-social' governing strategies, for minorities that experience a considerable degree of socio-economic disadvantage, the risks associated with increased responsibility may well outweigh the benefits.
Social-liberalism, in response to an earlier laissez-faire liberalism, had attempted to address both defects associated with the prioritisation of freedom. By extending to citizens a range of social benefits it had sought to increase both individual agency and social solidarity but in the process it had left itself open to a number of other criticisms. Firstly that the cost of its programme of social rights threatened the economic viability of the political community. Secondly, that the social cost of dependency threatened the moral values on which the political community depended. And, third, that maintenance of social cohesion in the political community occurred at the expense of the rights and needs of various minority groups in society.

So we arrive at the present state of play. Disadvantaged minority groups make claims for 'minority' rights (discussed below) which increase the freedom and agency of those belonging to them. Yet those minority rights have potential to threaten the political community which would deliver them. By emphasising membership of identity groups other than political community they threaten both loyalty and cohesion, while the differential treatment according to group identity they involve may cause resentment and factionalism.

It is to this balance – between the needs of individuals and needs of the community – that we need to attend when considering the citizenship rights of immigrant minorities. We must take into account the need of immigrant minority individuals to be free and able to exercise self-government at the individual and collective level, and balance those needs against those of the political community for cohesion, stability and loyalty.
II.

Immigrant minorities and equal citizenship

The civil, political and social rights which are common citizenship rights in liberal and social-liberal democracies go a long way towards allowing immigrant minorities to experience a full and equal citizenship within those democracies. Freedom of thought, speech, conscience, religion and association, for example, protect minority groups’ ability to practise their cultural, religious and linguistic customs as individuals and groups, in public and in private (with the exception of those situations when exercising such freedoms contravenes a similar liberty for other groups). The right not to be discriminated against on the grounds of racial, ethnic, national, cultural or religious background protects minority groups against invidious discrimination in a number of public arenas. In addition to these crucial freedoms and protections, immigrant minority citizens have the same political and social rights as other citizens, thus allowing them to participate in the political process, and to have access to educational, health and other social assistance as required or desired.

Nonetheless, immigrant minorities do not always experience the full and equal citizenship enjoyed by members of cultural majorities because of a number of barriers and burdens they face as a result of their minority status. In this section some of these barriers and burdens are identified and the protection of three types of ‘minority’ rights are proposed as remedies: interpretation and translation rights, special representation rights, and exemption rights. These three types of rights are all necessary if immigrant minorities are to experience full and equal citizenship. They do not, however, constitute a full answer to the question of how to ensure the equal citizenship of minorities. In order to protect both individual agency and political community, a defence is mounted below for the provision of social rights which are sufficiently generous as well as universal in some respects.
In making these claims in respect of the citizenship rights of immigrant minorities I draw a distinction between their needs and those of other minority groups, such as national and indigenous minorities. The distinction echoes that made by Will Kymlicka, who distinguishes between the types of demands made by 'national' indigenous groups, involuntarily incorporated into multination states through the processes of colonization or conquest, and immigrant minorities, whose language, ethnicity and cultural practices differentiate them from the majority or dominant cultures, but who do not make a claim to 'national' self-determination. Kymlicka stresses that the self-government rights to which some national and indigenous groups lay claim are quite distinct from the types of 'polyethnic' claims made by immigrant minorities. While the former are essentially claims for varying degrees of autonomy, to be exercised either within, or, in the case of secession claims, outside the existing political community, the latter are essentially claims for minorities to be fully included within the polity without discrimination. Importantly, he argues that policies which protect polyethnic rights do not necessarily lead to future demands for self-government. Immigrant minorities, he claims, seek inclusion and integration in the political community, not independence from it: polyethnic rights are 'intended to help ethnic groups and religious minorities express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant society.'

i. Citizenship rights of immigrant minorities

1. Linguistic assistance rights

Citizens who are members of a cultural minority may possess the same civil, political and social rights as all other citizens but be frustrated in exercising those rights because of some facts about their person that stem from their membership of a minority group (for example, their linguistic background, cultural beliefs and practices). Immigrant minorities who are also a linguistic minority may suffer a

48 He discusses this distinction in some detail in Multicultural Citizenship. A Liberal Theory of Minority Rights, Oxford, Oxford University Press, 1995, see Chapter 2.
frustration borne of their inability to understand the language or languages in which the legal, political and social institutions of state operate. Such people require assistance to exercise their citizenship rights, and gaining such assistance is so critical to their citizenship status that it warrants considering such assistance a ‘right’ in itself.  

Translation and interpretation rights do not create substantially new or different citizenship rights for linguistic minorities but rather assist them to access those rights they already possess in common with all other citizens. Such services must be considered a citizenship right in all states which accept, or in the past have accepted, immigrants who do not speak the official languages. If those who cannot understand the official languages are not provided with interpreters and translators they will not be able to participate in the political system, they will have difficulty accessing the health, housing, income and other social assistance available to them as citizens, and they will undoubtedly be unable to take full advantage of the legal rights they possess.

Interpretation and translation rights do not pose any real challenge to either the social- or the neo-liberal understandings of citizenship, as both models accept unreservedly the need to protect equally the civil and political rights of citizens. Neo-liberals may, however, object on the grounds of the costs associated with providing such services. In countries where immigrants hail from many parts of the globe a huge variety of languages may be spoken (in NZ for example, it is estimated there are over 50 languages spoken) they might argue that providing translation or interpretation services in each of these languages would be a prohibitively costly exercise. States can, however, minimise the need for interpreters and translators by ensuring that the children of immigrant groups learn the official language or languages through the education system, and can operate immigrant selection policies designed to favour those who already speak the official languages. Accessible provision of language

49 Kymlicka, 1995(b), p.31.
51 Translators deal with the written word; interpreters with the spoken word.
tuition for other immigrants who do not speak the official languages will also minimise the need for interpretation and translation services at a later date. Such policies will go some way towards minimising the practical and fiscal costs of providing linguistic assistance as a citizenship right, none of which should be used as an argument against providing translators or interpreters.

2. Representation rights: respecting, acknowledging and accommodating difference

2.1. Political representation
To be a citizen is to be someone with the ability to participate in the act of self-government. Representation has been crucial to citizenship since democracies became too large for citizens to participate directly in the act of self-government. The right to stand for political office and to participate in the selection of those holding political office are two of the fundamental political rights which protect the modern democratic citizen's ability to participate in this act of self-government. Such participation can be particularly difficult for immigrant minorities, despite the fact they have equal political rights. Their experiences and interests as minorities may differ from those who belong to majority cultural groups. Because of their numerical inferiority, however, they may not have the same opportunity as majority individuals to elect into political office those who represent either their interests or their experiences. Moreover, they may be frustrated in their efforts to gain office if members of the majority group perceive them to be representing minority interests only.

There are a number of mechanisms which can be used to assist minorities to gain political representation: special seats reserved for the representation of minority groups; the introduction of proportional electoral systems which facilitate minority representation; mechanisms within the public bureaucracy through which the interests of particular minority groups are considered as of right during the decision-making process; and minority group veto over decisions which directly and specifically

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53 Such as the seats reserved for Maori representation in the New Zealand parliament.
54 As, for example, Te Puni Kokiri or the Ministry of Maori Development is intended to do for Maori in New Zealand.
affect the interests of their members. Such mechanisms assist minorities achieve what Jacob Levy has identified as the three primary goals of minority representation: the presence of minority group members in political decision-making institutions; the opportunity for minority group members to elect representatives; and the provision of mechanisms designed to protect the interests of minority groups.55

The question here is whether immigrant minority citizens should enjoy assisted political representation, through mechanisms such as these, by reason of their status as citizens. It would be imprudent to categorically state that any particular mechanisms designed to assist minority representation should always be citizenship rights for immigrant minorities. Great variations in the size, history and socio-economic status of immigrant groups in various democracies, as well as in the constitution and political culture, of any democracy make such assertions inappropriate.56

It is reasonable, however, to argue that in societies where there are immigrant minority citizens within a polity, those citizens should have some guaranteed access to political decision making processes. If the immigrant minorities are significantly disadvantaged, economically, socially or politically, then there are very strong arguments for ensuring representation of their interests in the policy-making process, as their interests are likely to differ in some respects from those who do not belong to their group. If immigrant populations constitute a significant proportion of the population but consistently fail to gain any political representation in the legislature, then there are likewise very strong arguments that the polity should adopt a proportional representation system which facilitates minority representation. This will increase minorities’ ability to elect representatives and gain presence within the legislature. The adoption of these two mechanisms will assist immigrant minorities to access the political rights they hold as citizens.

Assisted political representation through mechanisms like proportional electoral systems and dedicated representation within the public bureaucracy also play a

55 Levy, p.44.
crucially important role in relation to the other citizenship demands presented by minorities. Many of the political demands presented by minorities pose difficult challenges to liberal political institutions. Without facilitated access to the institutions of political decision-making, minorities may not have the opportunity to fully participate in the debates involved in deciding such issues.57

In general, the setting aside of special seats for minority groups, and the institution of minority veto over issues of specific and direct interest to minorities, are mechanisms that should be reserved for the political representation of indigenous or other national minority groups. The immigrant minorities' claim is to equal citizenship, including an equal right to political participation and representation. Reserved seats and veto rights are mechanisms which both go beyond the normal rights of the citizen, and their justification rests on the need to protect indigenous or national minorities and their interests. Without mechanisms such as these, the integrity and survival of their cultures may be threatened. Such arguments do not generally relate to immigrant minorities, as the language cultures of immigrant minorities are usually secure back in the countries from which they have come.

Accepting that immigrant and other ethnic minorities should have some guaranteed access to political decision-making sits much more easily with social-liberal theorists than neo-liberal ones. Social-liberals acknowledge the inter-relationship between private and public inequality, and are not averse to intervention designed to counteract such inequalities. Neo-liberals, on the other hand, are highly reluctant to allow any interest group, including ethnic minority groups, guaranteed access to political decision-making processes, believing as they do that interest groups all attempt to distort policy in their favour at a cost to the public interests of society as a whole. Neo-

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57 Arguments in favour of the political representation of minorities form a large and diverse literature. A classic formulation was that of Arendt Lijphart, who argued in favour of 'consociationalism' — a grand coalition of group interests, accompanied by proportional representation in other areas of government, and group veto over those issues that directly affect their group. See Lijphart, *The Politics of Accommodation*, (2nd ed.), Berkeley, University of California Press, 1975; and *Democracy in Plural Societies*, New Haven, Yale University Press, 1977. More recent contributions include those from Iris Marion Young, Ann Phillips, Melissa Williams, Virginia Sapiro and Jane Mansbridge.
liberal polities are thus less likely to act to support the representation rights of minorities, and are thus more likely to frustrate the citizenship aspirations of immigrant minority groups.

2.2. Symbolic representation

Citizens who belong to immigrant minorities have the right to be accorded full membership in the political community. This right includes that to be 'symbolically' represented – to be included, that is, in those symbols which a political community uses to describe itself. Flags, public holidays, official languages, national anthems, official 'race relations' policies – all of these make public, symbolic, statements about the nature and history of a political community and about who properly constitutes and is deserving of respect in that community. The claim that minority groups deserve representation in such symbols of political community responds to a need operating largely at the emotional rather than material, legal or overtly political level (although their recognition or non-recognition may have significant side-effects on each of these areas). It involves minority groups gaining from other groups in the political community a public recognition that they too are a part of and belong within the political community and are worthy of respect within that community.

As partially rhetorical devices, inclusive symbolic representations of the political community may be delivered by either neo- or social-liberal polities. In very plural liberal societies, this will most likely require states to emphasise the civic nature of their political community over its ethnic aspects.58 Neo-liberals in particular, (because of their general aversion to the political demands made by any interest group, and especially the fiscal costs associated with such demands), may be highly reluctant to concede to demands even for symbolic representation for fear that such demands may be read as an implicit acceptance of the legitimacy of other minority demands. Using,

for example, the rhetoric of 'multiculturalism' could be seen to legitimate demands for linguistic assistance, representation assistance and so on, each of which represents a significant fiscal cost to government. As has already been noted, neo-liberalism emphasises the individual not the communal aspects of governance, and as such may be reluctant to include representations of community within the symbols of state.

3. Exemptions from law on cultural grounds

Certain laws within democratic states may have the effect of prohibiting an activity or practice which those who belong to a particular minority group consider intrinsic to their culture. In some circumstances it may be appropriate to grant members of that minority an exemption from such a law. Levy defines exemptions as:

individually exercised negative liberties granted to members of a religious or cultural group whose practices are such that a generally and ostensibly neutral law would be a distinctive burden on them. Often this is because the law would impair a minority's religious practices, or would compel adherents to do that which they consider religiously prohibited.59

Examples of such exemptions may be found in Canada, where Sikhs are exempt from the requirement to wear helmets when riding a motorbike in order that they not be forced to choose between riding motorbikes or wearing the turbans required by their religious beliefs. In the United States American Indians have been granted exemptions from some narcotics laws, in order that they may consume peyote for religious reasons.60

Exemptions would seem to contravene the principle of equality before the law required by liberalism. Moreover, their implementation requires the state to have some formal process whereby it determines whether individuals genuinely belong to a  

59 Levy, p.25.  
minority group, or (even more dangerously), to a certain religious faith.\textsuperscript{61} With the proviso that exemptions should not be granted to a group when such an exemption will unacceptably restrict the individual rights of any of their members (for example, the practice of female circumcision, which is prohibited in many countries, including New Zealand), these two objections to exemptions suggest that requests for exemptions are probably best dealt with on a case-by-case basis, where the disadvantages implicit in their implementation to the political community as a whole are weighed up against the disadvantages to a minority group if they are not implemented. This is the type of situation that illustrates the importance of minorities having representation in decision-making processes.

Whether a state accepts a minority’s request for a legal exemption will of course depend on the nature of the request, but both neo- and social-liberal states seem capable of accepting such demands; social-liberalism because it is accepting of the argument that differences in the private sphere may lead to inequalities in the public sphere; neo-liberalism because of its generally laissez-faire attitude. (Many neo-liberals would argue against the enforcement of motorcycle helmet wearing for example, on the ground that personal safety is an issue of individual choice).

\section*{4. Other minority rights that are not applicable to immigrant minorities}

Readers may have noticed that because the discussion has so far only focused on the citizenship rights of immigrant minorities some of the most difficult challenges posed by ethnic or national forms of identity to modern liberal conceptions of citizenship have not been addressed. Levy, for example, identifies four other types of ‘minority rights’, most of which do not generally pertain to immigrant minorities.

First are the rights of self-government, claimed by groups which ‘seek a political unit in which they dominate, [and] in which they can be ruled by members of their own

\textsuperscript{61} \textit{Ibid}, p. 28.
groups'. Such political units may take a variety of forms, ranging from full statehood at one end of the scale, through independence within a federal system (such as Quebec within Canada), to, at the other end of the scale, some limited degree of self-government within a territory inside a larger sovereign state, (as is the case, for example with some of the Indian territories in North America).

Demands for self-government generally arise from those groups who conceive of themselves as national rather than immigrant minorities, and are among the most common and also politically contentious of demands for 'minority rights'. 63 Short of secession, accommodating such demands within a democratic regime would require a system of what Kymlicka has labelled 'differentiated citizenship', likely to create 'overlapping political communities' and giving rise to 'a sort of dual citizenship and to potential conflicts about which community citizens identify with most deeply'. 64 Such demands are potentially destructive both to political community and to the rights of citizens within the community. This is not to say that such demands are never legitimate, or that giving in to such demands may not on occasions be justifiable. It is just that they are not demands generally made by immigrant minorities, who in migrating to a new country generally wish simply to become full and equal member of their new country. Because of this they are not the types of demands with which this thesis is concerned.

The second and third category of minority rights identified by Levy concern the right of minority groups to place restrictions on the liberty of either non-minority group members (for example, by not extending voting rights to non-Indian residents within Indian reservations), or on the liberty of minority group members (by, for example, limiting members' access to certain types of education). Both types of limitations are

63 Support for the principle of national self-determination may be found in international law (most notably in the United Nations Charter), but in a world where there are between 5,000 and 8,000 ethno-cultural groups in the world but only around 200 states, full secession is likely to remain outside the realms of possibility for a large number of groups who would like some form of self-government. For these groups then, the options are most commonly going to be found in forms other than full statehood.
justified on the grounds that they are necessary to protect the integrity of the minority culture.\(^{65}\) Internal restrictions are especially controversial because they raise the spectre of liberal individual rights being denied to minorities within minorities. If, for example, a minority culture wished to enforce restrictions on the education or marriage rights of women and girls, should such internal restrictions be respected by the state in order to protect and respect the integrity of the minority culture? Such a violation of individual rights is unacceptable for many liberals, including Kymlicka, although others such as Kukathas have argued that so long as members of minority groups have the right to exit from a group, that group ought to be able to enforce internally restrictive rules upon voluntary members.\(^{66}\)

While there may be a case for internal and external restrictions in the case of some threatened indigenous minority cultures, (and Kymlicka has presented some influential arguments that even in liberal polities such restrictions might be justifiable)\(^{67}\) they are not rights that should generally be granted to immigrant minorities. Immigrant minorities may find it difficult to sustain their languages and

\(^{65}\) In the case of external restrictions it is debatable whether such restrictions (for example the suggestion that non-Indians be denied the right to ‘purchase or reside on Indian lands’ derive from a prior right to self-determination or whether they differ in some respect from the rights which are exercised by sovereign nations. Will Kymlicka, *Liberalism, Community and Culture*, Oxford, Oxford University Press. 1989, p. 146.


\(^{67}\) Kymlicka’s argument centres around the ‘value of cultural membership’ to individuals and goes thus: in order to make decisions about what constitutes a good life, individuals need to belong to a culture. A culture provides individuals with a ‘context of choice’, as it presents them with a number of meaningful options, and a value system on which to judge those available options. Hence, the environment in which people make judgements about the viability of their conceptions of a good life needs to be protected.\(^{67}\) Where Rawls argues that self-respect is a pre-condition of being able to carry out a rational plan of life, and that individuals need the freedom to examine their beliefs in order to confirm their worth, Kymlicka adds that those beliefs, and the tools with which to examine them, derive from an individual’s cultural heritage. Consequently, cultures need to be protected as contexts for decision-making, (and not because they are of value in themselves.) In other words, humans, by nature, require a culture in order to conceptualise themselves and their life choices. The specifics of cultural groups are not inherently valuable, but are valuable for what they provide to those who belong to them. Moreover, the culture they belong to has to be their culture, it is not good enough just to provide them with any old culture because language, customs and cultural heritage all give meaning and emotional strength. For Kymlicka then, cultures are a necessary precondition for individual autonomy and access to one’s culture should therefore be considered a ‘right’. See Will Kymlicka, *Liberalism, Community and Culture*, Oxford, Oxford University Press. 1989, Chapter Eight. Others have objected to his arguments. For a summary of the debate over cultural rights see Jacob T. Levy & Andrew Norton, ‘Cultural Rights and Conceptions of the Good: Current Issues in Liberal Theory’, Political Theory Newsletter, No. 5, 1993, pp. 164-179.
cultural practices in the country to which they have migrated but as this a consequence of their voluntary decision to migrate to a liberal polity in which individuals have individual rights and freedoms, they should not expect the state to step in and enforce cultural laws or practices, either within or outside the group itself. For most immigrant minorities their culture and language continues to be practised in their country of origin, and thus faces no threat of extinction. In this their situation may be contrasted to that of an indigenous or other national minority, whose culture and language has no other receptacle than the territory in which it is a minority and endangered minority culture.

A similar argument may be applied to the question of whether the cultural associations of immigrant minorities should receive another of the ‘assistance’ rights identified by Levy: the right to public funding for the retention of heritage languages and traditions. It is certainly desirable that immigrant minorities receive public funding to retain their cultural traditions and pass such traditions on to their children, and there are many ways in which the political community as a whole will benefit if they do. But these benefits are not so great as to warrant immigrant minorities considering public funding for their language and cultural retention an enforceable ‘right’ of citizenship. They, like a great variety of cultural, religious and other community activities, should be eligible to compete to receive public funding, and in this process they should make their case in the same way as would any other community group. But, as their cultures and languages are secure elsewhere, and as the decision to migrate to a country where they would be in a cultural minority was voluntary, their situation is quite different to that of indigenous and other national minorities whose culture only has a chance of survival in the state in which it is indigenous.

Levy also puts affirmative action policies in the category of assistance rights. Affirmative action policies are, however a more difficult proposition. The justification generally presented for the implementation of affirmative action policies (or preferential policies), such as entry quotas for educational or vocational courses or

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68 Levy defines assistance rights as those which are 'claimed for help in overcoming obstacles to engaging in common practices'. Levy, p.29.
preferential selection criteria for jobs, is that some minority culture individuals suffer from an unfair disadvantage in the competition for entry to educational institutions or employment opportunities as a result of past or present discrimination. Preferential policies act to counteract that unfair disadvantage by tilting preferences back towards members of the disadvantaged group, and, in so doing, provide disadvantaged groups opportunities they might otherwise be unfairly denied on the basis of their identity. As Ramesh Thakur puts it:

The belief underlying preferential policies is that some groups are so far behind in all measurable criteria that their survival and integration into the mainstream of society will not be possible without the government taking an active role to bring them to the same economic, social and political level as the other groups.69

The question concerning us here is whether preferential policies should be seen as a ‘right’ of citizenship for immigrant minorities? The case for this is much less compelling than that for the right to linguistic assistance. Certainly critics of preferential policies believe they should not be considered ‘rights’. Thakur, for example, does not accept that affirmative action policies will have the long-term effect their advocates claim, and identifies a number of unanticipated outcomes of affirmative action policies. These include persistence, where policies introduced as temporary expedients end up institutionalising rather than eliminating divisions; expansion, where positive discrimination policies tend to extend and escalate; capture, where the elite of each disadvantaged group benefit most from affirmative action policies, and non-elites may in fact end up trebly disadvantaged; and divisiveness, where because government policy is framed in a race-conscious way, it is likely to reinforce racial thinking within the society.70

In defence, proponents of affirmative action usually argue that measures designed to create statistical parity through devices such as quotas are only temporary. With time the equal representation of all ethnic groups, in all occupations, and at all levels will create the conditions necessary for true equality of opportunity to occur. Until that time however non-dominant culture members need to gain immediate access to education and employment opportunities that allow them to have an input into

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decision-making, and in so doing, to remove the cultural bias evident when decision-making positions are held predominantly by members of a dominant culture. Moreover, the presence of minority culture individuals in such positions has many flow-on effects. It provides role models for younger members of their culture and provides those holding the jobs with the opportunity to increase the overall status of the collective. Gaining well-paid and high status jobs also allows minority culture members to increase their lifestyle choices, extends the educational choices for their children, and increases the spending power of their culture as a whole. For all these reasons, it is argued, the creation of statistical group parity will act to create the conditions of equal individual opportunity.\(^7\)

Some of these arguments are attractive, and it may indeed sometimes be desirable that affirmative action policies be implemented to assist severely disadvantaged groups gain access to the educational and professional opportunities in numbers more commensurate with their populations. It does not follow however that provision of such policies should be considered a 'right' of citizenship for disadvantaged minorities. The political costs of preferential policies can be very high and it is not certain that they will have the intended effect. There seem to be better and less politically divisive ways of improving the educational and employment status of disadvantaged minority groups: the provision of generous and partially universal social rights (discussed below); an education system designed to meet the educational needs of all children, including those belonging to disadvantaged minorities; and an effective and comprehensive system of non-discrimination rights. A political community may decide in certain circumstances to extend preferential policies to certain groups, but arguments for such policies should not be presented in terms of citizenship 'rights'.

\(^7\) Thakur, pp. 266-271.

Having made the argument that certain citizenship rights should accrue to immigrant minorities in order to assist them gain full and equal citizenship, the question is raised as to what obligations should be associated with such rights. This question may be answered thus: translation and interpretation rights impose upon linguistic minorities the obligation to familiarise themselves with the public languages. Translation and interpretation services, which impose a fiscal burden on the political community, are provided in order to ensure that no citizen is deprived of their citizenship rights as a result of a linguistic barrier beyond their control. Implicit in the extension of interpretation and translation rights is the understanding that linguistic minorities ought not permanently rely on such services, but learn the official language(s) of state so that they no longer need to rely on such services. This understanding may be compared with the belief that public unemployment assistance should exist for those who involuntarily are unable to find work, and that such public assistance places an obligation upon the unemployed to be engaged in the search for work.

Political representation rights place upon immigrant minorities the obligation to participate in the act of political debate in the same spirit of tolerance and open-mindedness that they expect from other groups involved in the political process. Jeremy Waldron has identified two aspects to this obligation, (which, it must be noted, are common to all citizens, not just minority groups). Participation should be engaged in in a way:

1. ...that does not improperly diminish the prospects for peace or the prospects that the inhabitants will in fact come to terms and set up the necessary frameworks.

2. ...that pays proper attention to the interests, wishes, and opinions of all the inhabitants of the country.72

Such obligations require all citizens – including immigrant minorities – to carefully consider how the political demands they bring to decision-making processes will impact on the sense of political community that sustains democratic legitimacy. This is not to say that minorities should continually suppress their demands in the name of the

greater good. It simply requires that they subject themselves to the same requirements of reasoned persuasion and debate as other citizens. In particular, it requires they be very wary of making non-negotiable claims which have the potential to be destructive to political community – but which are phrased in such a way that a failure by the rest of the political community to accept them is read by the claim-making group as a fundamental failure to ‘respect’ them as a group.73

Finally, legal exemption rights oblige minorities to exercise the right in the spirit of the exemption, and not in some other way. For example, those American Indians exempt from the legal ban on peyote are obliged to use the drug only on those ceremonial and religious occasions for which the exemption was granted. Use of peyote outside these occasions should not be eligible for the exemption and should be punishable in the normal way.

The difficulty with the first two obligations laid out here, and with the notion of obligation generally in liberal variants of citizenship, is that because of liberalism’s prioritisation of individual rights, any argument that obligations precede rights is regarded with enormous suspicion, and rightly so. Yet without any mechanisms for enforcing the obligations associated with rights, obligations become little more than an exhortation to ‘be good’. This difficulty has lead some liberal citizenship theorists to focus on how citizens might be inculcated with the ‘virtues’ of liberal citizenship74 – particularly though the education system. Certainly in the case of the obligations associated with immigrant minority citizenship rights, both the education system and the public rhetoric of government institutions have a role to play in educating minorities about the reciprocal nature of rights and obligations in democratic societies. Similarly, these institutions have a role to play in educating the political community as a whole about the public and private benefits of an inclusive, non-discriminatory model of citizenship.

III.

Immigrant minorities and the democratic community

i. Social rights: minimising inequality and maximising social solidarity

Unlike the rights discussed in the previous section, each of which were special rights designed to assist immigrant minorities to overcome those barriers to full and equal citizenship that stem from their minority status, the social rights advocated in this section are designed to promote the individual freedom and agency of all citizens, regardless of identity. Societies in which all citizens experience both freedom and agency are more likely to generate levels of tolerance, social cohesion and cooperation beneficial to democratic community. Poor and disadvantaged immigrant minority communities are amongst those who have the most to gain in terms of individual agency from the provision of sufficiently generous social rights. Conversely, they are amongst those who suffer most if there are no such rights. Thus, social rights must be central to any discussion of how to promote the full and equal citizenship of immigrant minorities.

Rights to a basic income, education, housing, health care and welfare must be considered crucially important citizenship rights in a multicultural society. And further, these rights must be sufficiently generous to provide those dependent upon them with an income sufficient to allow them to participate in society. If they are not, that proportion of society reliant on publicly provided social services is at severe risk of entrenched and cyclic disadvantage, where their inability to adequately feed, house and educate themselves will likely impose on their children a similar inability. As proponents of social-liberalism reasoned, provision of such rights meets two of the requirements of citizenship: first, that individuals not only be free to be ‘self-governing’ but also able to be so, and, secondly; that there be a level of social and economic equality sufficient to nourish and protect a sense of political community.

In most social democratic societies some social rights have been available only to those in need: the unemployment, sickness, invalids’ and domestic purposes benefits in New Zealand, for example, have only ever been available to those who meet certain
criteria of need. But other social rights have, at least theoretically, been available to all, regardless of need (public education at the primary and secondary level, public health services and retirement income have been provided universally in New Zealand). Such universality of provision ensures that the benefits and costs associated with this endeavour are reasonably fairly distributed amongst the population, and that citizens are thus better able to conceive of themselves as engaged in a common political endeavour. We may look back at the description, contained in the first part of this chapter, of how ethnic and cultural minorities (including immigrant minorities) might fare under the minimal and targeted welfare systems associated with citizenship in neo-liberal polities. In societies where social and economic inequality is heavily ethnicised, ethnic minorities, including disadvantaged immigrant minorities, bear an excessive burden of disadvantage and stigmatisation. In such circumstances, ethnic difference comes to be closely associated with other forms of difference: income, health, education, employment, housing, even imprisonment status. Such segmentation of societies, especially when it becomes quite extreme, undermines the legitimacy of democratic government, which rests on the claim that all citizens are equal.

Clearly the system of sufficiently generous and partially universal social rights advocated here will not find favour in a neo-liberal polity. And, having argued that generous and universal social rights have an important role to play in fostering the equality necessary for ethnic equality, the argument constructed so far comes face to face with those trenchant criticisms of the welfare state made by neo-liberals and conservatives. How is the state, which is now already substantially removed from much of the business of managing the economy and which is operating in a global economy over which it has little control, to provide the economic conditions capable

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75 Although retirement income (national superannuation), became subject to a surcharge under the Labour Government in 1985. At a certain income level the surcharge was greater than the benefit, meaning superannuation was effectively a targeted form of assistance until its removal in 1998. See Anne Else and Susan St John, *A Super Future. The Price of Growing Older in New Zealand*, Auckland, Tandem Press, 1998.

76 Some such services have, nonetheless, been difficult to access on occasions. Hospital waiting lists, for example, have made some public health treatments more difficult to access.

of funding some universal social rights, generous targeted social assistance and sustaining the national economy? And further, how is it to prevent a generous and partially universal welfare state from eroding the social virtues of independence, cooperation and responsibility, not to mention the economic virtues of efficiency, accountability and market responsiveness?

This is one of the most significant challenges facing liberal democracies in the twenty first century. If citizenship as an ideal of individual and communal self-government is to retain its power as a normative ideal towards which democratic polities should strive, then they need to find a satisfactory answer to this question. Without a satisfactory answer many citizens in supposedly democratic states will have neither freedom nor ability to exercise self-government at any level. The ‘third way’ politics, espoused by theorists such as Anthony Giddens78, and embraced (at least rhetorically) by social democratic parties in the United States, United Kingdom, Germany and New Zealand79, claims to provide a middle path through the excesses of both capitalism and socialism, along which the individual rights of citizens, as well as the collective needs of the political community may be met. Many from the left are, however, sceptical of this endeavour, at least as it has been implemented in Blair’s Britain.80 Some, such as Bikhu Parekh, have argued that ethnic minorities do not fit into Tony Blair’s vision of Britain, despite its claim to be inclusive and multicultural. For Parekh, this is because Blair focuses on improving minorities’ access to positions within the dominant cultural institutions, rather than acting to genuinely pluralize those institutions themselves.81 Parekh’s arguments highlight the lack of real dialogue between ‘minority rights’ theorists and post-welfarist social democrats. This is a dialogue that must take place if citizenship is to develop a normative theory capable of being inclusive as well as protective of individual rights, individual agency and political community.

79 Srikanta Chaterjee; Peter Conway; Paul Dalziel; Chris Eichbaum; Bryan Philpott; Richard Shaw, The New Politics: a Third Way for New Zealand, Palmerston North, Dunmore Press, 1999.
Conclusion

In this chapter it has been argued that citizenship remains the most desirable of political statuses because, in its ideal form, it provides citizens with both the freedom and agency necessary to be self-governing at both an individual and a communal level. In order for citizens to live in a polity where the reality of citizenship most closely approximates this ideal, individual rights and freedoms must be protected, as must be the political community capable of providing this protection. In comparing how neo-liberalism and social-liberalism (the two most politically significant post-war ideologies in liberal democracies) have met this normative ideal of citizenship, the conclusion was drawn that neo-liberalism’s emphasis on freedom and its enthusiasm for minimal and targeted welfare systems meant that it fell considerably short of this challenge. Social-liberalism, while not yet fully equipped to satisfy the complex prerequisites necessary for individual freedom, autonomy, respect for difference, and stable political community, is in a much better position to develop policies which can attempt to do so.

It is this understanding that informs the rest of the thesis, in which I consider how closely the citizenship experience of non-Maori ethnic minority groups in New Zealand during a period of neo-liberal governance (1990-1999) approximates that of the normative ideal of citizenship outlined above.

Chapter Two

The transition from social-liberalism to neo-liberalism: National in Government 1990-1996

I want to know why people should not have decent wages, why they should not have decent pensions in the evening of their days or when they are invalided. What is more valuable in our Christianity than to be our brother’s keeper in reality? (Michael Joseph Savage, 1938)\(^1\)

The Government’s social and economic objective is to provide an environment where New Zealand families are able to take control of their own lives, freed from the dependence on state welfare that currently traps so many of our people. To achieve that objective we must be prepared to make bold changes and strike a new balance between the state’s responsibility for the citizen and the citizen’s responsibility for their lives and those of their families...we must take steps now to encourage New Zealanders away from dependence on the state towards personal and family independence. (Jenny Shipley, Simon Upton, Lockwood Smith and John Luxton, 1991)\(^2\)

Introduction

The first Labour Government of 1935-1949 set in place the foundations of a welfare state which was to endure until nearly the end of the century. Designed to protect New Zealanders from the extreme hardships such as those witnessed during the Great Depression, the welfare state was to provide ‘cradle-to-the-grave’ security through the collectivisation of risks and responsibilities. It was not surprising that Labour should have introduced such policies, given its socialist roots. More surprising, perhaps, was that the National Party – established in 1937 in direct opposition to Labour’s socialism – should have also supported the welfare state during most of the post-war period. But it did, and for forty years the welfare state enjoyed bipartisan support and widespread public approval, while the benefits it provided were

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\(^1\) New Zealand Parliamentary Debates, Vol 51, 1938, p. 649.
consolidated and extended. Underpinning this support was a broad acceptance of T.H. Marshall's assertion that full citizenship would only be attained when citizens had access to the 'social rights' of citizenship. By the 1980s New Zealanders took for granted that modern citizenship entitled them to an extensive range of social rights.

But the economic crises of the 1970s revealed the extent to which generous welfare provision was reliant upon an interventionist state and a buoyant international economy. The international recession kicked off by the first of the oil shocks in 1973 exposed the painful cost of welfare assistance in times of high unemployment, low economic growth and steeply rising inflation. From the 1980s onwards a backlash against Keynesianism was spearheaded by a new economic liberalism which argued that markets could deliver economic growth and social welfare and that the role of the state should be curtailed. Such arguments were to become economic orthodoxy in the United States, Great Britain, Australia and New Zealand. Like earlier versions of economic liberalism, the new version - commonly referred to known as 'neoliberalism' or 'market'-liberalism - considered that governments ought to give paramount consideration to individual civil and political rights, particularly property rights. Social rights, they held, were a breach of individual property rights. Instead of pursuing full and equal citizenship through a generous welfare state, neo-liberals sought the enhanced individual freedom they were convinced could be found in the free-market society.

This chapter is about the way in which the National and Coalition Governments of the 1990s rejected the concept of social citizenship and chose to pursue instead a market-liberal vision of state and society. This transition between social- and market-liberalism was not effected entirely by the National Government. Much had already been done to dismantle the foundations of the welfare state by the fourth Labour Government of 1984-1990. Nor did the National Government entirely complete the transition - even under National the state retained responsibility for the welfare of its poorest citizens and for provision of major social services such as education and health care. But it was certainly their intention as a Government to comprehensively

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3 For a New Zealand example of such arguments see Bernard Robertson, Economic, Social and Cultural Rights. Time for a Reappraisal, Wellington, Business Roundtable, 1997.
alter the relationship between government and citizens, and, in particular, to root out from the national consciousness the idea that the state existed to provide the generous and universal social rights of citizenship considered necessary by social liberals like Marshall.

The chapter begins with a brief history of the development of the welfare state in New Zealand looking at both welfare policies and the philosophies underlying them. It then examines the move away from Keynesian social-democratic thought towards a market-based neo-liberalism in the 1980s and 1990s, with the main focus being on the policy changes implemented in the economic and welfare arenas by the National Government of the 1990s. The aim of the chapter is simply to provide some information about the political context within and historical background against which the National Government developed its thinking about how to treat ethnic minorities. It is hoped this background will then illuminate the main topic of this thesis: the way in which non-Maori ethnic minority groups in New Zealand were treated in a number of policy areas by the National and Coalition Governments during the 1990s, and whether this treatment enhanced or detracted from their citizenship status.

I.

A ‘perfect mania’: state intervention 1935-1984

Many commentators and historians have commented on the unusual equanimity with which early New Zealanders accepted a very high level of state involvement in their economic and social life, although such equanimity was less often a characteristic of Maori attitudes towards the colonial state. W. H. Oliver, for example, points to the crucial role the colonial administration's land policies and ‘native’ policies played in assisting European settlers to gain access to land, but their techniques – legal and

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military – were met with growing resentment and hostility on the part of Maori from the 1850s onwards.\(^5\)

Maori feelings notwithstanding, colonial administrations of the nineteenth and early twentieth centuries played a central role in the development of New Zealand. The racial and cultural make-up of the population was determined by a combination of assisted immigration and racially discriminatory immigration policies,\(^6\) its infrastructure developed through extensive public works programmes, and its economy progressed by state monetary and industrial policies. Although all nineteenth century New Zealand governments advocated a mixed economy, by the end of the century huge tracts of land were in Government ownership, Government had significant interests in forestry (the State Forest Act 1885 created state forests),\(^7\) and, fearful that if railways development was left to private enterprise it would not advance as quickly as settlement required, the Government owned and operated virtually all of the railway lines in New Zealand.\(^8\) In 1901, when coal was the major source of energy, the Government also established state coal mines.\(^9\)

Accept as they might that the state had a legitimate role in assisting with the economic development of the new colony, many British settlers were more ambivalent about the provision of extensive welfare rights to the needy. Mixing a Christian humanism with the Victorian values of family responsibility, hard work, thrift and independence, some feared too much state charity would breed dependence and moral decline amongst the poor. Until the late nineteenth century the state provided its most needy residents – and then only the ‘deserving’ ones – with limited and piecemeal health, education, welfare and labour policies,\(^10\) despite its extensive involvement in other aspects of the country’s development.

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6 See Oliver, 1988, pp. 6-7, and Bassett, 1998. Also Chapter Three of this thesis.

7 Bassett, pp. 48-50.

8 Ibid, pp. 61-63.


10 For an account of nineteenth century welfare provisions in New Zealand see David Thompson, A World Without Welfare. New Zealand’s colonial experiment, Auckland, Auckland University Press and Bridget Williams Books, 1998. Those state-provided services which did exist by the end of the century included sanitation, quarantine and vaccination services, the establishment of Regional Charitable Aid Boards which provided assistance to the poor in 1885, a free public primary
It was the experience of the Great Depression in New Zealand in which 75,000 New Zealand men were unemployed, (and the number of women unemployed or without income not counted) that legitimised for many the idea that the state could and should protect individuals from excessive hardship. Labour's victory in 1935 was to bring about New Zealand's transformation into a fully-fledged, twentieth century social democracy. For a start, Labour nationalized the Reserve Bank, restored salaries that had been cut during the Depression, restored the compulsory arbitration system, set a minimum wage, and established a large public works programme to create employment.  

But the most significant of all the changes introduced by Labour was the 1938 Social Security Act, passed, according to Prime Minister Michael Joseph Savage, to put 'an end to poverty', and 'for the first time to provide, as generously as possible, for all persons who have been deprived of the power to obtain a reasonable livelihood through age, illness, unemployment, widowhood, or other misfortune'. Those who were prevented from earning a living through 'age, sickness, widowhood, orphanhood, unemployment, or other exceptional conditions' were to be provided with means-tested benefits (except for the old-age pension) generous enough to save them from poverty. The 1938 Act also put in place free and universal primary, specialist, hospital and maternity health care, and provided prescriptions free of charge. Secondary education became free. In 1937 the state embarked on a mammoth public housing building project, contracting private construction firms to build over 15,000 flats and houses to be made available to low-income New Zealanders by 1947. A universal family allowance became available to all families with children from 1946. Welfare benefits relied of course on a growing economy. Convinced that through close and careful economic planning it could manage the economy towards prosperity, Labour further involved the state in the economy.

education system throughout the late 19th century, an old age pension for the 'deserving poor' from 1898, job creation schemes from 1892, and industrial arbitration under an act passed in 1894. See Oliver, 1988, pp. 4-17.


Quoted in Oliver, 1988, p. 25.

Savage was convinced that an interventionist state could eliminate poverty. This belief – which for Savage was rooted in socialist and Christian principles – stood in stark contrast to the nineteenth century view that ‘the poor are always with us’\textsuperscript{15}, and that the best a state could or should do was provide charity to an underclass that would always exist. For Savage, welfare benefits such as these were ‘applied Christianity’, and by providing such social rights, he hoped to give practical expression to the socialist ideal of egalitarianism and ardently reject its classist alternative, \textit{noblesse oblige}.

Although many of Labour’s policies at first seemed highly innovative to an international audience, high levels of state intervention in the economy were soon to become orthodox in industrialised democracies. In 1936 the economist John Maynard Keynes published his major work \textit{The General Theory of Employment, Interest and Money}, in which he suggested that nineteenth and early twentieth century neoclassical economists’ faith in the self-regulating capacity of the markets had blinded them to the market failure which had led to the Great Depression. He argued that that the Depression had been triggered by a fall in aggregate demand, and proposed that an effective remedy to this particular type of market failure was for governments to play an active role in stimulating demand.\textsuperscript{16} Keynes’ theory, with its emphasis on state investment and economic management, and its promise that depressions could that way be avoided, fitted perfectly the requirements of post-war nations attempting to rebuild their shattered economies. ‘Keynesianism’ quickly and widely came to be seen as providing a blueprint for modern capitalist democracies. And, for almost thirty years, rapid economic growth and prosperity in those economies seemed to prove only that Keynes had indeed discovered a happy middle path between capitalism and socialism.

When Marshall delivered his influential lecture on social citizenship in 1949 Keynesianism was just beginning its ascendancy as an economic prescription and

\textsuperscript{15} \textit{Ibid}, p. 41.

political ideal. The idea that governments could manage effectively the economy, and thereby create prosperity and maintain full employment, naturally created the expectation that they do so. In light of this new expectation, and of the emerging prosperity of the post-war period, Marshall’s concept of ‘social rights’ undoubtedly seemed legitimate — and possible — in a way it might never have before the war. Social citizenship of the type advocated by Marshall required a highly interventionist state, near full employment, high levels of taxation, a willingness to collectivise risks and responsibilities, and a desire for social solidarity. Keynesianism, and its adoption within societies still scarred by the experiences of depression and war, as well as the boom-time economies of the post-war era, provided all of these things. Marshall’s model of social citizenship was, in other words, very much a product of its time, and intimately linked with the rise of Keynesian social democracy. (This was true in a personal, as well as an intellectual and practical sense — the person in whose honour T. H. Marshall’s lecture was delivered, the sociologist Alfred Marshall, was Keynes’ teacher at Cambridge University, and a major influence on his thinking.)

Even after the first Labour Government lost power in 1949 New Zealand governments continued to pursue the goal of egalitarianism through state intervention in the economy and through the expansion of the social rights of citizenship (with the exception of free primary medical care, which was abandoned in 1941). Social welfare benefits were periodically adjusted to meet inflation. The Reserve Bank of New Zealand Act was passed in 1964, requiring the Reserve Bank to maintain and promote ‘economic and social welfare in New Zealand’ and to have ‘regard to the desirability of promoting the highest level of production and trade and full employment, and of maintaining a stable internal price level’. These arrangements effectively provided the Minister of Finance with control over monetary and exchange-rate policy. In 1972 Labour introduced the Accident Compensation Act, a contributory scheme which provided income-based compensation for accident victims, and then in 1973, the Domestic Purposes Benefit, which provided income assistance to single parents. In 1976 the National Party introduced its universal national superannuation payment to all people over the age of sixty. In significant

17 Bertram, p. 32.
18 Oliver, p. 36.
respects the welfare state had become more generous and universal since 1938. And, support for the welfare state remained high – although not universal – up until at least the early-1970s. A Royal Commission on Social Security reported in 1972 that it favoured a continuation of the existing model of social welfare, and echoed the Marshallian view that full citizenship required social rights. All citizens, the Royal Commission argued, should be ‘able to feel a sense of participation in and belonging to the community’, regardless of their background. But as the period of economic growth and prosperity shuddered to a halt in the early 1970s, and the market liberals began their protracted and successful campaign to discredit Keynesianism, the concept of social citizenship embraced by the Royal Commission also came under fire.

In 1973 two things happened which signalled the end of the post-war economic era: the breakdown of the Bretton Woods system (designed to provide international economic stability in part by fixing exchange rates to the gold-backed American dollar) and the first of the oil shocks. By 1974 the world was in an economic recession, experiencing a calamitous combination of low growth, rising inflation, growing unemployment, national budget deficits and international debt, and exchange rate instability. Many commodity producing countries were also adversely affected by the crash of the commodities market. For New Zealand, a further, equally damaging event occurred: Britain joined the European Community in 1973, thus ending New Zealand’s guaranteed access to British markets. Echoing the title of a famous New Zealand play, economist John Gould named the period after 1973 as ‘the end of the golden weather’. From 1974 onwards New Zealand struggled with a long list of economic woes, identified by Brian Roper as: ‘economic stagflation, high inflation, declining profitability, insufficient and poorly allocated levels of productive investment, historically low terms of trade, recurrent balance of payments deficits, increasing public and private indebtedness, the cessation of real wage growth, the highest level of unemployment since the 1930s, and the most widespread’. In New Zealand, a Royal Commission on Social Security, Report on Social Security in New Zealand, Wellington, Government Printer, 1972.


Roper, p. 2.
Zealand, as elsewhere, the Keynesian prescription no longer seemed able to deliver the economic prosperity and social cohesion it had once promised.

The world recession of the 1970s prompted a resurgence of economic liberalism. The new breed of economic liberals came to the old conclusion that government intervention in the economy was itself a cause of market failure. In place of the Keynesian strategy of stimulating growth through demand-side economic policies, they emphasised the suppression of inflation through tight control of the monetary supply (hence the term ‘monetarism’). Such conclusions were to have a revolutionary effect in New Zealand from 1984 onwards, fundamentally reshaping the economic, administrative, and social landscape of New Zealand.

II.

The ascendency of neo-liberalism: Labour in government 1984-1990

Treasury’s diagnosis of and prescription for the ailing New Zealand economy were detailed in full in their briefing paper to the incoming Labour Government in 1984. After almost a decade of very extensive government control of the economy under Prime Minister Robert Muldoon, the briefing paper (called Economic Management) recommended that the Labour Government effectively withdraw itself from many areas of economic activity, and free the market up to be the self-regulating mechanism it properly was. Treasury was not alone in its views. Market liberalisation was advocated by a growing number of economists, bureaucrats and business people as well as significant market-liberal factions within both the National and Labour parties. Most significantly however, Treasury’s convictions were shared by the new Minister of Finance, Roger Douglas, whose ideas for radically reducing the role of the state in the economy had been laid out in a pre-election Economic Policy Package.

Without accepting all of Treasury’s advice, Labour applied itself assiduously to the programme of market liberalisation. In its two terms of office the Labour Government
floated the New Zealand dollar, deregulated the financial sector, removed much assistance to the manufacturing and agricultural sector, lifted price controls, and partially deregulated the transport and communications industries. Under the State-Owned Enterprises Act 1986 it transferred many activities previously undertaken by the state sector to State Owned Enterprises required to behave more or less as if they were in the private sector. Many such enterprises were subsequently sold to the private sector. Government’s ability to exert influence over monetary and exchange rates was effectively curtailed by the Reserve Bank Act 1989, which replaced an earlier requirement that the Bank have regard to the desirability of maintaining full employment with the more limited requirement that it maintain low inflation. Then the remaining state sector was extensively restructured with the passing of the State Sector Act 1988 and the Public Finance Act 1989. The top tax rate was dropped from 48% to 33%, and the introduction of a regressive tax regime in the form of GST – a levy on consumption – had the effect of reducing government’s ability to redistribute income within society. The combined effect of these changes was that in the space of six years the Keynesian compromise between labour and capital, which had existed for the previous forty five years, was ended. Needless to say it provoked strong political reactions (as well as extensive academic analysis.)

Underlying the changes implemented by Labour were a number of theories about government and its appropriate role in the lives of citizens. On the one hand were the market-liberal and monetarist arguments put forward by Milton Friedman and others from the Chicago School of economics. On the other hand were the administrative and managerial theories advanced by James Buchanan and others from the ‘Virginia School’. Particularly influential in New Zealand were public choice theory and ‘managerialism’, and agency theory. Because of their influence on Labour’s policy

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making, and subsequently on National’s, each of these theories is examined briefly below.

Public choice theory rested on the assumption that human behaviour is motivated almost entirely by self-interest. This self-interested characteristic of human nature allowed the market to operate effectively, but it could—so the theory went—have detrimental effects in political life. Politicians, lobbyists, bureaucrats and voters tended to use the political system and its institutions to pursue their own interests. According to this analysis, if unchecked, the desire of politicians and bureaucrats to increase their own political and economic power would lead to an ever-expanding governmental sector. This, it was argued, would be detrimental to individual autonomy and liberty, to the economy, and to the general distribution of power in society. The true ‘public’ interest lay in preventing each of these sectional groups from pursuing their interests at the expense of the all others in society.

Flowing from this analysis of human behaviour were a number of prescriptions as to how best to organise political institutions, particularly bureaucracies. To minimise the degree to which politicians, bureaucrats and professionals could use political institutions and processes to pursue their own self-interest, the state should reduce its role to a minimum. Limits should be placed on public spending, which, without such limits, would spiral out of control. Those activities which remained under government control should be characterised by economic efficiency, achieved by importing some of the techniques of fiscal management used in the private sector. Competition should be employed as a device to both stimulate efficiency and break monopolies of control. Policy advice, funding decisions, and the provision of services should be separated in order to prevent the monopolistic control of policy sectors, especially by professionals. In order to create the desired competition and efficiency in the delivery of public goods and services (including the provision of policy advice), their provision should be contestable, allowing the most efficient and effective provider to gain the contract for their provision.

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25 Boston, Reshaping the State, 1991, p.3.
Agency theory put under scrutiny the nature of relationships in business and government. Arising out of the new ‘economics of organisations’, agency theory focused on the contractual relationship between ‘principals’ who wished something to be done for them, and the ‘agents’ they employed to do it. Agency theory analysed how best to achieve efficient outcomes under the contractual relationship, by seeking to understand the ‘incentive structures’ underlying the contract. Like public choice theory, agency theory considered individuals to be self-interested and opportunistic. It assumed, therefore, that both principals and agents ran the risk that the other might somehow attempt to exploit them. Principals ran the risk that agents would overcharge and under-work. Similarly, agents ran the risk that principals would underpay and overwork them. A good contract was one that minimised the risk of either occurrence, (although the focus of agency theory has been on minimising risks for principals rather than agents). Agency theory considered that efficient outcomes would usually be best achieved through contracts which incorporated a system of ‘incentives, monitoring and bonding’ into the contract, thus tying the interests of the agent into those of the principal.

Agency theory, and transaction cost analysis, (which analysed methods of reducing the costs of transacting business) bolstered public choice theory’s arguments for the contracting out of service provision. In addition, they emphasised the need for tightly specified ‘outputs’ within contracts if agents were to be held to account.

The influence of a further set of ideas, commonly known in New Zealand as managerialism or, (in the Northern Hemisphere), as the New Public Management, made itself felt in the New Zealand context. Mangerialism has been described by Pollitt as:

...a set of beliefs and practices, at the core of which burns the seldom-tested assumption that better management will prove an effective solvent for a wide range of economic and social ills.

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27 Toni Ashton, 1992, p.154
29 Ibid, p.5.
31 Pollitt, p. 1.
It asserted that ‘managing’ was a distinct skill, and one on which both private and state businesses relied to increase productivity and efficiency.\(^{32}\) As a generic skill, it could be applied successfully to any type of organisation, regardless of the nature of the activities in which organisation was involved. It was not necessary, for example, to have experience in the health sector in order to be an effective manager of a health organisation. New Public Management emphasised efficiency and cost-cutting; the use of contracts; the measurement of outputs rather than inputs; more stringent reporting and accounting mechanisms, and the separation of policy advice from service delivery, and of commercial from non-commercial functions within organisations.\(^{33}\) In short, the principles and practices of business management were to be applied to the public sector to a degree not seen in the past.\(^ {34}\)

Jonathan Boston has identified the influence of public choice theory, agency theory and managerialism on Labour’s policy-making in numerous areas.\(^ {35}\) Public choice theory, he has argued, influenced many of the changes to the state sector, particularly the ‘de-coupling’ of policy advice and implementation and the decision to limit government’s power over the Reserve Bank.\(^ {36}\) It was evident also in a rejection of the established practice of incorporating significant interest groups (such as Federated Farmers, Unions and Employer groups) into the decision-making process, and the increasingly accepted view that such groups were ‘vested interests’ attempting to ‘capture’ policy making or implementation. Agency theory, together with New Public Management, was instrumental in convincing Labour that publicly owned assets would be more efficiently and effectively run if ‘decoupled’ from ministerial intervention in day-to-day management and submitted to market forces, or, indeed, privatised.\(^ {37}\) Similarly, the decision to introduce performance contracts for senior management, including Chief Executives under the State Sector Act 1988 can be traced back to agency theory.\(^ {38}\) Similar influences were particularly noticeable in the

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32 Ibid, p. 2.
33 Boston, Reshaping the State, 1991 pp. 9-10.
36 Ibid, p. 10.
38 Ibid, p.11.
Public Finance Act 1989, with its emphasis on accountability and transparency, and on outputs and outcomes. All three theories emphasised the desirability of contestability as a factor contributing to efficiency and effectiveness and provided arguments in favour of the contracting out of government service provision, a practice which became widespread under Labour.\(^{39}\)

The arguments and assumptions underlying public choice theory and agency theory were derived from a classical liberal rather than a social-liberal understanding of human nature. By basing so many of their reforms on this understanding – that individuals were inherently self-interested, utility maximisers – the fourth Labour Government had clearly and decisively parted company from its socialist, collectivist roots. Likewise, their belief in the superior efficacy of the market represented an almost complete reversal – and, for many, a betrayal – of their traditional distrust of the free market.

Through its economic and administrative reforms the Labour Government progressed a considerable way towards dismantling the economic struts which upheld the welfare state. But it was not a straightforwardly neo-liberal government. As Andrew Sharp has noted, it operated in a ‘theory-rich environment’,\(^{40}\) combining its thirst for economic liberalisation with a more traditional left-wing desire to protect human rights (evident in the New Zealand Bill of Rights Act 1990), and a lingering concern for egalitarianism, now diluted down to the pursuit of ‘equity’ or ‘equal opportunity’ (evident in the Equal Employment Opportunities provisions in the State Sector Act 1988, and in the establishment of the Ministries of Women’s Affairs and Pacific Island Affairs).\(^{41}\) And, complicating each of these concerns, was the newly prominent question of how to deal with Maori. The period during which New Zealanders could complacently claim that they had the best race relations in the world now seemed irrevocably over. Maori sought compensation from the Crown for the occasions on which the Crown had breached the agreements set out in the Treaty of Waitangi. Increasingly the Treaty itself was understood by Maori (and others) to protect

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\(^{40}\) Andrew Sharp, ‘The Case for Politics and the State’ in Leap into the Dark, p. 5.

\(^{41}\) It was, for example, to the promotion of ‘equity’ not ‘equality’ that the 1988 Royal Commission on Social Policy was directed. See Volume One of the April Report of the Royal Commission on Social Policy, Report of the Royal Commission on Social Policy, Wellington, 1988.
(varying degrees of) Maori sovereignty or self-determination – te tino rangatiratanga – and Maori challenged the Crown to put in place mechanisms by which they, Maori, could exercise greater control over their own people and resources.

Labour took both claims seriously, attempting throughout their administration to respond appropriately, albeit in ways compatible with its other policy goals of efficiency and ‘equity’. In 1985 the Government extended the powers of Waitangi Tribunal, allowing the Tribunal to make recommendations on claims dating back to the signing of the Treaty in 1840. It also increased the number of Tribunal members to cope with the anticipated increase in claims. Then the findings of the Waitangi Tribunal from 1983 (when the Tribunal’s first report, on the Te Atiawa claim, was released) themselves began to provide a new and complex jurisprudence which exerted a growing influence over government. The Labour Government found itself increasingly locked into direct negotiation with Maori, foiled in its attempt to delegate settlements with Maori to the Waitangi Tribunal, and skewered by a Court of Appeal finding that the Treaty involved a ‘partnership’ between Maori and Pakeha, and that although the Crown ‘was indeed sovereign, … it was a negotiating sovereign, locked in permanent discussion with a particular section of its subjects by virtue of a promise made in 1840’. This finding added moral and legal legitimacy to the argument already promulgated by many Maori: that they constituted a separate ethnic group, with separate and differentiable traditions, values and history to Pakeha, and that these differences ought to have practical expression in the political, administrative and social organisations of state. The Government was startled and concerned by the Court’s finding. Seeking to clearly assert the sovereignty of the executive, the Government set out its Principles For Crown Action on the Treaty of Waitangi in 1989. In so doing it was proved that, as Andrew Sharp has argued, ‘the Crown had been drawn into the most fundamental of all political relationships – the relationship between equals, each claiming their own intrinsic authority.’

Alongside Maori claims to reparative justice were their claims to distributive justice. Maori continued to be poorer, less educated, less healthy, more unemployed and more imprisoned than the rest of the population. The roots of Maori disadvantage were identified by many in state racism, oppression and historical wrongdoing. Solutions were sought not only in reparation but in greater levels of \textit{rangitiratanga} or autonomy. If Maori could have greater control over the resources available to their people, it was argued, they could take greater control over their lives as a whole, moving out from dependency on the state. Nationalist arguments were important here too. Maori, it was said, deserved more than just the equal rights of citizenship, more even than compensation for the wrongs done to them as a people by the Crown in the past. Because they were the indigenous ‘people’, they retained certain rights to self-government, and even to power-sharing with the Crown.\footnote{For an exploration of such arguments, see Andrew Sharp, \textit{Justice and the Maori. The Philosophy and Practice of Maori Claims in New Zealand since the 1970s}, (2nd Edition), Oxford University Press, New Zealand, 1997.}

Such arguments exerted an enormous ideological and moral force over political debate during the 1980s. The Labour Government’s main response was to combine the requests for greater autonomy with those for distributive justice by continuing on with the process, already established by the previous National Government, of devolving social service delivery to Maori agents. In 1990 the Runanga Iwi Act was passed with the intention of allowing iwi (tribal groups) to deliver social programmes on behalf of government,\footnote{See Ann Sullivan, ‘Maori Politics and Government Politics’ in Raymond Miller, 1997, pp. 364-365.} and a Ministry of Maori Affairs was created in place of the old Department of Maori Affairs. Devolution accepted as reasonable Maori’s desire to get out from ‘state paternalism’,\footnote{\textit{Ibid}, p. 364.} and to have the opportunity to deliver and receive services in ways which were culturally, spiritually and linguistically attuned to Maori. Devolution, of course, also suited the Government’s other agenda: facilitating the state’s retreat from the lives of its citizens. It was contracting-out with a cultural or ethnic rationale, and represented something of an uneasy truce between the political, collectivist, identity-based arguments of Maori, and the individualist, market-based arguments of neo-liberalism.
The effect of all this on non-Maori ethnic minorities was, on the whole, negative. Maori claims that they were an indigenous 'nation', with all the rights of other minority 'nations', and that, in addition, the Treaty of Waitangi accorded them a unique constitutional position, served to separate Maori claims for justice from those of other minority ethnic groups. That these claims were also accompanied by a strong emphasis on the central importance of 'cultural', 'ethnic', and even 'racial' identity served to distance both Maori and the state from the view that pursuing equal citizenship, rather than identity politics, was a good way to address ethnically-based social and economic disadvantage. For non-Maori ethnic minorities neither position was terribly helpful. Non-Maori could not claim rights as national minorities, nor did they have a treaty with the Crown guaranteeing them rights as minorities. Moreover, the forcefulness with which Maori had presented their claim to being a distinct 'culture' worthy of equality with the dominant Pakeha 'culture' had led to a political environment where although 'culture' was deemed critical to identity 'multiculturalism' was seen as something that needed to be put off until true 'biculturalism' had been achieved.

So, during its time in office, Labour had been attempting to pursue several ideological and practical agendas. Policy goals of efficiency, fiscal restraint, accountability, personal choice, competition, and contestability of advice existed alongside those of social and economic 'equity', 'cultural sensitivity', reparative justice for Maori, and a liberal distaste for racial discrimination. And, with many in the Labour Party still committed to the egalitarian goals of social-liberalism, the Labour Government stopped short of applying, wholesale, market principles to the health and social welfare portfolios. The new National Government, elected in November 1990, had no such inhibitions.

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49 One example was the shift within the Public Service from 'multiculturalism' (as exemplified by Towards a Multicultural Public Service, 1983) to the primacy of Maori issues as outlined in Te Urupare Rangapu, 1988.
National entered government in 1990 under the Prime Ministership of Jim Bolger. While Bolger himself could have been described more accurately as a conservative pragmatist than a radical neo-liberal, there were several within his first Cabinet that brought a reformist zeal to their portfolios. Ruth Richardson, Simon Upton and Jenny Shipley were all advocates of Chicago School economics, and Upton, at least, had studied and found himself in sympathy with Buchanan’s public choice theory. Yet fundamentalist neo-liberalism sat did not sit a lot more easily with National than it had with Labour. National’s past acceptance of, (indeed – under Muldoon – insistence on), high levels of state intervention in the economy demonstrated the pragmatic rather than ideological nature of its political style up until the 1990s. But, at least rhetorically, National had always been the party of the free market. For the National Party of the 1990s then, the movement from free market rhetoric to practice did not involve the ideological wrench that it had for the fourth Labour Government. Moreover, much of the hard work had already been done by the preceding Labour Government, and by the time the National Government gained power in 1990 the fulcrum on which the political spectrum in New Zealand politics hung had moved considerably to the right. What remained was for National to continue the processes of commercialisation and privatisation that were already well established and, more critically, extend the market reform process into two areas with which even the fourth Labour Government felt uncomfortable: the labour market and the social welfare system.

During the period in which National was in government social policy may be divided into two, rather indistinct, overlapping periods: 1990-1996, and 1996-1999. The first was when Ruth Richardson was the Minister of Finance, at which time the main focus of government was the successful integration of New Zealand into the global economy and fiscal considerations were paramount. National, like Labour before it, was committed to an anti-inflationary monetary strategy based on tight

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monetary policy and reductions in state spending. In their first budget in 1991 – dubbed the 'mother of all budgets' – by the Minister of Finance Ruth Richardson, National announced significant reductions in government spending on social welfare. These, she informed the public, were the first steps in their campaign to bring about significant changes to the welfare state, marking a decisive move away from the economically damaging and morally corrupting notion of collective responsibility. Then, in 1991 the Minister of Social Welfare, Jenny Shipley, released *Welfare That Works*, laying out the National Government's policy objectives in the social assistance area. *Welfare That Works* was the blueprint for how government was to effect the transition to a minimalist model of welfare, where risks and responsibilities would be progressively transferred to individuals and communities.

### 'Welfare that Works'

Several themes emerged from *Welfare That Works*. First, the argument was made that the state could no longer afford to continue meeting the costs of a largely universal system of social welfare, due both to rising demand for social assistance and a prolonged period of economic decline. For this reason the government was to target social assistance to a much greater level than previously. Those who could afford to contribute towards the cost of the social services they received would be required to do so, while those who were unable to pay for services would continue to receive state assistance. In order for such targeting to take place it would be necessary to introduce means-testing to establish individuals' and families' ability to pay for services.

According to Shipley, the increased efficiency of government spending as a result of targeting would reduce levels of national debt, thereby allowing government to reduce tax rates. Lower taxes would encourage investment, entrepreneurial activity, and provide incentives for people to work harder, which in turn would stimulate economic growth and employment opportunities. With more jobs, fewer people would be reliant on welfare assistance. Reducing the level of welfare assistance, and targeting it more carefully at those in need, would thus create a virtuous economic cycle, ultimately resulting in greater prosperity for all.
To these economic justifications for a minimalist welfare model, National added moral, philosophical and psychological arguments. In their analysis, collective responsibility effected through the centralised mechanisms of the state occurred at the expense of individual responsibility. Individual responsibility had been eroded to such an extent that large numbers of people had become passive recipients of government assistance, unmotivated to work or lead independent lives. Excessive dependence on the state had sapped their motivation, trapping them unnecessarily in situations of deprivation and disadvantage. Such people were a drain on the social and economic infrastructure of the country, contributing to ‘crushing’ levels of national debt, compromising the efficiency of the national economy, and bringing down the living standards of other New Zealanders.

For National, the notion of collective responsibility via welfarism no longer served to protect citizens against hardship, it had become the cause of poverty and privation. The risk-sharing aspect of the welfare state they saw as being corrosive of individual incentive and responsibility. They argued that if individuals were not shown, and made to pay for, the true cost of their actions through the market, incentives for individuals to act responsibly were either reduced or removed. Individuals, families and communities should, therefore, carry more risk themselves, rather than share these risks across the national community through the centralising mechanisms of the state. As Shipley argued in *Welfare that Works*:

> Past benefit levels have had a negative effect on the lives of many New Zealanders, in particular those they are intended to assist. For many people the generosity of the benefit system has become a poverty trap. Benefit payments have been high enough compared to wages that for many people there has been little financial encouragement to take on paid work and employers have been unable to attract workers at rates that would maintain the viability of their businesses.

What was required, therefore, was a fundamental redistribution of responsibility across national society. All individuals would be encouraged to take more financial responsibility for their own social and economic outcomes by paying a greater

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proportion of the costs of those social services they used, although the state would continue to pick up responsibility for those in society unable to care for themselves and their families without state assistance. The reforms would be designed to ‘encourage self-reliance by providing people with sufficient motivation to move from state dependence to independence’, a goal to be effected by reducing the level of state support so that a benefit would be significantly lower than the minimum wage. Raising the minimum wage was dismissed as an alternative as it was considered likely to artificially inflate the cost of labour, causing economic inefficiency and increasing unemployment.

While the desire to reduce government spending was the main driver behind the benefit cuts of 1990 and 1991, fiscal considerations were accompanied by moral ones. Shipley countered the criticism that welfare cuts would widen the disparities between rich and poor with the argument that such disparities would act as an incentive for people to move off benefits into jobs, or to work harder in jobs they held. In this way growing economic inequality among citizens was presented as part of the solution to New Zealand’s economic problems, rather than the obstacle to social justice it had been understood to be in the past.

Greater fairness, personal choice, and flexibility were – Shipley argued – further benefits that were to be expected from the reforms: fair, because those who could afford to look after themselves would, under the new system ‘be encouraged to do so’. Individuals and families were to share with government the cost of social protection and social services. Greater personal choice of social services, and of providers (from the public, private or voluntary sector) would also occur as a result of ending the state’s monopoly as a provider of social services. The flexibility that purchasing arrangements could provide would create ‘a basis from which those representing particular groups can seek to have services tailored to meet their specific needs.’

The arguments presented in Welfare that Works were premised on the classical liberal understanding of human nature as self-interested, utility-maximising, rational and

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53 Ibid, p. 4.
54 Idem.
55 Ibid, p.15.
individualistic. Such an understanding suggested to the Government that the appropriate type of welfare system was that described by Ware and Goodin\textsuperscript{57} as a 'residualist' or 'minimalist' one; where individuals and families met 'the bulk of their needs via the market, their family, or voluntary agencies and charities',\textsuperscript{58} with the state catering only to the needs of those who were unable to do so themselves for reasons of disability or other incapacity.

For the years between 1990 and 1996 the National Government concentrated on putting into practice the vision they had laid out in \textit{Welfare that Works}. In each of the welfare portfolios – income assistance, labour market policy, health, education, housing and welfare – the National and National-led administrations during the 1990s worked to reduce the welfare benefits they saw as economically and morally damaging. And, as the following section on policy changes in each of the social policy portfolios shows, they employed the strategies of targeting, contracting out of service delivery, 'customised service' and risk management to try to do it.

\textbf{ii. Sectoral Welfare Policy Changes}

\textit{a. Income support}

Within weeks of the 1990 election, reductions had been announced to a number of income support provisions: the family benefit was abolished, widows' and domestic purposes benefits were cut between 9 percent and 16 percent. The unemployment benefit was reduced by $14 a week, and the age at which unemployed youth became eligible for the full unemployment benefit, rather than the 24.7 percent smaller youth benefit, was raised from twenty to twenty five.\textsuperscript{59} The unemployment benefit stand-down period for those who had left their jobs voluntarily was increased from six weeks to six months, although this was subsequently amended to three months.

\textsuperscript{56} Ibid, p.77.


\textsuperscript{58} Boston \textit{et al}, 1999, p. 6

\textsuperscript{59} Kelsey, 1993, p. 83
These benefit cuts were followed by those included in the 1991 budget. In that budget the age at which single parents qualified for the domestic purposes benefit was raised to 18. Those who had earned more than $22,500 per annum faced an increased stand-down period before they became eligible for the unemployment benefit.⁶⁰

Alongside the benefit reductions was the introduction of a range of charges for services such as health and education previously provided on a universal basis by the government. While those on benefits were exempt from some such charges, working people on lower incomes suffered a much higher effective marginal tax rate as a consequence of social services charges, with a predictable loss in real income for many in the low- to middle-income brackets. National eventually abandoned some of the more radical aspects of its social assistance reform package, (such as the introduction of a ‘smart card’ to track each family’s use and payment of social services), and never implemented targeting to quite the extent envisaged in Welfare the Works.⁶¹ Nevertheless, targeting and user-pays remained major strategies employed to cut welfare costs and discourage economic dependency upon the state. Each had consequences for income levels nationally.

The initial period of fiscal zealotry abated somewhat after Ruth Richardson lost the Treasury portfolio in the 1993 Cabinet reshuffle (as Bolger sought to control any damage she might have wreaked on the party’s self-professed goal of a ‘decent society’).⁶² Her departure marked the end of the harder-edged income-support reforms. But by that time many of the Government’s core economic strategies were already in place: the Employment Contracts Act 1991, the Fiscal Responsibility Act 1994⁶³, welfare cuts, and the structural health reforms were all firmly cemented in,

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⁶⁰ Ibid, p. 84.
⁶² James Brendon Bolger, A View From the Top: My Seven Years as Prime Minister, Auckland, Viking, 1998.
⁶³ The Fiscal Responsibility Act required the Government to reduce and maintain public debt to prudent levels by achieving budget surpluses, to ‘achieve and maintain the Crown’s net worth at a level that would provide a buffer against adverse conditions’ and to ‘pursue policies which would provide reasonable predictability about the level and stability of tax rates.’ Jane Kelsey, The New Zealand Experiment. A World Model for Structural Adjustment?, Auckland, Auckland University Press, 1995, p. 236.
providing what were frequently referred to as the 'economic fundamentals' of the period. Together, these, combined with the Reserve Bank Act 1989, the State Sector Act 1988 and the Public Finance Act 1989 (among other initiatives) were thought to pave the way for a stable, low inflationary economic environment.

b. Labour Market reform

One of the most significant policy decisions affecting the labour market had occurred in 1989, when the Reserve Bank Act 1989 was passed by the fourth Labour Government. National’s contribution was the Employment Contracts Act in 1991 – described by National as an Act to ‘promote an efficient labour market’. The main provisions of the Act were: the introduction of individual employment contracts, the reintroduction of voluntary unionism, and the end of unions’ monopoly over the bargaining agent role between employees and employers. The goal was increased flexibility and market responsiveness of the labour market, and a decrease in the bargaining power of the unions.

More generally, the National Government considered that it was inappropriate for governments to intervene in the labour market with ‘job creation’ schemes, as these were thought to distort the labour market, potentially displacing workers. Instead, growth in employment was to be facilitated simply through economic growth, while the problems of unemployment were to be fixed by focusing on training and ‘upskilling’ the long-term unemployed. As Jane Higgins put it, ‘a lack of job opportunities ceased to come within the ambit of social policy, and, indeed, ceased to be addressed directly at all’.

c. Health

Few areas of government underwent the number of structural and policy changes that occurred in the health sector. In the 1991 Budget Simon Upton, then Minister of Health, announced a number of radical changes to the health system. The roles of funder, purchaser and supplier of health services, were to be separated. Four appointed Regional Health Authorities were established, replacing the fourteen former elected Area Health Boards. Their responsibility was to ‘manage the purchasing of,
and contracting for, health services from public, private and voluntary providers \(^{66}\) – both at the primary-care and hospital-based services level. Hospitals were restructured into ‘Crown Health Enterprises’, and required to operate as businesses. Crown Health Enterprises were to compete with other health service providers for contracts from the Regional Health Authorities. Part charges were to be introduced for hospital services, although low-income families were issued with a ‘community card’ which entitled them to subsidised health care services.

Again, the goals of the reform included the introduction of managed competition in the health sector – thought to stimulate efficiencies and cost-cutting in the provision of services. The introduction of the community card brought much tighter targeting measures, and the introduction of part-charges for hospital services has had the inevitable effect of encouraging people to purchase private health insurance, thus lessening the reliance on state-funded services. (These charges were withdrawn however, thirteen months after their introduction, because of excessive difficulties with administration, and public opposition). \(^{67}\)

While population based funding had been introduced by the Area Health Boards Act 1983, the devolution of purchasing decisions to the Regional Health Authorities was intended to enable regions to respond to the specific needs of local populations. In particular, it was hoped that the reforms would deliver services that could respond to the needs of diverse populations, replacing the standardisation of services that characterised the previous, centrally administered health structure.

d. Education

By the time the National Government came into office in 1990 the most significant reforms of the education sector had already occurred. Following recommendations included in the Picot Report Administering for Excellence (released in May 1988), major changes were made to the administration of education in New Zealand, outlined in the Government White Paper Tomorrow’s Schools. Under the new policy, many of the duties previously the responsibility of the Department of Education were devolved

\(^{65}\) Idem.

\(^{66}\) Ashton, p. 146.

\(^{67}\) Ibid, p. 139.
to elected school boards of trustees, who governed the schools under the rules set out in individual school charters – a form of contract between the trustees and the Minister. Funding for each school was to be determined by a funding formula. In place of the Department of Education a much smaller Ministry of Education was created, with responsibility for providing policy advice. An Education Review Office, the New Zealand Qualifications Authority and the Special Education Service were also established.

Underlying these changes, and evident in both the Picot report and the Treasury’s brief to Government in 1987 *Government Management II*, was an emphasis on efficiency, choice and competition, replacing the previously central policy goal of ‘equality of opportunity’. Schools would be forced to compete with each other, with the effect that those schools who failed to attract pupils at the same rate as their competitors would be compelled to improve their performance. Many commentators have argued that an effect of these reforms was to place large and very significant components of educational administration ‘outside’ or ‘above’ politics, and that the accountability of the Minister of Education was greatly reduced as a result.

In the tertiary sector, the National administration increased the student fees introduced by the fourth Labour Government, while significantly cutting income assistance allowance available to tertiary students. Eligibility criteria for student allowances were significantly tightened, including a rise in the age of eligibility. A new Student Loan scheme was implemented in 1991 under which students were able to borrow money at market interest rates to pay for their fees and living costs. The Government justified the fee rises with the argument that there was both private and public benefit in tertiary education and that students should be made to pay for that proportion of their tertiary education from which they could be expected to gain private benefit. In addition, state assistance to tertiary institutions per student was decreased, and private tertiary training institutions as well as public tertiary institutions became eligible for

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the Equivalent Full Time Student (EFTS) funding each tertiary student brought with them to the institution.

e. Housing

The most significant change in housing policy was the introduction, announced in 1991, of market rentals for state-owned rental accommodation. This policy was accompanied by the withdrawal of the state from provision of subsidised mortgages for low income earners, the sale of Housing Corporation mortgages, and the replacement of subsidised housing with cash assistance, called an Accommodation Supplement, administered by Income Support. (Prior to 1991 low income families and individuals received housing assistance in the form of subsidised rental housing or subsidised interest rate mortgage assistance. The Department of Social Welfare provided an Accommodation Benefit to renters, which covered any costs that amounting to more than 25% of household income, and to people with private sector mortgages if they were beneficiaries.)

A number of structural changes were also introduced. Policy advice was separated from the provision of both state rental housing and housing finance, and a new policy-focused Ministry of Housing was established in 1992. A state-owned company, Housing New Zealand Limited, was established to own and manage the rental stock of state houses, and the role of the Housing Corporation of New Zealand was to 'manage the lending business.'70 Housing New Zealand was required to operate as a successful business, with social objectives.71

In addition, Community Housing Limited, a subsidiary company of the Housing Corporation, was established to provide community housing for people with special needs, such as people with physical, intellectual or psychiatric disabilities. It also provided housing services for non-disability-related needs, such as emergency housing and women's refuges. On the whole, these housing services were operated by non-profit community groups, who paid the rental on Community Housing Limited properties through a combination of rent payments from residents, service contracts

with Regional Health Authorities or the New Zealand Community Funding Agency, and other sources such as donations and grants. 

The stated aim of the housing reforms was to 'increase the effectiveness and equity of government expenditure on housing by improving the consistency and targeting of housing assistance and improving the management of the state housing stock'. At the time the changes were announced, the Minister argued that the previous system was unfair as those in state houses paid a lower rent because of the state housing subsidy on those houses. This, he claimed, was disadvantageous to those housed in privately owned rental accommodation who were required to pay market rentals. Moreover the provision of cheap rental housing by the Housing Corporation meant that there was little incentive for private providers to provide cheap rental accommodation.

The housing reforms were highly controversial, particularly the introduction of market rentals. While advocates of the new policy claimed that the market would deliver housing appropriate to the needs of tenants, opponents argued that market rentals for state houses would ratchet ever upwards as private landlords increased rentals, forcing Housing New Zealand to do likewise. Laurence Murphy argued in 1999 that '...housing costs in the state sector are undermining the capacity of households to meet their basic needs, as is evidenced by the number of Housing New Zealand tenants receiving special benefit payments.' Other commentators have also argued that the introduction of market rentals has been the single most significant cause of increasing levels of poverty in New Zealand during the 1990s.

f. Welfare

While all the policy changes discussed above are, broadly speaking, 'welfare' policies, there were a number of functions specifically designated as 'welfare' 

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73 Idem.
75 Murphy, in Boston et al, 1999, p.230.
services, responsibility for which lay with the Department of Social Welfare. These included: child protection services, youth justice and adoption services, the welfare of senior citizens, people with disabilities, families, as well as the income support services already discussed above.

A major piece of legislative reform in this area had come in 1989 with the introduction of the Children, Young Persons and Their Families Act. Under this Act child abuse and youth offending issues were to be dealt with primarily by the families and/or whanau of the children and young persons concerned. Family group conferences, attended by extended family members and Department of Social Welfare staff were held, at which decisions were reached about how care and protection of the child could best be secured. A general understanding informing the Act was that so long as the welfare of the child or young person could be assured, keeping children in the care of their family was the preferred option. In this way it was hoped that children and young people could avoid being removed from their families and subjected to either institutional care, or the formal justice system via the courts.

The Children, Young Persons and Their Families Act was the product of considerable consultation with professionals and communities, Maori communities in particular. The previous Act (the Children and Young Persons Act 1974) had been criticised for delivering uniform, standardised services which did not necessarily meet the needs of those who received them. Maori had argued that far too many young Maori were being removed from their families – a number disproportionate to their population. They blamed this on what they identified as ‘institutionalised racism’. Moreover, the services provided for young people within institutions had been criticised for being insensitive to the cultural needs of those Maori and Pacific Islands children in their care. Maori argued that they should be given much greater control over the care and protection of their children, and that the state legislate and provide resources for such control.

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As academics Christine Cheyne, Mike O’Brien and Michael Belgrave have pointed out, the resulting legislation thus met both Maori (and Pacific Islands people’s) demands for greater control and autonomy over child abuse and youth justice issues, and the state’s wider neo-liberal governance goals of transferring a greater degree of responsibility for welfare to families and communities. Cheyne et al further argue that while the Act did accommodate cultural difference to a much greater extent than previous legislation, wider government goals of economic efficiency and cost-cutting acted to greatly reduce benefits which might have been expected to flow from the new Act. In particular, the requirement under the Public Finance Act 1989 that purchasing decisions relate to specific output categories limited the flexibility of responses to family need to those which conformed to specific output classes. The Children, Young Persons and the Families Act 1989 remained in place during the period of National’s administration, although criticisms continued to be made of the inadequate level of funding allocated to its implementation.

Another significant change in the welfare sector occurred with the restructuring of the Department of Social Welfare in 1992, at which time the functional roles of service delivery, funding and policy advice were separated. Under the new structure the Department included the New Zealand Income Support Service, the New Zealand Children and Young Persons Service, (concerned with cases of child abuse and neglect, Youth Justice, and Adoption), the Community Funding Agency (responsible for purchasing social services delivery from non-profit and other organisations), and the Social Policy Agency (responsible for providing policy advice ‘across a wide range of social policy and social equity issues’). The new Community Funding Agency was responsible for purchasing tightly defined ‘outputs’ from each of the agencies it contracted with, ending the previous system where many community organisations (Plunket, for example) received annual operating grants. Under the contracting system organisations competed in order to gain a contract with government to deliver certain government-defined outputs.

79 Ibid, p. 196.
By 1996 the National administration had already ushered in a new era of social welfare policy in New Zealand. Their opposition to many of the traditional tenets of the welfare state stemmed from ideological, economic, and moral arguments, each of which emphasised the benefits of individual responsibility, and the dangers of ‘dependence’ on the state. It was thus a Government that no longer saw itself as instrumental in the pursuit of a social-liberal model of citizenship.

At the 1996 election, the first under the new Mixed Member Proportional (MMP) electoral system, no party won enough seats to form a majority government. The balance of power lay with the New Zealand First Party, led by an ex-National Cabinet Minister, and Maori, Winston Peters. New Zealand First had managed to wrest all the Maori seats away from their historical association with the Labour Party in the 1996 election, and in so doing, raised the expectation that they were a party whose natural allies lay on the left, not the right of the political spectrum. (Not only that, but one prominent New Zealand First MP, Tau Henare, had vowed before the election never to work with members of the National caucus.) After a lengthy negotiation period, however, Winston Peters announced that his party had decided to form a coalition government with the National Party. New Zealand First was subsequently to have something of a moderating effect on welfare policy, moving the debate away from the far right and a little closer to the centre.

The Coalition Agreement which National and New Zealand First signed as they entered Coalition Government contained statements which indicated that the New Zealand First Party was not comfortable with the exclusive emphasis on individual and family responsibility for social and economic outcomes. One of the ‘Fundamental Principles for Coalition’ read:

i. To provide health and social services vital to the well-being of a fair and compassionate society and in particular focus on those who through misfortune or

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*bad luck* become over-represented in the statistics of dependency, education failure, ill-health, child mortality and law-breaking. (Emphasis added.)

As social scientist Judith Davey has noted, the wording of this statement suggested that individuals were *not* always to blame for their own ‘dependency’. The Coalition Agreement also introduced new universal welfare benefits such as free health care for children under six and the removal of the surcharge on superannuation.

Nonetheless the Coalition Government remained wedded to the idea of ‘welfare dependency’ as an individual and family problem. Briefing Papers presented to the incoming government in 1996 warned that despite the Government’s previous insistence that individuals should take more responsibility for themselves, and the structuring of the welfare system so as to ‘encourage’ them to do so, numbers reliant on benefits were actually increasing, not decreasing. Dependency was apparently getting worse. So, in March 1997 the Department of Social Welfare hosted a conference entitled ‘Beyond Dependency’ where new solutions to the problem identified as dependency were sought.

The ‘Beyond Dependency’ Conference marked the onset of a second phase of welfare policy under National’s administration. The Coalition Government abandoned some of the more radical welfare proposals outlined by National in 1991, and came to focus instead on some of the moral arguments associated with neo-conservative thinking, particularly those concerning the moral perils of ‘dependency’. Some of this thinking engaged specifically with the concept of ‘citizenship’, and argued that the social welfare state had led citizens to the erroneous assumption that they could enjoy generous and extensive citizenship rights without having any or many of the responsibilities associated with citizenship. Attending the conference were a range of speakers from outside New Zealand who emphasised the relationship between the rights and obligations of citizenship including Lawrence Mead, whose book *Beyond*

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83 *Idem.*
84 *Ibid*, p. 22.
Dependency had emphasised the need for welfare rights to be dependent on fulfilment of citizenship obligations, particularly the obligation to work; Jean Rogers, an advocate of the 'work not welfare' model of welfare implemented in Wisconsin; and the British Labour MP Frank Field who had also written on the perils of passive welfare rights. These speakers were joined by employees of the Department of Social Welfare who similarly advocated a closer relationship between the rights and obligations of citizenship.  

The focus of the conference was on solutions to 'dependency', to be found in strategies which would, as David Preston put it, 'provide an active vehicle for re-integrating avoidably inactive adults back into the employment mainstream'. Preston identifies three main features of welfare and income assistance policy-making which distinguished the period after the Beyond Dependency conference. First, the reciprocal relationship between rights and obligations was stressed. Secondly, a greater attempt was made to structure benefits to reward rather than punish extra work effort following a recognition of the negative incentives that abatement regimes could have upon those reliant upon income support.

Thirdly, it was now considered desirable that government play a greater role in dealing with each welfare recipient, representing for government 'a shift away from passive payment of benefit entitlement towards active social advice and "brokerage" of services which enable people to exit from the benefit system'. This was the 'case management', or 'customised service' approach, where each 'customer' of income support was allocated to a particular Department of Social Welfare staff member, who then became responsible for assisting that customer to achieve 'greater reliance and independence'. The Department noted that such a strategy would combine elements of 'hassling' the customer (that is, forcing a change in attitudes to work amongst

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85 Ibid, p. 27.
87 Ibid, p.35.
89 Ibid, p. 28.
beneficiaries) and ‘helping’ them (through increasing the opportunities available to beneficiaries).  

Customised service, with its combination of the punitive and the supportive, enacted through intervention targeted directly at individual beneficiaries, represented an acknowledgement by the Government that punitive measures alone might be insufficient to reduce welfare dependency: lack of opportunities for some might mean support was also needed. This was not, however, an abandonment of the idea that people might have welfare dependency problems as a result of being de-motivated, lazy or other personal failings. It was more a concession to the view that although sometimes people were lazy and needed a good push and fright to motivate them out of dependency, others faced difficulties as a result of circumstances genuinely beyond their control.

To Preston’s list of the core features of late 1990s welfare policy needs to be added that of risk management. Imported from the private insurance sector, governmental risk management strategies aimed to minimise the level of risk government agencies carried in the conduct of their activities. After the Cave Creek tragedy in 1995 the Government came to place much greater emphasis on the management of risks, and from 1997 risk management was included by the State Services Commission in its schedule of performance expectation for departments, and appeared increasingly in

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90 Ibid, p. 28.
91 In the commercial sector risk management had been used to calculate and reduce the financial risks to which a company or corporation was exposed. Companies identified and assessed the probability and consequences of future risks, and developed a range of strategies to avoid or minimise the potential future costs these risks could present. Similarly, in the environmental area, risk management was used to identify environmental risks and work out how to minimise the likelihood of negative environmental impacts, or how to manage the effects of them should they occur. The political application of risk management was less clear. Unlike corporations, which usually had a single overriding goal - to maintain profitability - governments had multiple and very diverse goals: some of which might be at odds with each other, and each of which was subject to change via the democratic process. The presence of multiple, diverse goals within a democratic setting meant that risk identification, prioritising, and minimising were political calculations at least as much they were economic ones. See David Elms, in Owning the Future: Integrated Risk Management in Practice, Centre for Advanced Engineering, University of Canterbury, 1998, p. 3.
92 In April 1995 13 Tai Poutini Polytechnic students and a Department of Conservation field manager lost their lives after the Department of Conservation viewing platform on which they were standing collapsed. Several other students were also injured. After the incident the Government established a Commission of Inquiry into the platform collapse.
93 State Services Commission, Assessment of the State of the New Zealand Public Service, Wellington, State Services Commission, 1998, p. 19. A discussion of the origins of the Australia/New Zealand risk management standard can be found in David Elms, especially the chapter by Roger Key.
government accountability reports after 1995. In the social policy arena, risk management was used to identify fiscal risks (such as sub-populations with specific, expensive, health problems) and social risks (such as communities and families with a higher than average number of social problems). As a social welfare strategy its aim was to minimise the costs — to government and society as a whole — of poor social and economic outcomes. Ironically, as the decade progressed, risk management was to provide some strong arguments in favour of higher levels of state intervention.

While government had been quite emphatic in their rejection of structural causes of disadvantage during the early 1990s, after the Coalition agreement with New Zealand First there was a greater willingness to acknowledge that structural rather than personal or community faults might account for some of the existing disadvantage. Towards the end of the decade a third phase of social policy began to evolve. The severity of ethnically-based inequality had become startlingly clear with the release of the 1996 census statistics. Analysis of these statistics demonstrated that the fastest growing populations in the country, Maori and Pacific Islands people, experienced multiple disadvantage across most social and economic indicators. In the future New Zealand’s ageing population would be heavily reliant upon the income earned by a groups that in 1997 had the lowest income of all New Zealanders, low educational and vocational achievement, low labour market participation and high unemployment. Any risk analysis had to accept that this was an sub-optimal outcome.

The Government also began to consider the impacts of growing social and economic inequality on social cohesion. More effort from this point went into better co-ordinating the various welfare initiatives developed by government, and particular attention was given to co-ordinating the responses to Maori and Pacific Islands people’s disadvantage.

The primary example of this new co-ordinated approach was the Strengthening Families initiative, adopted by a number of ‘early intervention’ programmes targeted
at the families of at-risk children, identified ‘from the day they are born’. Margaret Bazley, Director General of Social Welfare, described it thus:

A major focus of Strengthening Families has been to promote the development of a seamless service at a local level across government and community organisations... The intention...is to ensure that families in need of services do not have 10 agencies at the door. But rather, a lead agency takes responsibility for co-ordinating services, and agencies actually talk to each other and work out joint solutions that will improve outcomes for children and young people.

The Strengthening Families approach was innovative in its integration of service provision, and the level of co-ordination between agencies. The programmes run under the initiative, (such as Family Start and Social Workers in Schools) represented government’s major strategy for dealing with those families experiencing multiple disadvantage.

Crucially, however, the Strengthening Families approach did not mean the Coalition Government had abandoned its commitment to a minimalist welfare state. Instead it sought solutions in the development of even more tightly targeted policy responses, with the result that while the state progressively withdrew from management of the national economy, and from citizen’s lives more generally it became progressively more involved in the lives of those whose economic status had suffered as a result of that withdrawal. Having dismissed social equalisation goals as detrimental to individual liberty and economic efficiency, the National and Coalition Governments of the 1990s had settled on a very minimum form of welfare provision. They did not share T. H. Marshall’s view that the social benefits of citizenship should protect each citizen’s ‘right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society’.

A final chapter in the National-New Zealand First Coalition Government’s attempt to balance the rights of citizenship with its obligations came with the release of the abortive Towards a Code of Social and Family Responsibility: Public Discussion

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95 Ibid
Winston Peters had already hinted that the Coalition Government considered ‘family’ and ‘social’ responsibilities to be an appropriate focus of government attention with his 1997 Budget Statements. In a June Budget Statement that year he announced that the Government intended to ‘provide beneficiaries with a plan that details what the Government expects of them in exchange for the help they receive from taxpayers’. This was to be a ‘Code of Family and Social Responsibility’, which would be a ‘contract between a welfare recipient and the State’.

After a period of controversy following Peters’ announcement of the proposed code, Jenny Shipley (who had by then replaced Jim Bolger as Prime Minister) announced that the debate on social responsibility was to be given priority under her leadership. In her speech at the Opening of Parliament in 1998 she claimed that there was no longer any clear public understanding or agreement on the relationship between the rights and obligations of citizenship. The community, she said, was ‘crying out for “pegs in the ground” in terms of what is fair, what can be reasonably expected from each of us and from Government on behalf of all taxpayers.’ We must, she went on, ‘sort out the expectations, obligation and responsibilities in this partnership in a clear-headed way’. This was what she hoped to achieve with the release of the public discussion document on a code of social and family responsibility immediately after her speech.

Towards a Code of Social and Family Responsibility: A Public Discussion Document, listed eleven areas of family and social responsibility including the obligation to work, to manage money properly, to look after one’s children’s health and education, and take care of one’s own health and education. It was to be distributed to every household in the country, along with the request that individuals, families and groups discuss the document and provide feedback to the Department of Social Welfare. One of the questions asked of the public concerned the form a code should take: should it be, most innocuously, simply a ‘statement of government policy’, or should it, more

98 Ibid.
99 For a discussion of this debate see Davey, 2000, pp. 33-36 and Chapter Four.
controversially, actually have some force in law? Should it, for example, give the Government the right to withdraw income assistance to those welfare beneficiaries who failed to keep their side of the 'contract' contained within the Code?

In the event the Government did not proceed with the development of a Code of Social and Family Responsibility. The discussion document was heavily criticised for seeming to apply only to beneficiaries and thereby further stigmatising those reliant on welfare; for being punitive, poorly planned, for overstepping the proper role of the state in the lives of its citizens, amongst other things.\textsuperscript{101} It seemed guaranteed to only arouse more controversy if pursued by the Government. Attempting to salvage something out of the exercise Jenny Shipley assured the public that issues arising out of the public responses to the discussion document would be 'fully investigated'.\textsuperscript{102} And, some of the policies foreshadowed in the public discussion document had become Government policy in any case, most noticeably the 'workfare' policy, at the initiative of the New Zealand First Minister for Employment, Peter McCardle.

The proposal for a 'community wage' to take the place of the unemployment benefit had appeared in the Coalition Agreement. It proposed that those on the unemployment benefit be obliged to 'undertake a prescribed level of work or training in return for the unemployment benefit'.\textsuperscript{103} When McCardle announced the introduction of the Community Wage in April 1998 he made it clear that this proposal, like the Code of Social and Family Responsibility, was about getting those who received their social 'rights' of citizenship via the unemployment benefit being forced to fulfil their citizenship obligations – namely the obligation to work:

All job-seekers receiving the Community Wage will have a contract which specifies their obligations, including being available for community work and actively seeking paid employment. There will be penalties for failing to comply.\textsuperscript{104}

Under the new scheme all beneficiaries had to be available to participate in work – usually found in the voluntary and community sectors – for up to twenty hours a week

\begin{footnotesize}
\begin{enumerate}
\item 100 Jenny Shipley, Speech to the Opening of Parliament, February 1998.
\item 101 See Davey, 2000, Chapter Four.
\item 102 Jenny Shipley, 'Statement on Social Assistance', quoted in Davey, p. 118.
\item 103 National –New Zealand First Coalition Agreement, p. 25.
\item 104 Peter McCardle, Ministerial Press Release, 22 April, 1998.
\end{enumerate}
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in order to receive their benefit. The unemployment benefit would be considered 'payment' for the work completed, while the unemployed person would be considered to have discharged his or her obligation to work in return for the right to social assistance.

Although the Coalition Government never went so far as to develop the Code as policy or law, it nonetheless provided a very clear indication that its thinking about citizenship had moved beyond a pure neo-liberalism into the newer territory of a post-welfarist model of citizenship. In this it was influenced by a range of contemporary ideas about citizenship and welfare in post-Keynesian, post-industrial democracies. The trend in Britain under Prime Minister Tony Blair and the United States under President Bill Clinton was for social policy to re-emphasise the obligations associated with social citizenship. This argument was central to what Blair called the 'Third Way', which sought to find a path between the social-liberal support for passive welfare entitlements, and the neo-liberal opposition to welfare on the grounds that it was economically inefficient and morally corrupting. A new emphasis was put on reciprocity, and on the benefits to 'civil society' and 'social capital' if citizens were transformed from the passive recipients of welfare rights to active, participating citizens, involved in their local communities.

This was a quite different model of citizenship to the 'social citizenship' on which New Zealand had modelled its welfare state before 1990. As universality decreased as a feature of the citizenship 'contract' it was replaced with relationships of obligation between those who were 'virtuous' market citizens – able to care for themselves and their families without becoming 'dependent' on the state – and those who were 'dependent' and thus failing as market citizens.

Conclusion

During the 1990s in New Zealand a series of National and National-led Governments attempted to effect a redistribution of responsibility for social and economic outcomes between the state and the citizens. In this endeavour National was heavily influenced by the economic and social arguments of neo-liberalism, and, as the decade progressed, increasingly influenced by the arguments of moral conservatism, neither of which supported the social-liberal concept of citizenship. By the end of the decade New Zealand had effectively made the transition from a social-democracy with a strong and partially universal welfare state to a liberal democracy with a more limited and targeted form of welfare state. At the same time as governments in the 1990s were attempting this transition from a social-liberal to a neo-liberal form of democracy, they were engaged in the ongoing legal, political and social debate with Māori about what principles should guide the relationship between Māori and the New Zealand government.

Both neo-liberalism and the ongoing debate with Māori were crucially important factors in determining how the National and Coalition Governments of this period dealt with the non-Māori ethnic minorities in New Zealand. The political and philosophical background provided in this chapter is intended to set the scene for Part Two of this thesis, which focuses specifically on the treatment of non-Māori ethnic groups during the 1990s.
PART TWO:

THE CITIZENSHIP STATUS OF NON-MAORI ETHNIC MINORITIES IN NEW ZEALAND,
1990-1999
Chapter Three

Colouring by numbers: Ethnic statistics, targeting and risk management: 1990 - 1999

Conceptual systems change through time, and we have every reason to expect these changes to continue. Distinctions that we now take to be fundamental later generations may dismiss as irrelevant and artificial. Perhaps nature has one and only one structure, but in our attempts to discover that structure we keep changing our minds. ¹

Statistics has helped determine the form of laws about society and the character of social facts. It has engendered concepts and classification within the human sciences. Moreover the collection of statistics has created, at the least, a great bureaucratic machinery. It may think of itself as providing only information, but it is itself part of the technology of power in a modern state. ²

Introduction

Are there such things as ‘ethnic groups’ and thus ‘ethnic minorities’? Governmental treatment of such groups is the subject of this thesis but it is by no means clear that they have any empirical reality. Up until the 1980s it was widely assumed that individuals belonged to distinct ‘racial’ groups, and ‘ethnicity’ was a largely unfamiliar term. But by the 1990s virtually all government agencies in New Zealand were equipped with the terminology, ideology and statistical instruments to think about policy in an explicitly and intricately ethnicised manner. Not only that, groups of individuals conceptualised themselves and made claims to government and each other as ‘ethnic’ groups. ‘Ethnicity’ and ‘ethnic’ identity were being forged as social

'realities' through at least two channels: through the Government's persistent usage of ethnicity as a relevant variable in the policy-making process, and through processes of individual self-identification with ethnic forms of identity. In both processes official statistics played a central role.

Statistics often seem to provide us with a picture of social reality. For example, a study on 'discrimination' in New Zealand society released in 2001 'found' that 16 percent of respondents thought that there was a 'great deal' of 'discrimination' against Maori, while the comparable figures for 'Pacific Islanders', and 'Asian' were 18 percent and 22 percent respectively. The groups considered to be most discriminated against were 'gays and lesbians', 'people who are overweight', and 'people on welfare' (25 percent in each category). This study provided information that was at the same time eloquent and meaningless. To the extent that New Zealanders shared with each other, and with the respondents, a common understanding of the terms 'discrimination', 'Maori', 'Asian', 'gays', 'overweight' and 'welfare', the statistics presented a quickly-understood anatomy of their national prejudices: Asians were the least liked of any ethnic minority in New Zealand, but homosexuals, fat people and dole-bludgers were even more disliked. But without a shared understanding of what is meant by each of these categories the social 'reality' portrayed by the study would simply dissolve into puzzling meaninglessness. (What does it mean to be 'gay'? Who are 'Asians' and 'fat' people?) Geneticists may be peering down their microscopes to find the genetic basis of homosexuality, obesity, and even different personality traits, but each category remains the creation of the culture which perceived 'Asians' or 'fat' people to be socially distinguishable groups. The 'science' of social statistics – capable of recording and analysing vast quantities of information about individuals and their lives – has thus become a highly sophisticated way of measuring our prejudices, even when that is not its intention.

Historians of statistics, Ian Hacking, Theodore Porter and Lorraine Daston, have all argued that the collection of information about governed populations has been used to

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3 Compaq poll conducted in November-December 2000 by UMI Insight, published in National
'consolidate and rationalise state power' since ancient times. But it was not until the early nineteenth century that statistics emerged as a 'social science', generating as it came an 'avalanche of numbers': birth and death rates, life expectancy, incidence of disease and criminality, geographical distribution, income, natural resources, interest, inflation and growth rates. Such numbers came to be an increasingly important tool of governance in the nineteenth century, and of central importance in the governance of advanced liberal societies' in the late twentieth century. Indeed, despite the fact that the collection and use of detailed statistics was not commonplace before 1820, by 1990 (when this study begins) it was virtually impossible to imagine any of the structures, practices and techniques of contemporary government operating without the ongoing collection of detailed statistical information about a vast range of subjects.

The neo-liberal project with which New Zealand was engaged in during the 1990s, was one in which, to quote Nikolas Rose:

the technologies of rule...[sought to] degovernmentalize the State and to de-statize the practices of government, to detach the substantive authority of expertise from the apparatuses of political rule, relocating experts within a market governed by the rationalities of competition, accountability and consumer demand. It does not seek to govern through "society" but through the regulated choices of individual citizens, now construed as subjects of choices and aspirations to self-actualization and self-fulfilment. Individuals are to be governed through their freedom...

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Business Review, 2.2.01.
5 Porter, 1986, p. 17.
9 Rose, 1996, p.41.
Statistics, and the probabilistic language and logic of risk they spawned, played the central role in the development and practice of such ‘technologies of rule’, as they evolved in New Zealand.

The centrality of statistics for the neo-liberal project helps explain what might otherwise seem puzzling – that a National Government which professed to be anti-interventionist and explicitly individualist should have continued with the endeavour, begun under the previous Labour government, of developing a complex and detailed instrument for collecting ‘ethnic’ statistics, and that it should have insisted on the routine and standardised application of this instrument to the collection of statistics across all areas of government policy.

This chapter asks two questions. First, how did the fact that governments in the 1990s conceived of people as belonging to ‘ethnic’ groups affect those who belonged to what were now understood to be ‘ethnic minority’ groups? Secondly, what effect did the increasingly prudentialist use of ‘ethnic’ statistics by the National and National-Coalition administrations during the 1990s have on the citizenship status of those who belonged to ethnic minorities? The chapter begins with a history of the collection of ‘racial’ and then ‘ethnic’ statistics in New Zealand from the end of the nineteenth century up until the late 1980s, including the period from the 1970s onwards when racial statistics were collected primarily to assist the project of redistributive justice between different ethnic groups in New Zealand. It then moves on to examine the collection of ‘ethnic’ statistics (as they were now called) during the National and Coalition administrations of 1990-1999 and the purposes to which they were put during this period.
The history of 'racial' and 'ethnic' classifications and statistics in New Zealand
1851-1991

i. Nineteenth century censuses and racial classifications

Modern periodic censuses were first collected routinely at the beginning of the nineteenth century in Western Europe and America, with Britain a particularly enthusiastic advocate of their use. Many of those early British 'social' statisticians involved in the promotion and collection of census statistics were engaged in the attempt to 'ameliorate sharp class divisions and to prevent social upheaval through kind treatment of workers, the inculcation of morality, and the provision of education', and saw the reformist potential of the information censuses garnered. The economist Thomas Malthus, for example, whose ideas about population growth were to be so influential in colonial Britain's population policy, was a founding member of the first important British statistical association, the Statistical Society of London, in 1834.

The new enthusiasm for recording numbers about social 'facts', especially via periodic censuses, gave rise to the demand for systems of classification which could enumerate what were thought to be significant differences among individuals and groups. It was at this point – the point at which classification systems were developed – that preconceived ideas about what was socially, politically or economically important most coloured the emerging 'science' of statistics. Statistics developed its

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11 Ibid, p. 32.
12 Idem.
reputation as a numerical science just as the modern concept of ‘race’ emerged, complete with associated controversies as to whether ‘racial’ differences extended beyond the physical to also include mental capacities and psychological tendencies.

Racial classifications had already been developed by the Swedish botanist Carl von Linnaeus (1707-1778) whose *Systema Naturae* described four races distinguishable by skin colour. He was followed by the French naturalist George Louis Leclerc, Comte de Buffon, and the German physician, Johann Friedrich Blumenbach, both of whom developed racial classifications in the eighteenth century. The enlightenment passion for scientific enquiry saw attempts to provide a ‘scientific’ basis for racial classifications increase dramatically during the nineteenth century. (Two main techniques were employed in these classifications: measurement of the skull by an ‘cephalic index’, and, more popularly, the study of skin colour, hair, nose, eyes and other physical characteristics.) Charles Darwin’s theory of evolution by natural selection, while not itself based on statistical studies, seemed to lend itself naturally to a statistical understanding of biology. When racial theory met evolutionary theory in the mid-nineteenth century, the stage was set for an evolutionary racial theory perfectly suited to the expansionist ambitions of imperial Europe.

‘Scientific racism’ maintained that human beings fell into distinct racial groups, each of which was characterised by certain physical, mental and psychological tendencies and capacities. The popular idea that there was a hierarchical ordering of races, in which the most developed race – the European Caucasian – would inevitably dominate inferior races, seemed to legitimate the subjection of non-European cultures to those of their colonisers. Such racial thinking cast a shadow right over the late nineteenth century and halfway across the twentieth.

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14 Statistical biology was subsequently developed by Darwin’s cousin, Francis Galton who, with his twin interests in biology and statistics, both developed in the context of renewed British colonial expansion, came to the conclusion that ‘inherited qualities provided by nature were by much the most important in determining the achievement of individuals’, a conclusion which was to convince him of the benefits of eugenics. See Porter, 1995, pp. 130-134.
ii. Racial terminology in New Zealand censuses 1851-1976

It was, of course, during the mid-nineteenth century that Britain colonisation and settlement of New Zealand proceeded in earnest. With the developing institutions of colonial administration came both the racial classifications and the statistical technologies increasingly used in Britain. Just as in Britain, statistics about the population were collected in order that government might more effectively record social 'problems' and measure the success of policies designed to solve such problems.

The early British colonists seemed to have little doubt that the cultural and technological achievements of Europeans in general and the British in particular were infinitely superior to those of the indigenous Maori. Indeed, in their eyes there was a certain degree of magnanimity in their offer to share with Maori the fruits of British civilisation. The extension of British subjecthood, via the Treaty of Waitangi was intended as something of a compliment to Maori as it implied that Maori (unlike some of the other indigenous people colonised during the era of European empire-building), were capable of becoming the legal and political equals of other British subjects. All that was required was for Maori to abandon their pre-modern social and political structures, their language, cultural and religious beliefs and adopt the superior British culture, religion, political organisation, education and technology. In

15 The most comprehensive investigation of the development of 'racial' thinking is to be found in Ivan Hannford's Race. The History of An Idea in the West, Washington, Woodrow Wilson Press, 1993. On the application of Darwinian theory to racial evolution see Chapter 8.

16 Jane Verbitsky notes that Lord John Russell, in his instructions to Governor Hobson in 1840, commented on the superior political, legal, and agricultural skill of Maori in comparison to 'wanderers' and 'tribes of hunters'. She argues that Maori 'impressed sufficient numbers of Europeans that they were of a higher evolutionary ranking than, for example, the Australian Aborigines, that it was believed that, with tutelage, they could become like their civilised European brothers.' See Jane Verbitsky, 'Models of Social Development in Maori Education Policies', Unpublished PhD Thesis, University Of Auckland, 1993, p.10. On the theoretical - non-racialist - background, see J.G.A. Pocock, 'Tangata whenua and enlightenment anthropology' New Zealand Journal of History, No. 1, Vol. 26, (1992), pp. 28-53.

17 Ibid, pp. 9-16.
short, the price of equality for Maori was the total destruction of their culture in favour of British culture, via the policy of cultural assimilation.

Cultural assimilation as practised in New Zealand was not a policy grounded in the theory of scientific racism. There was no biological or genetic impediment which was assumed to interfere with the ability of Maori to attain the vaulted status of British subjecthood. Attachment to an inferior culture, not the curse of inferior blood, was the ‘problem’ identified with Maori identity, and the rationale for assimilation policies and for recording the first racial statistics.

The first census in New Zealand was conducted in 1851, recording information only about the British settler population. A separate census enumerating Maori took place in 1857-8. In keeping with the concern over cultural difference, and in defiance of a purely genetic understanding of race, membership of the ‘Maori’ category was determined by a mixture of biological descent and a ‘mode of living’ criteria. Those Maori who were ‘half-castes’ were allocated to the Maori population if they were living in a more traditional Maori lifestyle, within their hapu (sub-tribe), but to the European category if they were living a more European lifestyle, in a European-style ‘household’. The allocation of half-castes living in a European-style to the European category reflected a belief that cultural assimilation had occurred in these cases. Persons of more than half-Maori blood, however, were allocated to the Maori category, regardless of their mode of living.18 This procedure of determining Maori identity continued up until 1926 (although several Acts of Parliament subsequently went on to define ‘Maori’ in a different way).19

‘Genetic’ assimilation of the Maori population into the European population was to occur through intermarriage, which, it was thought, would result in the demise of the

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19 For example, Census and Statistics Act, 1910 (not operative until 1926), Maori Affairs Act 1974, Electoral Act 1975.
Maori 'race' as a genetically distinct group. The Under-Secretary of Native Affairs in 1911 reflected this common belief:

the ultimate fate of the Maori race is to become absorbed in the European. Whether any tendency is shown in this direction must be gathered from the increase or decrease in the number of half-castes.²⁰

The rate of genetic assimilation could be assessed by measuring the degree of miscegenation between European and Maori, and a census question was developed which asked respondents of mixed descent to identify their 'proportion of descent'²¹. Thus, 'racial' statistics were designed to allow the colonial and early national governments to record the 'problems' they associated with Maoriness and to track the cultural and genetic assimilation of Maori into European. All going well, assimilation would in time remove this problem of Maoriness altogether.

Another 'problem' identified by early colonial administrations was the immigration of non-European 'races' into New Zealand. Attitudes towards those described as belonging to a 'Mongolian race' – the Chinese and the 'Hindoos' who had been arriving in the colony since the mid-nineteenth century – were often vehemently hostile. Theories of racial inferiority were applied to the Chinese in way they never were to Maori.²² Such 'alien' races were to be kept out by restrictive immigration legislation, and, where this failed to deter their entry, the inclusion of a new 'race alien' category in the 1916 census could record their number and monitor the 'problem' they presented.²³ It was from this 'race alien' category that the modern ethnicity question in the census subsequently evolved.

²⁰ Quoted in Brown, p. 27. Counting Maori who lived in a European fashion as Europeans was also a matter of convenience, as European and Maori were enumerated in separate censuses - one which measured 'households', and the other 'hapu', and, for the enumerators it was easier if the two collections were kept separate.
²¹ Brown, p. 4.
²² See the chapter on immigration in this thesis.
²³ Brown, p. 4.
These were the two main ways in which early governments used the term 'race' to categorise individuals via official statistics in the nineteenth and early twentieth century. It was clearly a conveniently commodious concept. In relation to Maori it referred to cultural and physical differences which could be subjected to cultural and genetic assimilation. Equally, however, it could be used to justify the wholesale exclusion of 'aliens' such as the Chinese, on the grounds of their 'racial' inferiority.

Although conflict between Maori and British was portrayed as 'racial' conflict, at root such conflict was the product of two fundamentally different value systems: between the materialist, Christian, liberal individualism of the colonisers, and the spiritual values of tribal communalism held by Maori. 'Race' as measured in the first century of New Zealand state-building was as much a shorthand term for potential political opposition as it was an attempt to trace genetic bloodlines. The collection and analysis of 'racial' statistics assisted early governments in their goal of rooting out Maori communalism in order to facilitate the introduction of a land-owning, capitalist settler society in New Zealand. Racial statistics were also a means by which they might record their success in doing so. As such, the collection of racial statistics had as much to do with the supplanting of one set of economic and social interests with another as it did with 'racial' theory as understood by the purveyors of nineteenth century scientific racism.

Assimilation continued to be the officially-promoted form of race relations in New Zealand through until the 1960s. Although its main target was Maori, it was equally applied to the small non-Maori ethnic minorities such as the Chinese, Indian, and Pacific Islands populations in New Zealand. Assimilation as practised in the mid-twentieth century derived its logic from a combination of the philosophical assumptions of liberalism and Christian humanism and a faith in the modernist project of nation-state building. From Christian humanism came the belief in the equality of all men, later to be given force in human rights legislation. From liberalism came the belief that the best kind of society was one where individuals were

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24 Verbitsky, pp.11-12
free, equal, and independent. Associated with liberalism was the modernist belief that identities based on racial or ethnic forms of loyalty and identity were pre-modern, anachronistic and antithetical to the functioning of a cohesive, meritocratic, modern capitalist state. Liberal assimilation policies attempted to dissolve such ‘pre-modern’ beliefs and value systems through the gradual merging of all non-liberal cultures into the dominant liberal culture. According to assimilationists such policies were not about favouring one ‘culture’ over another, but rather speeding up a process of inevitable and desirable modernisation.

Assimilation never gained universal approval within government, and certainly did not gain approval within Maoridom. Many felt Maori should be able to maintain their own identity, culture and way of life, separate from Pakeha. Others felt that interaction between Maori and Pakeha need not occur at the expense of Maori culture. In 1961 the Acting Secretary of Maori Affairs, J.K. Hunn, released the Report of the Department of Maori Affairs, (otherwise known as the ‘Hunn Report’) which recommended a move away from the formal policy of assimilation to one of ‘integration’. Integration, as Hunn defined it, involved the combination of ‘Maori and Pakeha elements to form one nation wherein Maori culture remains distinct’. Hunn was not, however, a cultural conservationist, and he was as quick as any assimilationist to point to the dangers of a Maori minority who continued to ‘complacently live a backward life in primitive conditions’:

> Here and there are Maoris who resent the pressure brought to bear on them to conform to what they regard as the Pakeha mode of life. It is not, in fact, a Pakeha but a modern way of life, common to advanced people (Japanese, for example) — not merely white people — in all parts of the world.

What distinguished Hunn’s views from those of the assimilationists was his belief that relations between the Maori and Pakeha ‘races’ should take their own, evolutionary path rather than be forced down the assimilationist route by government policy. And,

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25 Verbitsky, p. 19.
27 Hunn, p. 16.
Unlike assimilationists, he had a relaxed attitude towards Maori retaining some elements of their culture:

Only the Maoris themselves can decide whether those features of their ancient life [language, arts and crafts, and the institutions of the Marae] are, in fact, to be kept alive; and, in the final analysis, it is entirely a matter of individual choice.28

Nonetheless, as Jane Verbitsky has argued in her thesis on Maori education policy, Hunn’s recommendation that the Maori schools integrate with the state schools was entirely assimilationary in both intention and effect.29 Importantly in relation to the collection of official statistics, under integration, as under assimilation, what was really significant about ‘racial’ identity was its cultural, not biological component. Nonetheless statistics continued to collect racial data using the biological concept of ‘racial origin’.

iii. From ‘race’ to ‘ethnicity’, assimilation to multiculturalism and biculturalism: 1976-1991

A first timid break with the nineteenth century terminology of race came with the 1976 census, at which time the census question on ‘racial origin’ was replaced with one on ‘ethnic origin’. This was not, however, a clear rejection of the biological or genetic element of identity. Respondents were still required to give information about their biological descent and to identify ‘proportions of descent’ if they were of mixed origin. Clearly there still lingered the assumption that identity – whether called ‘racial’ or ‘ethnic’ – was at least in part a matter of ‘blood’, and that when one type of ‘blood’ mixed with another type, racial or ethnic identities were somehow changed.

Nonetheless, the decision to drop the term ‘racial origin’ in favour of ‘ethnic origin’ was the product of a significant shift in thinking about the nature of identity. In this New Zealand was very influenced by international developments. New Zealand had

28 Ibid, p. 15.
never fully subscribed to any form of scientific racism and so was quick to support the internationalist anti-racism which had emerged after the Second World War, actively promulgated by a variety of international organisations and legal human rights instruments. During the 1970s New Zealand ratified a number of such instruments including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, each of which was explicitly anti-racist. The Civil Rights movement in the United States had contributed to an international awareness of racism. The ‘Black Pride’ movement had insisted that racial or ethnic identities were something to be proud of, rather than purged of via assimilation. The post-war decolonisation process also threw a spotlight onto the oppressive influence that colonisation had had on the lives of the colonised. Each of these movements and processes highlighted the destructive effects of scientific racism and of the assumptions of cultural superiority which had underlain many state-building processes in the New World.

Norman Kirk’s third Labour Government, which gained power in 1972, was attuned to the anti-racist, anti-discrimination and black pride movements, and committed itself to a policy of ‘multiculturalism’. Multiculturalism differed from assimilation and integration in that it rejected their assumptions that European culture was superior to others. Official documents began to argue in favour of ‘respect’ for all cultures, including minority ones. In education policy, for example, the Advisory Council on Educational Planning established in the early 1970s advocated that the education system ‘have greater regard for the different cultural and linguistic backgrounds’ of its Maori students. Maori culture was no longer something which (as Hunn had argued) could at best be maintained by Maori in the private sphere, but at worst would inhibit Maori from developing the skills and belief systems that would allow them to progress in the modern world. It was now something that was valuable in itself; something

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29 Verbitsky, pp. 90-110.
30 Most notably by the various international bodies of the United Nations.
31 Verbitsky, p. 212.
which could assist Maori themselves attain a sense of self-esteem and confidence, and which could contribute to a unique sense of national identity.\textsuperscript{32}

The ideology of multiculturalism had a profound effect on the way in which ‘racial’ or ‘ethnic’ identities were conceived. According to the language and practice of ‘multiculturalism’ individuals belonged to distinct ‘cultures’, each of which was equally deserving of respect, and each of which should resist, with Governmental help, being assimilated into the dominant culture. ‘Cultural’ identities (which were usually conflated with ethnic or racial identities) became in a sense more solid and unyielding under multiculturalism than they had ever been under assimilation or integration in New Zealand. Under Muldoon’s National Government the Office of the Race Relations Conciliator committed itself to such a vision in 1982 with the publication of \textit{Race Against Time},\textsuperscript{33} which, significantly, used the language of ethnicity, not race.\textsuperscript{34}

The movement from integration to multiculturalism created pressure for official statistics to record identity in way compatible with the new policy of ‘multiculturalism’. In 1981 the Chief Statistician J.H. Darwin requested a review of ethnic Statistics ‘in response to mounting concern about their relevance and reliability’.\textsuperscript{35} Such a review was subsequently undertaken by Paul Brown of the Statistics Department. His 1983 report, entitled \textit{An Investigation of Official Ethnic Statistics}, suggested changes to the way in which identity data was recorded.

He began the report with a description of what were then seen as the reasons for collecting ‘ethnic’ statistics. First he identified, without questioning, the Electoral Commission’s need for accurate statistics about the Maori population in order that they could set electoral boundaries.

\textsuperscript{32} \textit{Ibid}, p. 215.
\textsuperscript{35} Brown, p. 3.
Then he described the redistributive goals of government:

The collection of ethnic statistics in general is now justified on the grounds that considerable social inequalities exist between various ethnic groups. In what is now considered to be a relatively advanced society, ethnic statistics show that Maori and Pacific Islanders are socially and economically disadvantaged relative to the dominant European group... While the underlying reasons for the persistence of these inequalities is debatable, there is general agreement on the desirability of their removal, which provides justification for the continued collection and use of ethnic statistics.36

That Brown should describe such a project of social equalisation during a period of National Government indicated how widespread was the acceptance within New Zealand of the social-liberal agenda during the post-war period. And, according to Brown, it was time that statistics began to reflect the values of 'multiculturalism', which he said, held 'that social justice and development are better served by encouraging rather than discouraging cultural (ethnic) diversity'.37

He went on to attack the notion of 'race'. It was, he said, a nineteenth century European concept with no basis in scientific fact.38 It had 'purported to provide a scientific basis for distinguishing population groups with distinctive physical characteristics,'39 the hierarchical ordering of these which had provided the logic and legitimacy for assimilation policies, but, he argued, racial categories were in fact social constructions that reflected the social and political beliefs of particular periods. Given that the government and others now endorsed 'multiculturalism' the classification system based on 'race' should be replaced by one based on 'ethnicity', which emphasised the cultural aspects of identity over the biological ones. Further the move to multiculturalism provided a reason why 'cultural affiliation' should be used to determine membership of ethnic groups, rather than 'proportion of descent':

36 Ibid, p. 4.
37 Ibid, p. 5
38 Ibid, p. 11
...Within the context of multiculturalism the overt cultural behavioural aspects of ethnicity are more important in defining ethnicity than the inherent biological dimension alone and ethnicity takes on a political dimension. Thus, while Maori descent is a necessary condition for being a Maori, the importance of descent is subservient to identification with Maori cultural beliefs and behaviour.  

In any case, he concluded, after several generations of racial intermarriage in New Zealand it was increasingly unlikely that people of mixed descent could accurately identify ‘proportions of descent’.

It might be observed at this point that despite Brown’s desire to distance identity categories from biologically-based racial theories, in the context of a multiculturalism which saw cultures as distinct, separable bodies of ‘beliefs and behaviours’, the concept of ‘ethnicity’ potentially linked biological identity and cultural identity together at least as forcefully as did the concept of ‘race’. Indeed, ‘race’ as used during the latter assimilationist period did not necessarily say anything about one’s cultural beliefs, as, in the properly assimilated nation, physical characteristics would be all that differentiated members of one race from another. But ‘ethnicity’ retained the biological element and linked it into a distinct set of cultural values and beliefs.

Brown’s other main recommendation was that more research be done into the collection of ethnic statistics in a number of central government agencies, in order to determine whether the development of a standard classification of ethnicity would assist with collection of relevant and accurate ethnic statistics.  

Following Brown’s report the ‘proportion of descent’ question was dropped in the 1986 census, replaced by a question which used cultural affiliation to establish group-based identity. The term ‘ethnic origin’ was still used, but respondents were no longer asked to identify whether they were of a ‘full’ ethnic origin, or proportions of descent if they were not, although they were asked to identify whether they had any Maori.

40  Ibid, p. 5.
41  Ibid, pp. 63-69.
ancestry. Respondents could also tick more than one box if they were of multiple ethnic origins.\(^{42}\)

The 1986 census also dropped the overtly racial term ‘Caucasian’ (used in the 1981 census) instead using the term ‘European’, and those within the generic ‘European’ category had the option of providing a more specific identity, through the ‘other’ category. Ethnic data coding instructions, however, placed them all back together into one category again, with the consequence that no disaggregation of the European ethnic group data was available from the 1986 census.

To follow up both of Brown’s recommendations a Review Committee on Ethnic Statistics was established, releasing their *Report of the Review Committee on Ethnic Statistics* in 1988. They too favoured the trend away from racial terminology, and found themselves largely in agreement with Anthony Smith,\(^{43}\) who had rejected the biological emphasis of racialism in favour of other bases for identity. Borrowing the French term *ethnie*, Smith had argued that *ethnie*:

> ...unite an emphasis upon cultural differences with the sense of an historic community. It is this sense of history and the perception of cultural uniqueness and individuality that differentiates populations from each other and which endows a given population with a definite identity, both in their own eyes and in those of outsiders. \(^{44}\)

He argued that it was through the transmission of shared meaning embodied in things like languages, art, architecture, music, legal codes, and modes of warfare, that a sense of a common group identity was entrenched and perpetuated:

> ...ethnicity is largely ‘mythical’ and ‘symbolic’ in character, and because myths, symbols, memories and values are ‘carried’ in and by forms and genres of artefacts and activities which change only very slowly so *ethnie* once formed, tend to be exceptionally durable under ‘normal’ vicissitudes and to persist over many generations, even centuries, forming ‘moulds’.

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\(^{42}\) Pre-tests carried out by the Department of Statistics before the 1986 census revealed that 'respondent discrimination between the "ancestry" and "cultural affiliation" type questions tested was low, resulting in similar response patterns to both types of question'.\(^{42}\) However, the same pre-tests revealed a 'negative response and reaction' to the question which asked respondents to identify proportions of descent if they were of mixed ancestry Department of Statistics, *Report of the Review Committee on Ethnic Statistics*, 1988, p.50.


\(^{44}\) Smith, p. 22.
within which all kinds of social and cultural processes can unfold and upon which all kinds of circumstances can exert an impact.\textsuperscript{45}

Smith's argument that ethnic forms of identity were extremely durable and persistent was in contrast to the assimilationist idea that an individual and his or her culture could be easily parted. Moreover, he argued, assimilation's attempt to disguise cultural particularity as neutral modernism was a politically dangerous strategy:

...closer examination always reveals the ethnic core of civic nations, in practice, even in immigrant societies with their early pioneering and dominant (English or Spanish) culture in America, Australia or Argentina, a culture that provides the myths and language of the would-be nation....Failure to understand the inner meanings and appreciate the force of those myths, memories and symbols which underpin ethnic identity, can only prevent us from coming to grips with the ethnic antagonisms that bedevil relations between states and individuals in the modern world.\textsuperscript{46}

There was, in other words, to be no getting away from ethnic identities, and governments should recognise the forces lining up behind such forms of identity. There was no 'civic' culture, no non-ethnic form of nationalism, to which a country might aspire. It was better that states take steps to appease the monsters that might be woken if ethnic forms of identity were deliberately ignored or suppressed.

For Smith it was not necessary that ethnic groups be able to connect themselves through common blood-lines in order to understand themselves as to be a group, it was enough that they felt themselves to be so connected. Nonetheless, 'ethnic' classifications were still not entirely reliant on 'cultural affiliation'. According to Smith an ethnic group was:

A social group whose members have the following four characteristics: (a) share a sense of common origins (b) claim a common and distinctive history and destiny (c) possess one or more dimensions of cultural individuality (d) feel a sense of unique collective solidarity.\textsuperscript{47}

\textsuperscript{45} Ibid, p. 16.
\textsuperscript{46} Ibid, p. 226.
\textsuperscript{47} Ibid, p. 66.
To be a member of an ‘ethnic’ group then was to have a distinct and differentiable cultural, historical, ancestral and political identity.

On the question of why ‘ethnic’ statistics needed to be collected at all, the Review Committee was much less forthcoming than Brown. In contrast to the social equalisation goals spelt out so explicitly in Brown’s report, the Review Committee spoke more guardedly about the ‘need to inform policy planning and evaluation for various Government departments’, including the Department of Maori Affairs, the Pacific Island Affairs Units, the Departments of Welfare, Justice, Health and Internal Affairs so that they could plan and monitor their respective policies. Despite this reluctance to speak plainly about the project of social equalisation, the Review Committee, like Brown, saw the primary political salience of ethnicity as being where it coincided with social and economic disadvantage, and – again only for Maori – for the purposes of political representation. Maori and Pacific Islanders, as the two ethnic groups experiencing the greatest level of comparative socio-economic disadvantage, were seen as the two groups about whom ethnic information was most needed.

Citing a desire to be more consistent with a multicultural approach to government policy, the Department of Statistics also noted the need experienced by ethnic groups themselves for adequate ethnic data – so that they might plan their own policy and service delivery, and to assist them in applying to the Government and other agencies for funding. Belying this multicultural approach, however, was the Review’s response to some submissions which saw implicit racism in ‘the way the European ethnic category covered the bulk of the population of New Zealand while ethnic minorities were analysed in great detail’. The greater detail about ethnic minorities, the submittants claimed, drew attention to, and highlighted the ‘failures’ within those groups, while ignoring any successes. The Review Committee responded to this criticism by saying that although in the 1986 census some respondents had identified themselves as Polish, Greek, Dutch etc, this level of detail would not be available.

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49 Ibid, p. 24
from statistics coming out of the census, because ‘there are no policy actions which
will provide special treatment for these groups.’

Having identified the reasons for collecting ethnic data, it became clear to the Review
Committee that the movement from race to ethnicity was not to be so easily
conducted. Whilst including Smith’s definition, and generally agreeing with Brown
that in most instances a question about ‘cultural affiliation’ might be more appropriate
when trying to capture ethnic identity, the Review Committee saw a number of
reasons why in fact a ‘blood ancestry based’ question should continue to be included.
Some users, particularly those working in health, wanted ethnic data based on descent.
(The increased incidence of some diseases in certain genetically-related groups – such
as hepatitis in Maori for example – made literal ‘blood’ lines significant for health
researchers.) The Review Committee was also concerned about the continued
comparability between those statistics based on a ‘cultural affiliation’ concept and
those based on a ‘proportion of descent’ concept, as all statistics had been, up until
1986. And in relation to Maori, there were a number of reasons why they would not
easily make the transition from a ‘racial’ group to an ‘ethnic’ one. Maori themselves
did not particularly embrace a change from the language of race to one of ethnicity. As
Andrew Sharp argues:

...It is true that they [Maori] asserted a separate and valuable culture and that they described
themselves collectively as te iwi Maori (Maori originally meaning: "ordinary, normal people
over and against "te iwi Pakeha"). But the notion of their being te iwi Maori and thus
something like an ethnic group was not by any means the end of their self-description. They
were, they claimed, tangata whenua - the people of the land. They were its original
inhabitants...They were a "first nation", and "indigenous people" - an ethnic group maybe, but
only incidentally to that primary status. And in fact, as well as seeing themselves as one
people, they often saw themselves as forty-three to sixty separate iwi (tribes), all claiming tino
rangatiratanga against the rest of the iwi and against other hapu within the same iwi - for it
was leaders of hapu who had signed the Treaty of Waitangi.

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The Review Committee on Ethnic Statistics was convened during a period when the
fourth Labour Government was making the transition from an official race relations
policy of 'multiculturalism' to one of 'biculturalism'. Maori had vehemently protested
that a discourse and policy of 'multiculturalism' downplayed the significant and
unique rights and position of Maori in New Zealand. Maori were not, they argued,
simply another ethnic minority. Their argument that New Zealand should be based on
a bicultural, not a multicultural model was broadly accepted by the Labour
Government. In this they were influenced by the High Court's finding in New Zealand
Maori Council v Attorney General (1987), that the Treaty of Waitangi 'signified a
partnership between two races'.² While biculturalism proved to mean many things to
many people, and was variously interpreted and implemented from then on,³ it had
been successful at least in pushing 'multiculturalism' off the governmental agenda.

'Biculturalism' fitted well with the language of 'ethnicity'. It was ardently committed
to the idea that differentiable cultures were the primary source of identity, meaning
and self-esteem for their members. It staunchly promoted equality between two
'cultures': Maori and Pakeha. The fact that these two groups were sometimes labelled
'cultures' (as in the High Court finding above), sometimes 'ethnic groups' (in official
statistics, for example) but that the policy and ideology itself emphasised 'cultures'
simply demonstrated how much intellectual slippage there remained between the three
concepts, and how little, in fact, the move away from an official language of race to
one of ethnicity had really signified.

One of the practical manifestations of a governmental biculturalism was the
progressive devolution from central government to pan- and local Maori agencies for
the provision of economic and social development strategies for Maori. This process,

² The Maori Council sought to halt the potential sale of public lands under the State Owned
Enterprises Act (1986) because some of those lands might be subject to a Maori claim before the
Waitangi Tribunal. Only the year before the Waitangi Tribunal had been given retrospective powers to
investigate claims dating back to 1840, and some of the claims were yet to be lodged. Sections 9 and 27
of the State Owned Enterprises Act stated that claims lodged after the end of December 1986 would not
be able to recover land transferred into private hands. The Court found in favour of the Maori Council.
³ The literature on how biculturalism has been interpreted and implemented is now quite
extensive. For a brief review see Augie Fleras and Paul Spoonley, Recalling Aotearoa. Indigenous
by 1990, was to get as far as the establishment of *iwi runanga* (legal representatives of *iwi*) who were to act for tribal groups to provide services to tribal groups. The *iwi runanga* were to receive government funding, as well as authority, to deliver services to members of their tribal group. The *Report of the Review Committee* recognised the state’s desire to ensure that funding and delegated authority is restricted to those within the targeted ethnic group, and the need of newly empowered Maori organisations to have access to statistical information about those for whom they now had increased responsibility. This required the Department of Statistics to maintain blood ancestry information on Maori as well as information about *iwi* (tribal) affiliation.

For all these reasons the Review Committee recommended that the Department of Statistics investigate the feasibility of including in subsequent census both types of questions. Thus genetically-determined identity remained, for the Review Committee, generally relevant for health statistics, and more specifically relevant for the delivery of social services to, and political representation of, Maori. But the Review Committee agreed with Brown that ‘wherever possible, where information will be used in producing official statistics, the method of reporting ethnicity be self-identification’.

It was a major concern of the Review Committee, as of Brown before them, that the collection of all ethnic statistics be standardised over all government agencies. Research they had conducted found that there was no consistency in the collection of ethnic statistics, either in the way ethnicity was understood (‘biological descent’, versus cultural affiliation) the method for determining membership (self-identification versus leaving it up to the official filling out the form to hazard a guess as to their subject’s ethnicity), or in the categories used. In the interests of reliability, comparability, accuracy and appropriateness the Review Committee recommended

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54 Andrew Sharp, 1997, p. 442.
that the Department of Statistics 'lead and co-ordinate the development of standard ethnicity classifications with associated instruments suitable for obtaining standard ethnic data across all official surveys.' It also recommended that the Departments of Health, Labour, Social Welfare, Justice and Education develop appropriate procedures for collecting ethnic statistics in their area of concern.

All of this was indicative of the Review Committee's keen awareness that the logical basis of classification systems, the categories used to group people together, the methods of allocation, and the use to which the resulting statistics were put, were all politically significant acts. Statistics were not simply the product of scientifically recorded 'fact', but the product of the social, economic, historical and power contexts in which they were formed. The Committee was anxious to develop ethnic statistics which did not perpetrate and entrench discriminatory ways of understanding group-based identity but which left room for a group-based claims to identity and politics.

In response to the Review Committee's recommendations the 1991 census question on ethnicity used the term 'ethnic group' rather than 'ethnic origin', and replaced the term 'European' with 'New Zealand European'. There was no general descent or ethnic origin question, except for that asking specifically about Maori descent ('Have you any Maori ancestry?'). Racial thinking had been officially phased out and replaced by a less biological, more socially constructed understanding of group identity. But 'ethnic' statistics continued to play a central role in allowing government to develop policies of social and economic equalisation between ethnic groups and in evaluating the progress of such policies. Moreover, it encouraged individuals to think of themselves in explicitly ethnic terms, and in terms of the categories formally used by state agencies.

Ethnic statistics in the 1990s: targeting and risk management

The National Government that gained power in 1990 inherited the classification systems and statistical technologies developed by previous governments but it did not share many of the social-liberal policy goals which had hitherto justified the collection of ethnic statistics. Nor did it seem particularly likely to be sympathetic to group-based identity claims. The new Government’s rhetoric was fervently individualist, and was far more likely to refer approvingly to market outcomes than to the ideal of ‘social’ justice between ethnic groups. What then, was the National Government to do with the by now extensive array of data produced on the social and economic outcomes of various ‘ethnic groups’ in New Zealand?

In fact, the new National Government, clearly committed to pursuing a number of neo-liberal goals, came to rely very heavily indeed on statistical information in pursuit of those goals – including those concerning ethnicity. Indeed, within three years it oversaw the introduction of an new classification system designed to collect relevant and standardised ethnic statistics at a hitherto unimagined level of detail: The New Zealand Standard Classification of Ethnicity (NZSCE). Building on the work of Brown and the Review Committee on Ethnic Statistics the New Zealand Standard Classification of Ethnicity formalised the movement away from racial terminology and towards that of ethnicity.

i. The New Zealand Standard Classification of Ethnicity

The New Zealand Standard Classification of Ethnicity had a five level system of classification. At the simplest level of classification there were only four categories: ‘European/Pakeha’, ‘NZ Maori’, ‘Pacific Island groups’ and ‘Other’. At the most complex level over 220 possible identity groups were listed, a number which was exponentially increased by the possibility of dual or multiple ‘ethnic’ group identities.
Andrew Sharp labelled it 'ethnicisation with a vengeance'. The classification employed a system whereby specificity was reduced at each level by a process of aggregation. Thus an individual might have chosen to identify herself as 'Greek Cypriot', which was how it would appear at the most complex level, level five. But she would become 'Greek' at level four, 'Other European' at level three, and European/Pakeha at levels one and two. The categories set out by the New Zealand Standard Classification of Ethnicity formed the basis of the 1996 ethnicity question.

In the accompanying notes, Statistics New Zealand (as the Department of Statistics was now known) presented reasons for the need to collect ethnic data and to have a standard classification of ethnicity. The primary rationale was the retention of both Maori and Pacific Island cultures. Maori statistics needed to be provided, and Maori needed to be recognised as a distinct cultural group at all levels of the classification because New Zealand was the 'only territory where there is a commitment to the status, preservation and continuity of Maori cultural traditions (including language)'.

In relation to the Pacific Island population resident in New Zealand, New Zealand's 'historical and continuing relationships and ties of citizenship, defence, development or aid' were seen as conferring upon New Zealand a responsibility to ensure the maintenance of the cultures of those Pacific Island nations who had significant populations in New Zealand. Statistics New Zealand explained that many of the islands from which Pacific migrants came were adversely affected by emigration, and in the case of some countries, such as the Cook Islands, the population in New Zealand was substantially larger than that of the homeland. Thus, it was thought, any attempt to preserve Cook Island culture needed to occur in New Zealand as well as in the Cook Islands. Statistics needed therefore to differentiate between the various groups that made up the Pacific Island population in New Zealand.

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59 Statistics New Zealand, New Zealand Standard Classification of Ethnicity, p. 18.
60 Idem.
This emphasis on ‘culture’ in Statistics New Zealand’s justification for the collection of ethnic statistics was entirely in keeping with the importance placed on ‘ethnic’ forms of identity by both multiculturalism and biculturalism. No specific rationale was presented for the collection of data on other ethnic groups. Moreover, unlike Brown and as befitting a Government for whom distributive justice was an infringement of individual liberty, Statistics New Zealand did not mention the need to lessen the comparative disadvantage of any ethnic group as a reason to collect or standardise ethnic statistics.

The New Zealand Standard Classification of Ethnicity also adopted, like the Review Committee, Smith’s definition of an ethnic group, on the grounds that it most usefully reflected the contemporary nature of ethnicity in New Zealand.\(^\text{61}\) For Statistics New Zealand the fact that Smith’s definition of ethnicity emphasised the political nature of ethnic identification whilst acknowledging the historical roots on which ethnic groups base their sense of common origins made it most appropriate for the New Zealand context. Because there had been high levels of social, economic and cultural interaction, and inter-marriage between the three main ethnic groups (European, Maori and Pacific Islanders) the genetic aspects of ethnicity were considered to be less important in New Zealand than the complex inter-relation of social, political, cultural and historical factors that ‘ethnicity’ emphasised:

Identification through mythical and symbolic sources as well as biological ancestry is recognised by a “sense of common origins” and a claim for “common and distinctive history and destiny”. The “dimensions of collective cultural individuality” cover a variety of factors – some primordial, some situational – without specifying that any one is vital. A “sense of unique collective solidarity” takes account of politicisation which can develop, renew, make irrelevant or even undesirable, identification with a specific ethnic group.\(^\text{62}\)

The given categories were in part derived from responses given to the 1986 census question on ethnicity, while other categories had been taken from relevant responses that were given to the 1986 Australian census question on ethnicity. The New Zealand Standard Classification of Ethnicity introduced a new label for the dominant

\(^{61}\) Department of Statistics, NZ Standard Classification of Ethnicity1993, p. 15.

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majority population, (labelled ‘NZ European’ in the 1991 census). The change was one designed to recognise distinctions between those who now considered themselves ‘New Zealanders’ of European national or racial descent, and those of European descent who, although living in New Zealand, continued to identify themselves with a different identity. Under the Standard Classification both categories were ‘European/Pakeha’ at the broadest two levels, but were split up into ‘NZ European/Pakeha’ and ‘Other European’ at level three, and ‘NZ European/Pakeha’ and a number of other, specific, European groups at level four.

Following on from a discussion in the Review Committee’s report about the use of the terms ‘European’ and ‘Pakeha’ to denote the dominant majority,63 Statistics New Zealand reported that they had received submissions both from those who objected to ‘European’ (because it did not describe uniquely New Zealand aspects of culture,) and from those who objected to ‘Pakeha’ (on a number of grounds, including fear that it had a derogatory meaning; that it was a term historically used to deride and ridicule the British colonists, and now, likewise to challenge the authority of the dominant majority.)

The New Zealand Standard Classification of Ethnicity ascribed political motives to some of those reluctant to be described as ‘Pakeha’:

...the terms ‘Maori’ and ‘Pakeha’, which initially worked mutually to define one another, have acquired political significance. Objections to the use of ‘Pakeha’...are as much objections to the changes in the power relationship, and possibly objections to biculturalism and the partnership principles embodied in the Treaty of Waitangi.64

62 Ibid, p. 15
63 A number of submissions to the Review Committee had contended that ‘New Zealanders had their own culture established over many generation and that their links with Europe were therefore unimportant’. (see Report of the Review Committee on Ethnic Statistics, p. 34). The term ‘Caucasian’ was one suggested alternative, but the Review Committee rejected this as deriving from a theory of races. The term ‘New Zealander’ was likewise dismissed, as it was considered likely to lead to confusion between ‘ethnic and national identity’.  
64 New Zealand Standard Classification of Ethnicity, p. 17
Bearing in mind that neither ‘European’ nor ‘Pakeha’ were likely to satisfy all who fell within these categories, the *New Zealand Standard Classification of Ethnicity* employed both terms, feeling that this would ‘provide more information for respondents, and may also cancel out negative reactions from two opposing viewpoints’.65 The definition of ‘Pakeha’ adopted by the *New Zealand Standard Classification of Ethnicity* was Spoonley’s, which combined historical, cultural, political and ancestral facets of identity:

New Zealanders of a European background, whose cultural values and behaviour have been primarily formed from the experiences of being a member of the dominant group in New Zealand. The label excludes those who continue to practice minority group ethnicity: the Chinese, Indian, Samoan, Tongan groups etc; and those European groups who retain a strong affiliation to a homeland elsewhere and reproduce this ethnicity in New Zealand.66

This, again, added an explicitly political component to the nature of group identity. The salient determinant of Pakeha ethnicity in this reading was the experience of power in relation to other groups.

Only the category ‘New Zealand Maori’ was the same at all levels of classification. The *New Zealand Standard Classification of Ethnicity* noted that a legal definition of ‘Maori’ already existed in the Maori Affairs Amendment Act 1974 and the Electoral Amendment Act 1980, which defined ‘Maori’ as ‘a person of the Maori race of New Zealand, and any descendant of such a person’. While this was a definition that appears to rely on primordial concepts of race and biological descent, Statistics New Zealand argued that because the process of categorisation was dependent upon self-identification, the preferred method of cultural affiliation actually occurred.67

Yet despite preferring ‘ethnicity’ over ‘race’ Statistics New Zealand had had difficulty in creating categories that were ethnic in a Smithian sense, and, as they themselves said:

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65 *Ibid*, p. 17
66 *Idem.*
67 *Ibid*, p. 15

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Some categories may be more correctly classified as nationality rather than ethnicity, in view of the distinctive categories contained within each, e.g. ‘Chinese’, ‘Indian’, ‘Sri Lankan’. But these, and most of those listed [at level five] have been reported consistently as ethnic groups or ethnic origins in New Zealand and/or in Australian censuses. There may be a number of reasons for this. Confusion may exist about the concepts ‘nationality’ and ‘ethnicity’... [Alternatively] respondents may have developed a decreased sensitivity over time and geographical distance to the ethnic divisions of their country of origin, or an awareness that the general population (dominant ethnic group) in the host country does not appreciate these ethnic distinctions.68

Some broad categories, they admitted, such as ‘Other Asian’, or ‘African/African origin’, reflected the ‘historical pattern of very small numbers of people identifying with any of these groups in New Zealand or Australian censuses, and the lack of demand for a more sensitive classification.’ If immigration patterns were to change the current volume and ethnic mix of people from these areas the classification would, they said, need to be updated.69

In adopting an ‘ethnic’ version of identity, Statistics New Zealand demonstrated themselves unwilling to entirely give up the idea that genetic inheritance, even for non-Maori, was irrelevant. Ethnicity in the Smithian sense was a combination of cultural affiliation and familial descent. Individuals could choose to affiliate with a certain ethnic group, but the assumption remained that this was an affiliation based at least in part on genetic descent. In this sense, the New Zealand Standard Classification of Ethnicity retained a great deal of the logic which had underlain racial classifications. This had implications for the way in which ‘culture’ itself was understood. Because particular ‘cultures’ were seen to be embedded within particular ‘ethnicities’, and ethnicities were associated with genetic descent, the opportunity for cultures to be seen as something that people of different ethnicities could share was diminished.

68 Ibid, p. 18
69 Idem.
Nor did the New Zealand Standard Classification of Ethnicity entirely rid the classification system of the racially exclusive logic that had determined New Zealand's immigration policy since colonisation. This was clearly illustrated by the fact that the New Zealand Standard Classification of Ethnicity only offered 'hyphenated' identities – those which combined cultural or ethnic identities with civic identities – to Europeans and Maori. It did not, for example, provide the option of 'Pacific Islands New Zealander', 'Chinese New Zealander' or 'Indian New Zealander', but it did provide 'New Zealand European' (at level 3) and 'New Zealand Maori' (at all levels). Thus, even those of Chinese or Indian descent whose families had been resident in New Zealand for a hundred years or more could identify themselves only by their 'ethnicity', and not with their identity as a New Zealander. If they did choose to identify themselves as 'Chinese New Zealander' at level 5, for example, at every other level they would be reclassified as either 'Chinese' or, at level One, 'Other'. This emphasis on 'ethnic' forms of identity foreclosed the possibility of a 'civic' form of national identity amongst New Zealand's ethnically diverse population.

Each of these points undermined some of the good intentions behind the New Zealand Standard Classification of Ethnicity. The formalisation of a preference for ethnic thinking over racial thinking (even if imperfectly delivered) was by implication a democratic one. Under the old classification system based on racial 'blood-lines' individuals had did not have the power to name themselves. They were unable to choose the category with which they most identified, and perhaps most invidiously, the classification system itself was both a product and a technique of a social system in which power was unequally distributed – in which the politically dominant sought to name those they oppressed, to assign them to a place within the classification system and to make assumptions about the capacities of those they so assigned. These assumptions, moreover, had provided the basis for political decisions which had the effect of translating into social reality the inequalities that had previously been assumed.
The adoption of voluntary, self-selecting 'ethnic' categories, on the other hand, promised to return a degree of self-determination to individuals. They could, by the process of cultural-affiliation decide what they wished to be called individually, and as groups they had some input into developing the categories. The classification system itself was constructed with the understanding that invidious discrimination on the basis of group identity was illegitimate morally and in law. Moreover, by providing statistics that responded to the informational needs identified by ethnic groups themselves, Statistics New Zealand was ensuring that ethnic statistics could be a tool of self-directed community development, as well as of government-directed policy development. Such a classification system had the potential, therefore, to increase the citizenship status of the ethnic minority individuals it counted.

However, the use to which the new classification system was put under the National and National-led administrations of the 1990s did not have an uncomplicatedly democratic effect on the citizenship status of non-Maori ethnic minorities, primarily because the collection of ethnic statistics was no longer primarily justified by the need to reduce social and economic inequalities between ethnic groups. Instead National and Coalition Governments used ethnic statistics extensively in the 1990s to target social assistance more precisely to those experiencing the greatest social and economic disadvantage, amongst whom could be counted disproportionately high numbers of those belonging to ethnic minority groups.

**ii. Social policy and the use of ethnic statistics to implement targeting of welfare assistance**

National committed itself early on in its administration to a reduction in the cost of social welfare spending. Minister of Social Welfare Jenny Shipley made in plain in 1991 that the Government considered the cost of the welfare system excessively burdensome, and that welfare assistance would henceforth be targeted to a much
greater extent.70 Targeting formed part of a wider strategy to wean New Zealanders off the state: to get them to more comprehensively internalise the ideal of individual self-government which lay at the heart of neo-liberalism. Individuals should, in this view, take advantage of their extensive market freedom. They were free to pursue self-fulfilment through the wide variety of consumer options now available in modern plural democracies: educational, occupational, recreational, familial, prudential, health, and even identity choices could equip them to become the masters and mistresses of their own destinies. Identities based on self-selecting ‘cultural affiliation’ were better suited to this consumerist vision of identity than had been the biologically-based racial categories of old.

Shipley talked of the need for individuals and communities to share more of the responsibility for social and economic outcomes,71 by which she largely meant that individuals should no longer expect to receive so much assistance from the state in the way of universal welfare rights. Instead they should, where they could, expect to pay for social services they received, whether publicly or privately provided. And, because the rocks at the bottom of the cliff were going to be particularly hard and sharp under this Government, individuals should each build their own personal fence at the top, constructed out of personal savings and private insurance. In short, New Zealand was to move towards a post-welfarist form of democracy where, as Rose puts it:

...social insurance, as a principle of social solidarity, gives way to a kind of privatization of risk management. In this new prudentialism, insurance against the future possibilities of unemployment, ill health, old age and the like becomes a private obligation. Not merely in relation to previously socialized forms of risk management, but also in a whole range of other decisions, the citizen is enjoined to bring the future into the present, and is educated in the ways of calculating the future consequences of actions as diverse as those of diet to those of home security. The active citizen thus is to add to his or her obligations the need to adopt a calculative prudent personal relation to fate now conceived in terms of calculable dangers and avertable risks.72

70 See for example Shipley, Upton, Smith, & Luxton, 1991.
71 Ibid p. 12.
72 Rose, 1996, p. 58.
The transition from a more universal welfare system to a more tightly targeted one, in combination with the associated policies of 'user-pays' in various welfare sectors such as health and tertiary education, was deliberately designed to undermine the welfarist assumption that risks would be shared across the national population. The prudential approach which individuals were encouraged to take in relation to their lives required them to make more precise probabilistic calculations about risk than had perhaps been necessary under a more universal welfare system. Individuals, therefore, required extensive information if they were to be able to make genuinely informed, self-interested decisions. The ability of the free market to spontaneously provide such information in the form of market signals was one of the attributes of the market that neo-liberals most admired.

Nor was the internalisation of the goals of post-welfare democracy to be confined to individuals. All of the institutions through which society was organised and governed, such as various government agencies, schools, universities and hospitals, were required to similarly wean themselves off the state. They should no longer consider themselves as the institutions of collectivised welfare but should instead see themselves as competitors in a marketplace of welfare providers. The introduction in the 1980s of accrual accounting within government agencies and the widespread separation of policy advice, funding, purchase and service delivery functions had already gone a long way towards facilitating this process. National further assisted the process through the introduction of competition in the health and education sectors and the increased emphasis on the contracting out of publicly funded service provision.\(^\text{73}\)

One of the effects of the introduction of a managerialist ethos within government agencies was a new concern within those agencies about the economic efficiency and accountability of government. Like any corporate organisation, government agencies began to think more and more in terms of the risks they faced as organisations, and acted to minimise or externalise such risks. Taxpayers came to be seen almost like

\(^{73}\) See Chapter Eight of this thesis for a more detailed discussion.
'investors' in the state, and the state agencies entrusted with the taxpayers' money felt themselves beholden to use it cautiously, sparingly, and to protect the taxpayers from financial risk in the form of government overspending. Risks posed to government finances were to be identified and risk management strategies put in place to minimise the costs associated with them.

One such risk was identified in the form of those sub-populations whose higher levels of unemployment, poor educational achievement, illness or criminality imposed high social and fiscal costs on the state in comparison to other sectors of the population. Minimising the costs these sub-populations imposed on the state would involve identifying the factors that made such communities less likely to do well at school, to get jobs or to be economically independent, and working to change those factors. Here the targeting of specific, 'solution'-oriented welfare services to sub-populations became itself a form of risk management. The goal was to transform those within such sub-populations into the individualised citizens of a market society.

Numbers generally were crucial in this transformation of a welfare state into a post-welfarist one. To begin with, the transition from a partially universal to a more targeted or residual model of welfare assistance required a great deal of statistical data about comparative income levels, living costs and so on, in order that assessments could be made on where to draw the line between those who would receive assistance and those who would not. Such targeting took on a specifically 'ethnic' character where ethnic sub-populations were identified as having particular problems with educational under-achievement, poor health, unemployment, poor housing, or criminality. The funder-provider split that had been introduced into many of the social service areas such as health and welfare meant that services could more easily be targeted at such sub-populations, and tailored to meet specific community needs in ways that were responsive to cultural or ethnic difference.

In many respects the National Government’s policy of targeting specific assistance to disadvantaged ethnic groups such as Maori and Pacific Islands people was a product
of typically liberal reformist impulses. National clearly hoped that detailed ethnic statistics could help them in their attempt to more accurately target social assistance towards those in the greatest need, and to increase the effectiveness of those services by delivering them in ways which were suited to the particular characteristics of the sub-population being targeted.

But the policy context within which such targeting occurred made the use of ethnic statistics and targeting somewhat less benign. With the privatisation of risk, and the removal of many of the benefits of a welfare state for the middle classes, the incentive was there for a much stricter form of accounting as to who was paying into the system and who was getting benefits back out of the system, and for resentment to grow towards those who got more out than they put in. As Michael Ignatieff has said:

"Citizenship reposes in not too strict an accounting of what the bargain is worth. Childless couples pay through their taxes for the education of other people’s children; young working people help to pay for the retirement and sickness costs of the aged; those who work help support those out of work; those who take good care of their children often end up paying for the mistakes made by others who don’t take good care of theirs. This impersonal civic altruism further undergirded by the insurance principle: we pay into a common fund in order to draw on it ourselves and as long as we get adequate public services when we need them, we don’t mind paying for them."

Ethnic statistics made it plain that some ethnic sub-populations were imposing a financial cost on other sub-populations.

Committed to a market-liberal ideology which emphasised individual responsibility and market justice, the National Government was reluctant to discuss structural or societal causes of disadvantage, preferring instead to promote the idea that individuals

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succeeded or failed as market citizens entirely on their own merits. But when it became clear after the release of the 1991 and 1996 census figures that Pacific Islands populations (along with Maori) were severely under-employed and disproportionately poor, under-educated, welfare-dependent, poorly housed, and unwell, the implication seemed to be that Pacific Island communities themselves harboured characteristics that made them more likely to be unemployed and poor. The language of individual and community responsibility made it more likely that disadvantaged sub-populations would be tarred with the brush of blame for their own disadvantage, even in those cases where the Government’s policies had themselves clearly contributed to the position of disadvantage.

All of this points to the dangers associated with the collection, analysis and dissemination of ethnic data. Inevitably, publication of and repeated reference to the poor socio-economic status of any ethnic minority group, (and in New Zealand this applied in particular to Maori and Pacific Islands people) will stigmatise those who are members of such minority groups, regardless of their actual socio-economic positions. As Paul Starr puts it:

...by virtue of the web of associative memory, names call to mind other object and events and colour the perception of any category. They thereby often trigger the damages or advantages the categories bring.  

And, in a society where all individuals were encouraged to take a more risk-averse, prudential approach to life, the prudential citizen may well feel themselves encouraged to avoid people who belonged to communities in which ‘risk’ factors were concentrated.

Nor is this process of association likely to be limited to those outside the group. The self-identity of individuals who identify with an ‘ethnic’ group which has negative social and economic statistics may also be affected by the statistical picture of their

ethnic group. The more pervasive the statistical profile of ethnic sub-populations become in the general population, the more likely it is that individuals who either self-identify or are identified by others as belonging to that group associate themselves, or are associated by others with that negative social and economic status. This in itself can represent a loss of freedom, and a return to the limiting stereotypes which it was hoped would be abandoned with the move from racial to ethnic systems of classification.77

To argue this is not, however, to argue that a veil of secrecy should have been pulled over the stark social and economic disparities that exist between ethnically constituted groups in New Zealand. Undoubtedly such statistics should be collected, analysed, disseminated. And, if they reveal significant disparities between different ethnic groups then governments should make concerted efforts to reduce such disparities. The dangers arise when such statistics are collected and disseminated in a political environment in which social equality is not itself pursued as a primary political good. In such a political environment disadvantaged groups risk stigmatisation at a very time when the welfare support available to assist them to get out of a position of disadvantage is greatly reduced. The fact that 'ethnic' understandings of ethnicity continued to link together biological descent and cultural beliefs suggests perhaps a greater connection between this form of identity and socio-economic performance than may in fact be the case.78 (In fact, prior to the market reforms put in place by the fourth Labour Government, Pacific Islands people were employed at a slightly higher rate than was average across the national population.79 And having suffered major job losses as a population during the mid-to-late 1980s significantly through Labour’s corporatisation policy, many found themselves reliant on income assistance at the very time when the National Government reduced the rate of the unemployment benefit,


cut the family benefit, raised the age at which individual’s became eligible for income assistance and increased the cost of state housing.)

The primary justification for collection of ethnic statistics in the Standard Classification, we may remember, was the preservation of both the Maori and Pacific Islands culture and languages, not the closing of economic or social gaps between unequal ethnic groups. In fact, the rejection of assimilationist policies made it very difficult to engage in any thorough-going project of social or economic equalisation between ethnic groups. Throughout the decade policy-makers developed policies consistent with the promotion of cultural forms of identity – primarily through the provision of culturally-appropriate social services and the contracting out of service provision to ethnic providers. The effect was to emphasise cultural differences at the very time when, for some ‘cultural’ or ‘ethnic’ groups, economic or ‘class’ differences were also growing. Again, this exacerbated the risk of negative stereotyping of economically-disadvantaged ethnic groups such as Pacific Islands people, embedding them more deeply in the cultural or ethnic forms of identity which were statistically associated with disadvantage.

**Conclusion**

When, in 1983, Brown recommended a move away from the terminology of race towards that of ethnicity he clearly thought that such a move would improve the quality of citizenship for Maori and other ethnic minority groups in New Zealand. It would distance New Zealand from the discriminatory racial thinking that had so thoroughly disgraced itself during the twentieth century, and would instead connect official statistics with the ideology of multiculturalism and its associated belief in cultural equality. Such values were inimical to invidious discrimination. Moreover,

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80 For a discussion of this see Nancy Fraser, 'From Redistribution to recognition? Dilemmas of
the collection of accurate ethnic statistics would aid government in its central purpose in the collection of such statistics: the amelioration of economic and social disadvantage suffered by those belonging to minority ethnic groups. His was a distinctly social-liberal statement of faith that governments could, and should, intervene to alter what statistics demonstrated to be problematic.

By the time National gained power in 1990 most of what Brown recommended had come to pass, but the collection of ethnic statistics was no longer justified by the need for social and economic equalisation. In the post-welfarist democracy National sought to facilitate, government was to have a much smaller role to play in altering the realities revealed by statistical analysis, including those of ethnic inequality. Individuals, on the other hand, were encouraged to adopt a much greater responsibility for using statistical information to calculate what was in their own best interests. Free will, by this view, was something primarily to be exercised at the individual level, characterised by the individualised numerical calculation of risks and benefits.

Under neo-liberalism and in contrast to the interventionism of the multicultural ideal, ethnicity was largely a private sphere concern – except, that is, when some ethnic groups were seen to impose a financial risk to other individuals within society. Ethnic statistics came, therefore, to be used by the Government as part of a risk-management strategy and those ethnic groups found to be most disadvantaged were cast as economically and socially ‘risky’.

But the very concept of ethnicity, on which this governmental strategy was based, despite its valorization in official statistics, remained a profoundly confused and indistinct concept. Brown had thought that use of ‘ethnicity’ in place of the term ‘race’ would break the connection that scientific racism attempted to make between the biological and cultural aspects of group identity. In fact, the discourse of ethnicity never entirely separated identity from genetics, and, moreover, it added to the genetic aspect of identity a rather essentialist understanding of ‘culture’. The danger of this
was most apparent when ethnic statistics seemed to show that some ethnic groups (Maori and Pacific Islands people in particular) were measurably behind across a whole range of social and economic indicators. The emphasis that a discourse of ethnicity placed on the importance of cultural values to individuals made it easy for the Government to detract attention away from other possible explanations for unequal social and economic outcomes – such as the social and economic policies of the Government itself. Any blame for Maori and Pacific Islands disadvantage that might be placed at the foot of the Government was more easily transferred to those groups themselves, and some aspect of the ‘culture’ or ‘ethnicity’.

The language and logic of ‘ethnicity’ and the cultural relativism that was associated with it certainly moved New Zealand closer to a place where individuals could feel proud of their cultural heritage and enjoy their cultural practices without fear of official discrimination. The collection of detailed ethnic statistics also highlighted the diverse nature of New Zealand society and made it far more difficult for Government to assume that it governed a monocultural or even bicultural society. But, as evidenced by the period 1990-1999, there were dangers in placing too much emphasis on ethnic forms of identity during a period when governments are unwilling to do much to halt the growth of inequality. As economic inequality in New Zealand grew it was those concentrated in the industrial working classes, like Maori and Pacific Islands people, that bore the brunt of the economic restructuring. But because the Government no longer saw itself as having much of a role in removing economic disparities, it discouraged the development of socio-economic solutions to ethnic disadvantage that would involve greater economic redistribution. Ethnically-based solutions (such as ethnic community development, contracting-out of service provision to ethnic providers, for example) fitted more closely with the non-interventionist goals of the Government.

During such periods there might have been some advantage for disadvantaged minority groups in adopting the language of citizenship over that of ethnicity. Citizens share in common a number of needs. In particular they require well-protected civil, political and social rights. During the period 1990-1999 the social rights of all those
citizens in the poorest sectors of New Zealand society were severely diminished. Unfortunately, the emphasis on individuals as members of cultural and ethnic groups, rather than as citizens, made it easier for government to hoist responsibility for disadvantage directly on to the ethnicity of those individuals. In doing so the citizenship status of disadvantaged minority group individuals was undoubtedly diminished. Moreover, in emphasising ethnic difference over civic solidarity, the strength of citizenship-based arguments may well have been depleted.
Chapter Four

Creating Political Community: Citizenship, Immigration and Ethnicity

All societies produce strangers; but each kind of society produces its own kind of strangers.¹

National identity is about whether we identify with a community, see it as ours, are attached to it and feel bonded to our fellow members in a way in which we are not bonded to outsiders. It implies that – however deep our disagreements and frustrations – we care enough for each other to want to continue to live together. Such commitment leads to mutual trust and goodwill, breeds a spirit of relaxed tolerance, and ensures that not every disagreement is feared as a source of subversion and secession. The commitment to the community clearly cannot be permanent and unconditional. I cannot be one of you if you refuse to treat me as one, and I cannot be committed to you if you do not make a reciprocal commitment to me.²

Introduction

Earlier in this thesis it was argued that democratic citizenship is only possible where there are political communities who see themselves as such: who see themselves, in other words, as communities capable and desirous of self-government at the collective level. In many states this sense of political community has, at least historically, been based around a particular ethnic or cultural identity, understood and expressed as a ‘national’ identity. Ethnic understandings of national identity are inherently exclusive: they exclude from within³ those who do not belong to the ‘national’ culture, even though they live within its political jurisdiction. They also exclude from without through immigration and citizenship policies designed to prevent members of

different ethnic and cultural groups from gaining entry to or full membership of the political community.

Ethnic nationalism has become increasingly difficult to sustain in many states as high levels of migration globally have resulted in the ethnic diversification of most national populations. Some liberal states with ethnically and culturally diverse populations have deliberately attempted to foster a 'civic' sense of national identity within their populations, based on loyalty to the political institutions and values of liberal democracy (including an acceptance and affirmation of ethnic diversity), rather than on a specifically ethnic nationalism. Australia, Canada and the United States are three such liberal states.

Did New Zealand in the 1990s have an ethnic or a civic understanding of national identity, and thus of political community? It is the argument of this chapter that during this time New Zealand was in a transitional period, rejecting the explicitly ethnic understanding of political community that had been sustained through immigration policy up until 1986 when Labour dropped the preference for migrants from 'traditional source countries' (Britain and Northern Europe), but doing little to replace it with a 'civic' understanding of political community. It was thus suspended between the ethnic and the civic versions of national community.

Following Labour's footsteps, the National Government did more to encourage the arrival of migrants from a diverse range of countries than any previous government. Yet despite accepting migrants from a diverse range of cultural, ethnic, national and linguistic backgrounds, it did little to facilitate conditions that would make those migrants feel as if they could become part of the national community. Rather, the Government's assumption that what was really important about individuals was their ability to function successfully in a market economy led it to ignore the non-economic aspects of individual identity. As a result it was ill-prepared to deal with the racial and cultural hostility expressed against the new migrants (particularly those from Asia), by those New Zealanders for whom non-European migrants challenged their conventional understanding of who could, properly, be called a 'New Zealander'.
It is also the argument of this chapter that the National Government's decision to operate an expansionary, non-discriminatory immigration policy placed an obligation on it to also address some of the inevitable consequences of ethnic, linguistic and cultural diversity which arose as a consequence of that policy. Its failure to do so, while premised on the assumption of 'equal' or non-discriminatory treatment, instead had the opposite effect of exacerbating the discriminatory treatment migrants received in New Zealand. It also made the transition from an ethnic to a civic form of political community much more difficult than it perhaps needed to have been.

The chapter comprises two main parts. The first provides a brief summary of citizenship and immigration policy up until National took office in November 1990. Although outside the time-frame of this thesis, Labour's 1986 Immigration Review was important in that it abolished the preference for migrants from 'traditional source' countries. Like National's 1991 immigration policies Labour's immigration policy changes in 1987 were grounded in its wider programme of market-liberal reform. Unlike National, however, the Labour Government made some effort to address the cultural implications of migration by discussing the benefits of 'multiculturalism' that would be consequent upon a more diverse migrant flow.

The second part looks at citizenship and immigration policy during the period 1990-1997. Discussion focuses on the 1991 and 1995 policy changes to the General and Business immigration streams, as it was via these streams that the vast bulk of migrants entered New Zealand during the period. It was also in these areas that National's policy may be differentiated from the policy of the preceding Labour Government, and in which ethnic considerations were most relevant. Little attention is therefore paid within the chapter to immigration occurring through the humanitarian, refugee and family reunification policies.
I.

Historical background

I. Immigration and citizenship policy in New Zealand 1840-1986

At its conception as a colony in 1840, New Zealand administrators sought to create in New Zealand a political community made up primarily of British 'stock', racially and culturally 'British'. Early administrators envisaged they were creating a Britain of the South Pacific: a national community brought together by a shared commitment to Queen and Empire and unsullied by alien races, views or lifestyles. Although it was accepted that part of the community would also be Maori, it was quite openly assumed that Maori would inevitably fade out as a distinct racial and cultural group, becoming instead loyal - if brown skinned - British subjects. Article Three of the Treaty of Waitangi had conferred upon Maori the status of British subjects. In its English version it read:

...Her majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

The conviction that New Zealand society should be made up predominantly of those of either British or Maori descent underlay the operation of a racially exclusive

Colonial visions of the type of nation New Zealand would become, and of the type of person that would dominate it, varied among early European settlers. Missionaries, such as Dandeson Coates, the Lay Secretary of the Church Missionary Society, argued that official British interference, and wholesale British colonisation of New Zealand would be detrimental to the native Maori population, and was thus to be avoided. Humanitarians similarly argued that past colonisation of non-Europeans by Europeans had lead to disastrous situations of 'oppression or even extermination'. Whether the missionaries who shared Coates' disapproval of the New Zealand Company's plans for colonisation were entirely altruistic in their motivations is unclear. Sinclair writes 'more than one historian has suspected that Coates secretly dreamed it [the New Zealand of the future] would be a theocracy'. Others, such as Wakefield, believed that New Zealand was to become the dominion of the white man, although publicly he asserted the complementariness of Christianity and colonisation, and the benefits of such a marriage for the Maori, thus attempting to alleviate humanitarian concern. Between these two conflicting visions evolved a third, held by Busby and Hobson, the first New Zealand Resident and Governor respectively, and described by Sinclair thus; 'the future of New Zealand, whatever Dandeson Coates or Wakefield might wish, was that of a 'plural society'. Colonisation could not be stopped - that was the flaw in Coates's argument - but on the other hand the Maori could not be ignored. New Zealand was to be the home of white and brown men. The problem of government was to reconcile their interests.' See Keith Sinclair, *A History of New Zealand*, London, Oxford University Press, 1961, pp. 48-50. See also Claudia Orange, *The Treaty of Waitangi*, Wellington, Allen & Unwin, Port Nicholson Press, 1987.
immigration policy throughout the late nineteenth century and most of the twentieth century. Around the turn of the nineteenth century, for example, New Zealand went through a period of particularly virulent anti-Asian sentiment, and between 1888 and the 1920s a number of Acts of Parliament were passed with the express intention of limiting to the greatest extent possible the number of Chinese migrants to New Zealand.6

Citizenship policy was likewise biased towards Britons. Up until 1948 the concept of citizenship was an imperial one. From 1840 onwards all those who had British subject status were free to enter and reside in New Zealand, with all the legal, civil and political rights as their equivalents in Britain. (When, in 1856 the British imposed a ‘common code’ of nationality throughout the British Empire, all within the Empire acquired a common status as British subjects and citizens, and theoretically any of these subjects was free to enter New Zealand. In reality, however, racially discriminatory practices towards non-white British subjects persisted in New Zealand, as in many parts of the Empire.)7 Non-British nationals, on the other hand – described

5 The Immigration Restriction Act of 1920 set the scene for immigration legislation for the next sixty seven years. In essence it avoided making overtly racist criteria for admission to New Zealand by investing the Minister of Customs with the discretionary power to decide whether or not a prospective immigrant would gain admittance to New Zealand. All persons of exclusively British or Irish descent were automatically allowed entry. There was some leniency however, and after this piece of legislation it became common practice to allow the wives and children of Indian men who had become residents of New Zealand to join their husbands, and by 1926, even fiancées of Chinese and Indian citizens were often granted entry, as the resident population in New Zealand was frequently not large enough to allow for the selection of a marriage partner in the culturally traditional way. The poll tax was not in practice levied against the Chinese after 1934, although it was not abolished until 1944. See W. T. Roy, ‘Immigration Policy and Legislation’, in K.W. Thompson and A.D. Trlin, (eds.), Immigrants in New Zealand, Palmerston North, Massey University, 1970, pp. 17-20.


7 The ‘common code’ was formalised in 1914 with the British Nationality and Status of Aliens Act. See National Archives, Our Journey Together. He Rerenga Tahi, a pamphlet produced by
as 'aliens' – could only attain the rights and privileges of British subjecthood in New Zealand if they underwent the process of 'naturalisation', which in the early years of the colony involved a special Ordinance or Act of Parliament. Thus, before World War Two citizenship and immigration policies in New Zealand worked along parallel tracks in meeting two primary goals: to foster the development within New Zealand of a white settler society oriented towards the cultural and political norms of the United Kingdom, and to exclude 'aliens' either from entry to the country, or from full citizenship if already there.

After World War II New Zealand accepted some European migrants who added a little ethnic diversity to the national population. The establishment of the United Nations and the raft of anti-discriminatory Human Rights legislation that sprung from it was influential in moving New Zealand away from its strictly racially exclusive immigration policy. Amongst this legislation was the 1951 UN Convention Relating to the Status of Refugees, and, later, the 1967 protocol relating to the status of refugees. New Zealand acceded, and became bound to these in 1960 and 1973 respectively. After the Second World War New Zealand accepted about 5000 refugees and displaced persons from Continental Europe under the auspices of the International Refugee Organisation. They were joined by over 1100 Hungarians between 1956 and 1959.

Refugees aside, post-war immigration policy was generally cautious, tailored to meet New Zealand labour shortages, and strongly loyal to the concept of the British Empire. A population advisory committee established in 1945 recommended that

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National Archives for their exhibition on the evolution of New Zealand Citizenship, Department of Internal Affairs, 1999.

Anti-Chinese immigration legislation, for example, was accompanied by a ban on their naturalisation, operative between 1908-1948. The ability of all aliens to 'naturalise' was likewise suspended during the First World War, at which time all 'aliens' were required to register with the police, and the citizen status of those aliens who had already been naturalised was subject to police revocation. In fact, limits on the ability of Chinese to naturalise were not fully lifted until 1952, at which time Chinese were naturalised on the same basis as other non-commonwealth citizens. Between 1948 and 1956 only 'highly assimilated' Chinese could be naturalised, and then only on condition that they renounce their Chinese nationality (something not required of any other national group), and vow to 'stand closer to a New Zealand way of life than that of the Chinese community in New Zealand'.

Under the UN Convention a 'refugee' was any person who had left their country because of: 'A well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular group or political opinion is outside the country of his nationality, and is unable or, owing to such fear, is unwilling to return to it.' (United Nations Convention Relating to the status of Refugees.)

Schroff, p. 196.
migrants should only be encouraged to come to New Zealand if they were able to meet demands in the labour market that could not be filled by people already resident in New Zealand, and that preferably such people should come from the British Isles.  

...if it is proposed to encourage immigration of other European types, they should be of such character as will, within a relatively short space of time, become completely assimilated within the New Zealand population and have a distinctly New Zealand point of view...We therefore feel that if any positive steps are taken to encourage immigrants other than from Great Britain they should be found in Northern European countries.  

Free and assisted passages were introduced in 1947 to try and encourage immigrants from the United Kingdom, a scheme expanded by the National Government in 1950 in response to acute labour shortages. In addition, a bilateral immigration agreement was drawn up with the Netherlands resulting in a large increase in the number of Dutch migrants arriving in New Zealand. Occupational specialists from Denmark, Germany, Switzerland and Austria were also recruited in the late 1950's. Free passages lasted until 1960, when they were replaced by a cost-sharing arrangement with employers, applying only to British migrants.  

When, in 1948, Britain encouraged New Zealand (along with other British colonies Australia and Canada) to adopt an independent New Zealand citizenship, New Zealand acquiesced only reluctantly. The British Nationality and New Zealand Citizenship Act 1948 bestowed New Zealand citizenship upon all British subjects born, naturalised or ordinarily resident in New Zealand.  

Links with the Commonwealth were retained via a provision within the Act for citizens of other Commonwealth countries to have priority in acquiring New Zealand citizenship by registration. And, demonstrating a lingering suspicion of 'aliens', the 1948 Act contained a provision whereby governments could revoke the citizenship of naturalised aliens if they felt it necessary. Such revocation was not possible for those

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11 Ibid, p. 197.  
13 Schroff, p. 197.  
14 'Ordinarily resident' for at least one year.  
15 Despite the establishment of New Zealand citizenship, the words 'British subject' were not replaced with 'New Zealand citizen' in New Zealand passports until 1978.
who had attained citizenship through birth or through British subjecthood, so the Act in effect created a system of second-class citizenship.\textsuperscript{16}

Nonetheless, inward migration flows were becoming a little more diverse by the mid-1960s. Particularly significant was the increase in the numbers of long-term migrants from the South Pacific. In the 1950s and 1960s New Zealand governments encouraged migrants from the South Pacific to migrate to New Zealand to meet the growing need for unskilled or semi-skilled labour in the manufacturing sector. Many of the Pacific Islands labour migrants stayed and were joined by family members and Pacific Islands communities thus became established in a number of New Zealand cities. (As long as New Zealand continued to experience labour shortages migration from the Pacific Islands was accepted as economically beneficial, and a blind eye was turned on those Pacific Islands people who overstayed their work visas. But, once the boom times were over, many Pacific Islands people were branded as ‘overstayers’ and blamed for the recession affecting New Zealand.)

Another labour shortage in the early seventies caused the New Zealand government to again attempt to recruit labour from overseas. Assisted passages were offered on even better terms than before, and the scheme was extended to Belgium, France, Italy, the Netherlands, Switzerland, West Germany and the United States. A record number of migrants (70,000 in 1973-4) subsequently arrived, by which time the labour shortage had in fact disappeared, and the resulting pressure on social services meant a change in public and official opinion on the desirability of large-scale immigration.

The 1970s also saw the arrival in New Zealand of numbers of refugees from Vietnam, Laos and Cambodia, after the collapse of Saigon in 1975, and the Vietnamese invasion of Cambodia in 1979.\textsuperscript{17} By 1985 6,199 Indo-Chinese refugees had arrived in

\begin{footnotesize}
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\item[\textsuperscript{16}] National Archives, 1999. McKinnon, 1996.
\item[\textsuperscript{17}] The New Zealand government had initially been reluctant to take the refugees, largely because of the historical requirement that refugees should only be accepted if they met immigration criteria and were of ‘practical use to society and have the ability to be assimilated into the community’. However, concerns over the safety of returning Vietnamese Embassy staff after the fall of Saigon, and Vietnamese and Colombo Plan students caused them to reconsider their attitude, granting asylum to both groups in 1976.\textsuperscript{17} In 1977 the United Nations High Commissioner for Refugees (UNHCR) appealed to New Zealand to take some of the Vietnamese refugees who had fled Vietnam by boat. By 1978 Cabinet had softened its line still further, and agreed to take a much larger number of Indo-
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New Zealand, largely selected from the grim refugee camps of Thailand, Malaysia, Hong Kong, Indonesia and the Philippines.\(^\text{18}\) During this period New Zealand also began to accept, in co-operation with the United Nations High Commissioner for Refugees, migrants refugees from Chile, Uganda and Iran.

In one of the first significant breaks with an imperial conception of national identity, the Labour Government elected in 1972 reviewed immigration policy and imposed controls which ended unrestricted access for British migrants, and terminated assisted passages.\(^\text{19}\) From April 1974 the special treatment hitherto extended to British and Irish nationals ceased, and they too were required to obtain an entry permit prior to travel. This meant that the British and Irish had to meet specific immigration criteria in order to qualify for permanent residence\(^\text{20}\). In requiring British citizens, like all other nationals, to gain an entry permit prior to travelling to New Zealand, the Government had for the first time clearly indicated that a New Zealand citizen and a British citizen were not interchangeable.\(^\text{21}\)

Shortly thereafter the Citizenship Act 1948 was replaced with the Citizenship Act 1977, which remained current right through the 1990s. With the Citizenship Act 1977 New Zealand made a further break from Britain and the Commonwealth, removing the distinction between 'Commonwealth' and 'foreign' citizens, and the term 'naturalisation'. From this time on the only distinctions in law were those between New Zealand citizens and others.\(^\text{22}\) It also marked the end of the British/alien distinction - 'aliens' were no longer required to register with the police as they had been previously, and the term 'alien' was itself phased out.\(^\text{23}\)

After the passing of the 1977 Citizenship Act the main barrier to membership of the New Zealand political community was immigration not citizenship policy. The key to

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Christopher Hawley, 'The Resettlement of IndoChinese Refugees', in Trin & Spoonley, (eds.), *New Zealand and International Migration, A Digest and Bibliography, No. 1*, Department of Sociology, Massey University, Palmerston North, 1986, p. 60.; Man Hau Liev, p.100.

Schroff, p. 198.


Ibid.

Ibid.
becoming a 'New Zealander' was to be granted permanent residence. Once an individual had permanent residence they could enter and leave New Zealand freely, they had access to a broad range of civil and political rights – including the right to vote after one year's residence – and they were eligible to almost identical social entitlements as citizens. After two year's residence they were eligible to apply for citizenship.24

Some distinctions were upheld between New Zealand citizens and non-citizens. Only citizens could travel on a New Zealand passport; some public service positions, in the area of national security for example, could be held only by citizens, and there were some restrictions on the ownership of rural land by non-citizens. Only New Zealand citizens qualified for subsidised education fees, and some scholarship and awards, and assistance from overseas universities were available to New Zealand citizens only. Some international sports required that players be citizens of the countries they represented. Particularly significantly for Pacific Islands people, given the youthful profile of their population profiles, was the requirement that members of School Boards of Trustees be New Zealand citizens.

However, in comparison to many other countries these distinctions were minimal, and citizenship status was not a centrally important status in the allocation of citizenship rights in New Zealand. In fact, civil and political rights, and frequently social entitlements, were also extended even to individuals arriving in the country without

24 The procedures for treatment of asylum seekers (those who arrive in New Zealand seeking refugee status, but not under the aegis of the UNHCR) were determined by the New Zealand Immigration Service. Determining whether an asylum seeker should gain refugee status was a two-stage process. The Refugee Status Section of the Immigration Service made an initial determination, after which asylum seekers had an automatic right of appeal to the Refugee Status Appeal Authority, a body established by Cabinet, and which operated under terms of reference, processes and procedures endorsed by Cabinet. The UN Human Rights Committee noted with approval in their consideration of New Zealand's April 1995 Report on Human Rights, that a representative of the Human Rights Commissioner had begun to attend hearings of the Refugee Status Appeal Authority. During the period when their case is under consideration asylum seekers were granted special assistance by the government. They received legal aid for the presentation of their case to the Refugee Status Appeal Authority, and help accessing employment, health, education and social welfare. The case in 1997 of an Irish asylum seeker, Danny Butler, who was sent back to Ireland after his appeal had been declined by the Refugee Status Appeal Authority highlighted a perceived need for legislative provisions to cover such cases. The fact that Danny Butler remained in New Zealand for seven years while his case went through the appeal process prompted Max Bradford, Minister of Immigration to introduce legislation to limit the appeal process to around six to nine months. Financial concerns, as well as legal ones appeared to underlie this decision. The Minister's office estimated the costs associated with benefits paid to asylum seekers to be in excess of $8 million a year.
legal permits. This was in part a product of New Zealand's post-war commitment to human rights, but also, as McKinnon has argued, resulted from the fact that membership of the New Zealand political community had historically relied so heavily on an ethnic and cultural, rather than a legal understanding of membership.\(^{25}\) The lack of emphasis on citizenship status was highlighted by the fact that while official census statistics collected information about the ethnic identity of individuals, they did not collect citizenship status data. New Zealand had no way of knowing exactly how many of those resident in New Zealand at any one time were in fact citizens.

New Zealand's own colonial relationships in the South Pacific meant that the idea of who belonged to the New Zealand political community widened to include the residents of those Pacific Islands with whom New Zealand had a continuing political relationship. During the 1960s many of the Pacific Islands went through the United Nations decolonisation process. The Cook Islands and Niue opted for the status of self-governing states in free association with New Zealand in 1965 and 1974 respectively. Under this arrangement both Cook Islanders and Niueans remained New Zealand citizens with unrestricted rights of entry. Western Samoa ceased to be a New Zealand Trust Territory and gained independence in 1962, at which point Western Samoans gained their own independent citizenship status. While no longer New Zealand citizens, Western Samoans continued to be allowed to enter New Zealand on an annual quota basis, set at 1100, augmented by those who qualified on occupational or family reunion grounds.

In 1982 the citizenship status of all Western Samoans was tested in the Privy Council in *Lesa v. Attorney General*. Falema’i Lesa, a Western Samoan facing prosecution in the New Zealand courts for 'overstaying' her visa was, under earlier legislation, a natural-born British subject and hence a New Zealand citizen.\(^{26}\) The ruling had the effect of granting New Zealand citizenship to 100,000 Western Samoans, resident in both Western Samoa and New Zealand. Lesa's lawyer, George Rosenberg, argued that Lesa was a British subject under the 1928 British Nationality and Status of Aliens

\(^{25}\) McKinnon, p. 45.

\(^{26}\) Barrie MacDonald, 'The Lesa Case, and the Citizenship (Western Samoa) Act, 1982, p. 73.
(in New Zealand) Act, which stated ‘...this Act shall apply to the Cook Islands and to Western Samoa in the same manner in all respects as if those territories were for all purposes part of New Zealand...’ It also declared certain Imperial Acts of the United Kingdom to be part of the law of New Zealand. Under one of these, the British Nationality and Status of Aliens Act (UK) of 1914, ‘any persons born within His Majesty’s dominions and allegiance’ were deemed to be natural-born British subjects’. All such natural-born British subjects born or resident in New Zealand were citizens under the British Nationality and New Zealand Citizenship Act of 1948.27

The ruling was of great interest to Western Samoans and of equal concern to the New Zealand government, which moved swiftly to reverse the finding through the Citizenship (Western Samoa) Act 1982. The Act confirmed Lesa’s status as a citizen, but removed citizenship status from those granted it by the Privy Court’s findings. Instead, citizenship was granted to all Western Samoans then in New Zealand, and the Act bestowed the immediate right of citizenship on all Western Samoans granted permanent residence in New Zealand in the future.28 The Act remained in force throughout the 1990s.

As a result of the various migration flows of the past 40 years New Zealand had small but well-established communities of Pacific Islanders, Dutch, Indians, Chinese, and South East Asians by the mid-1980s. But the numbers remained small: in 1984 an overwhelming 94.5 percent of the population were of either European or Maori descent. With the exception of the Pacific Islands labour migrants and the refugees from South East Asia, New Zealand had continued to conceive of itself as a country with an ethnic core, and, accordingly, to operate an immigration policy in which those from ‘traditional source’ countries were given preference. This preference remained until the fourth Labour Government of 1984-1990 deliberately attempted to replace New Zealand’s Commonwealth bias with a much more internationalist orientation. It made the first decisive immigration policy changes in this regard, with the introduction of the Immigration Act 1987.

27 Lesa vs Solicitor General, Privy Council 1982
28 Barrie MacDonald, p. 73
Since Labour had entered office in 1984, it had been involved in a widespread programme of economic reforms designed to transform the heavily regulated, inefficient and insulated economy it had inherited from Muldoon’s National government to one which was efficient, export-led, and internationally competitive.29 In August 1986 Kerry Burke, then Labour Minister of Immigration, released the Review of Immigration Policy, in which a number of major legislative and policy changes were outlined. The proposed changes formed an integral part of the larger programme of economic reform, and were designed to promote the overall goals of attracting foreign investment; promoting and developing good economic relations with Asia and other areas of economic growth; deregulation of the economy; and reduction of national debt. The new immigration policy sought to combine the antiracist, equalitarian values of social liberalism with the internationalism and anti-interventionism of economic liberalism, and it formed a key part of the Government’s attempt to promote economic relations between New Zealand and Asia and other non-traditional regions.

Most significant among the 1986 changes to immigration policy was the decision to ‘abolish national origin as a factor in immigrant selection’,30 thus terminating the historical preference given to those applicants for New Zealand residency from the ‘preferred source’ countries of Northern and Western Europe and North America. Instead, immigrants were to be selected solely on criteria which evaluated their personal qualities, skills, qualifications, potential contribution to the New Zealand economy and society, and capacity to settle well.31

The Review of Immigration Policy argued that the ‘preferred source’ policy had been flawed on several grounds: it was factually incorrect, as migrants from China, Hong Kong, Greece, Yugoslavia and India also had long histories of migration to New

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31 Ibid, p. 15.
Zealand; discriminatory, in that decisions were made on the basis of an applicant’s nationality; and inefficient, as employers had experienced difficulties recruiting quality migrants if they were not from the traditional source countries. Further, concern was expressed that:

the traditional source approach has restricted the entry to New Zealand of people from countries and regions of present and future importance to New Zealand. If non-traditional markets for New Zealand exports are to be developed and expanded it is important to build up personal as well as commercial relationships and the inflow of capital is more likely to proceed in an environment which welcomes human as well as financial investment.32

While the 1986 Review team clearly envisaged an expanded economic role for immigration policy, it nevertheless retained the existing link between immigration policy and labour market policy, operated through the Occupational Priority List,33 and thus ‘fell short of an expansive pro-immigration policy’34. It did, however, seek to move New Zealand away from an immigration policy which attracted primarily white-collar migrants from the United Kingdom and Europe, and low-skilled or unskilled workers from the Pacific Islands.35 And, by removing geographic restrictions on migrant sources, it contributed to a considerable change in the ethnic make-up of the resulting migrant stream.

Britain’s entry into the European Economic Community in 1973 had alerted New Zealand to an urgent need for diversification of both export products and markets. Development of new export products, particularly niche products, in which New Zealand could build on a competitive advantage, would require venture capital and entrepreneurial skills. The potential of Asia, the Middle East and the Soviet Union,

33 Since the 1960s migrants applying to enter New Zealand under the occupational category were required to be qualified in an occupation specified in a Occupational Priority List (OPL) drawn up by the Department of Labour. The OPL identified gaps in the New Zealand labour market which could be filled by suitably qualified migrants. Migrants were also required to have a firm offer of employment from a New Zealand employer. The policy of selecting migrants specifically to fill labour market gaps explains why the New Zealand Immigration Service is part of the Department of Labour.
35 Structural changes within the New Zealand economy suggested to the authors that migrants with different types of skills, from different parts of the world, might benefit the New Zealand economy. Declining growth in the manufacturing sector reduced the demand for low skilled manual labour, and was paralleled by a growth in the services, technical, professional and financial sectors. See Ongley, p. 24.
not only as export markets, but also the source of investment capital, was growing, as was an awareness that these new relationships might be jeopardised by a perception that New Zealand was willing to take the money, but not the people, from such countries.\textsuperscript{36} Government also began to realise that along with the skills, qualifications and capital that migrants from the regions of Asia, the Middle East, Southern and Eastern Europe would bring, were their personal links with and cultural understandings of these regions, each of which could help New Zealand further develop fledgling relationships with these regions.

Labour's 1986 policy statements on immigration were not, however, purely mercenary. Echoing the ideals of multiculturalism which the Labour Party had spoken of during the Kirk Government, one of the stated objectives of the new immigration policy was to 'enrich the multi-cultural social fabric of New Zealand society', and enable migrants to 'maintain valued elements in their own heritage'.\textsuperscript{37} Furthermore, the 'attitudes and adaptability to life in a multicultural society' of the immigrants themselves were to be assessed, so that those with inappropriately racist views could be screened out.\textsuperscript{38} The internationalism and anti-discrimination of the new policy marked a clear break from the racist and xenophobic attitudes characterising New Zealand's immigration policy for the previous 100 years.

The new immigration policies came into force on 1 November 1987, with dramatic effect. Between 1986 and 1990 applications for permanent entry into New Zealand more than doubled, from 10,000 in 1986 to 20,500 in 1990. Increases were marked in all categories under which entry was granted. Perhaps even more significant was a change in the sources from which migrants came. Following the termination of the 'preferred source' policy, migrants from the United Kingdom dropped from 34.2 percent in 1986 to 15.5 percent of the total migrant flow in 1990, while the percentage from non-traditional sources, such as Hong Kong, Taiwan and Malaysia increased notably.\textsuperscript{39}

\textsuperscript{36} Burke, p. 15.
\textsuperscript{37} Ibid, p. 10.
\textsuperscript{38} Ibid, p. 15.
In October 1989 a report from the New Zealand Immigration Service to the Minister cited and endorsed the conclusions of the 1988 Poot (et al) Report as well as an Australian report that came out at around the same time, the Fitzgerald Report. Both studies suggested that given certain conditions, an increased level of migration would have positive effects on the GDP levels per capita. This suggestion defied the previously held conviction that a substantial increase in numbers of migrants would be detrimental to the employment chances of New Zealanders, and would put inflationary pressure on the economy by increasing the demand for housing, schooling and other goods and services. By 1990 the Labour government, with Roger Douglas as Minister of Immigration, was coming to accept the view that population growth via an expansionary immigration policy could stimulate economic growth in New Zealand, making further liberalisation of immigration policy desirable. Labour, however, was not given the opportunity to translate this view into policy. Their six year term came to an end with National’s victory at the general election in October 1990.

II.

National’s immigration policy 1990-1999


As was the case in so many policy areas, the transition between the Labour and the National Governments’ treatment of immigration was characterised more by continuity than by difference. National was equally, if not more, persuaded than Labour by the argument that net migration increases had beneficial economic effects. It moved quickly to establish a Working Party on Immigration, with a brief to assess the existing immigration policy and make recommendations for change. The Working


Party reported back to the new Minister of Immigration, Bill Birch, in March 1991. Its most significant recommendation was that New Zealand adopt a points system when assessing applications for entry to New Zealand under the economic category, similar to that used in Canada. Such a system would replace the existing Occupational Priority List and would have the advantages of being consistent, transparent and sensitive to attempts to control the number and the mix of migrants.

The Priority List System had required migrants to fill a pre-identified gap in the New Zealand labour market. Under the new system, however, the education, qualifications, work experience and age of prospective migrants would be assessed — along with any offers of skilled employment — and points allocated accordingly. Extra points would be allocated to those applicants whose personal funds for settlement purposes after their arrival in New Zealand were sufficient to reduce the likelihood of them becoming dependent upon the state. English language ability, while seen as important, was not given too much weighting in the points system, in the belief that migrants who satisfied the other criteria would quickly acquire a working knowledge of English after arrival in New Zealand. The Working Committee recommended that the Government set a target of the number of immigrants they wished to see entering the country. The minimum number of points migrants needed to meet in order to be granted residency could then be lowered or raised to reach the desired target of migrants.

Curiously, in light of the effect the recommended policy was to have on the ethnic make-up of migrant flows, little consideration was given to the possible effects of the new immigration policy on the ethnic make-up of the expected migrant flow, nor its effects on the local population. Ethnicity was mentioned only twice in the 1991 Report. The first reference came in a discussion on settlement factors for which points are awarded, where it was thought appropriate for some points to be allocated if an applicant has the sponsorship of a long-term resident or relative in New Zealand. This, the Working Party thought, would ‘recognize the support which could be expected to

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44 Ibid, pp.8-9
be given to new immigrants by those of the same ethnic origin, without in any way replacing the family reunification category'.

The second mention of ethnicity related to Maori. The Working Party reported that representatives of the Maori people had expressed concern that 'increased immigration would have the effect of removing employment opportunities for the unskilled among their people'. In response, the report noted that because migrants attracted under the new policy would be selected on the basis of their employability, professional and entrepreneurial skill, they would be unlikely to compete with the unskilled sector of the labour market in which Maori were concentrated. Moreover, business migrants would be likely to increase the number of employment opportunities. Ranganui Walker, however, dismissed as illusory the consultation process engaged in by the Working Party. He claimed the Minister had consulted a limited number of Maori leaders, very few of whom represented tribal groups. Furthermore, although many of these speakers argued against the immigration proposal, they had been ignored. The Minister was wrong in later claiming that those Maori consulted were 'broadly positive' towards the proposed changes. The report, Walker argued 'was a fait accompli, and the Minister's restricted discourse with Maori leaders after the fact gave an illusion of democratic consultation' where in fact there was none. Thus the report seemed to both underplay the potential for ethnic conflict arising from the policy changes it suggested, and, according to some Maori consulted in its development, misrepresent the outcomes of that consultation.

46 Ibid, p. 32
47 Ranganui Walker, 'Immigration Policy and the Political Economy of New Zealand', in Stuart Grief, Immigration and National Identity in New Zealand, Palmerston North, Dunmore Press, 1995, p. 287. Maori opposition to the new immigration policy remained, and by 1996 it was bolstering political opposition to government policies of privatisation and deregulation. This opposition among Maoridom later contributed support to the nationalist party New Zealand First, who were to hold the balance of power after the 1996 general election.
ii. The November 1991 immigration policy changes

A points system much along the lines of that advocated by the Working Party was adopted by the New Zealand Immigration Service in November 1991. The 1991 policy changes created a General category (which included both a General Category and a General Investment Category), a Family Category, a Humanitarian Category and a Business Investment Category. The new points system applied to both the General and the General Investment categories. A net migration target of 20,000 per annum was set, to be achieved by approving 25,000 applications for new residents per annum. A Refugee Quota, set at 800 in 1987 was also to remain (although it was subsequently reduced to 750). Each of these categories attracted migrants from different parts of the globe.

Unlike the previous Labour government, National introduced the 1991 policy changes without any associated rhetoric about the benefits of 'multiculturalism'. This was not just because the term was too politically loaded during a period of bicultural discourse. Multiculturalism, and the social programmes associated with it, were simply not part of National's vision. Nor did the Government mention the possibility of settlement assistance for the new migrants. Consistent with a neo-liberal emphasis on individual responsibility, the Government considered that the new migrants should simply make their own way once in New Zealand, and should expect little support in the way of settlement assistance, English language tuition or cultural retention. Settlement was simply not considered the Minister of Immigration's responsibility. The points system of 1991 was designed explicitly to award residency to those migrants who had the skills, education and capital to look after themselves. They were chosen for the very reason that they would make a net contribution to the New Zealand economy, rather than be a drain on it through consumption of special services.

For both these reasons no specific targeted resettlement policies were seen as necessary. Where special needs did arise, the Government saw it as being the
responsibility of the community as a whole to assist with resettlement.\textsuperscript{48} Non-governemental agencies, such as the Home Tutor Scheme, (a voluntary organisation providing English language tuition to speakers of other languages) played a large role in providing post-arrival assistance to new migrants. This ‘hands-off’ attitude towards post-arrival migration issues was consistent with the Government’s more general non-interventionist philosophy, and was to remain throughout the 1990s. But the policy could be contrasted with that of other migrant receiving countries such as Australia, Canada, the United States and Israel, which all regarded the provision of settlement services as an appropriate role for government to play and which provide a variety of publicly funded and/or provided migrant settlement services.\textsuperscript{49}

However, despite the scant regard given to ethnic or cultural implications of the new policy, the Government was clearly aware that significant cultural and historical differences existed between Asian countries and New Zealand. They were aware that Asian business practices differed from European practices, and were very conscious of the role that personal relationships and trust played in establishing successful business relationships. Indeed, such considerations were frequently mentioned as reasons why greater understanding between New Zealand and various Asian countries was to be encouraged and facilitated – in part through immigration. To this end government focussed its efforts on educating the New Zealand public about Asia, and the benefits of a closer relationship with it. The major initiative undertaken by the Government in respect of this was the Asia 2000 programme, launched in 1991. Asia 2000’s stated goals were to educate New Zealanders about Asia and Asians and to improve New Zealand’s business and other links with the Asian region.\textsuperscript{50}

\textit{iii. The effects of the policy changes: immigration to New Zealand 1991-1995}

During the period immediately after the 1991 policy changes, and before amendments were introduced in 1995, the number of people approved for residency in New Zealand increased 25.1.199


\textsuperscript{49} Michael Fletcher, \textit{Migrant Settlement, A Review of the Literature and its Relevance to New Zealand,} Report Commissioned by the New Zealand Immigration Service, September 1999.

\textsuperscript{50} \texttt{www.asia2000.org.nz} homepage, 25.11.99
Zealand grew rapidly: 26,000 people were approved for permanent residency in 1992, 35,000 in 1994, and 54,811 in 1995. This last number was over twice the minimum target of 25,000 residence approvals set in 1991. Under the Citizenship Act 1977 permanent residents were entitled to apply for citizenship after two years residency in New Zealand.

What gained the most public attention about the new flow of migrants, who came from over 120 countries, was the great increase in the numbers of those coming from Asia. By 1993, 35 percent of all residence approvals were given to those from countries of North Asia (South Korea, China, Taiwan, Hong Kong), 8 percent were from South Asia, and 8 percent were from South East Asia, making a total of 51 percent of all residence approvals going to those from Asian countries. (see Figure 4.1.)

Figure 4.1
Residency approvals by region of applicants: January-December 1993


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52 In South Asian category: Afghanistan, Bangladesh, Bhutan, India, Sri Lanka, Maldives, Nepal, Pakistan.

53 In the South East Asian category: Brunei, Burma, Indonesia, Cambodia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam
By 1994 this number had increased to 57 percent.\textsuperscript{54} (See Figure 4.2.) By 1995/1996 migrants from North Asia alone constituted 44 percent of those approved for residency, with Taiwan making up 23 percent of total approvals, overtaking Great Britain as the single largest country of origin of migrants.\textsuperscript{55} (See Figures 4.3 and 4.6.) This was a migration stream to which New Zealand was completely unaccustomed, and, as Malcolm McKinnon has noted it was 'the first wave of migration dominated by people non-kin to the domestic population since Pakeha displaced Maori as the majority population in the 1850s. It...therefore presented New Zealanders with a conceptual challenge as well as a new experience'.\textsuperscript{56}

\begin{figure}
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\caption{Residency approvals by region of applicants: July-1994-June 1995}
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\caption{Residency approvals by region of applicants: July-1994-June 1995}
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\textsuperscript{54} New Zealand Immigration Service, \textit{Immigration Fact Pack}, December 1994, Issue 1, Department of Labour, p.2.
\textsuperscript{56} McKinnon, p. 50
Figure 4.3
Residency approvals by region of applicants: July 1995-June 1996


Figure 4.4
Residency approvals by source country: Top ten countries July 1993-June 1994

North Asia was the highest single regional source of those approved for residency under the General Points system, at 33 percent of the total, which in 1994 constituted
69 percent of the total number of residence approvals. What this meant was that those migrants approved for residency from North Asia were commonly highly skilled and educated, often with access to significant quantities of capital. The position of relative educational and financial advantage that many of the North Asian migrants held upon arrival in New Zealand undoubtedly compounded the 'conceptual challenge' experienced by New Zealanders attempting to accommodate these new settlers within their communities.

The assumption made by policy-makers had been that such migrants would, because of their skill level and education, integrate successfully into the New Zealand labour market, and hence into the New Zealand community more widely. But research during the 1990s indicated that migrants from Asia did not participate in the workforce in proportion to their skills and qualifications. Recent migrants from Asia had the lowest full-time employment rates of all recent immigrants, including those from the Pacific Islands. Despite this, there seemed to be a public perception that assumed that Asian migrants were very wealthy indeed. It was in large part this assumption that led to the tensions that were to follow.

iv. 'Asianisation' vs the 'Inv-Asian'

In March 1993 the Minister of External Relations and Trade, Don McKinnon, set out a strategy for the 'Asianisation' of economic links. He argued that the world's economic activity now revolved around three poles in the world – the United States, the European Community, and Asia and that New Zealand needed to be associated with one of them. The Asia-Pacific region, he argued, was 'our neighbourhood' and it offered 'excellent economic opportunities'. The domestic manifestation of the new orientation to Asia – 'Asianisation' – was to be the presence of many new Asian residents and citizens in New Zealand.

57 New Zealand Immigration Service, Immigration Fact Pack, December 1994, Issue 1, Department of Labour, p.3.
58 Liliana Winkelmann & Rainer Winkelmann, Immigrants in New Zealand: A Study of their labour market outcomes-Part I, Report prepared for the Department of Labour, Wellington, December 1997, p.vii
59 Tim Murphy, 'Asian emphasis on new agenda', New Zealand Herald, 18.3.93.
'Asianisation' did not proceed entirely smoothly. Events in April and May 1993 (discussed below) were to mark a low in relations between Asians and other New Zealanders – a reflection of the rapid increase in Asian migrants, and a failure by the Government to adequately consider domestic consequences of an expansionary, internationalist immigration policy.

Many of the new Asian migrants arriving after the 1991 immigration policy changes settled in Auckland. As was to be expected, the arrival of a comparatively large number of ethnically and culturally differentiated migrants, from a region with which New Zealanders had had little previous contact, produced tensions between the new migrants and the host community. That the new migrants, usually selected for their skills and capital, seemed to be thriving during a period when many New Zealanders felt uncertain about their own economic future, drew resentment and even hostility from some. Many New Zealanders felt a sense of unease about the wider processes of liberalisation and globalisation into which immigration policy was integrally tied, and the xenophobia directed against Asians in the early-to-mid 1990s was frequently complicated by this hostility to the new economic environment. For some, perhaps, the new Asian migrants represented the face of the global economy into which New Zealand was attempting to integrate, and it was a face which was, for many, neither familiar or comfortable.

An article by well known journalist Pat Booth, published in April 1993 in the suburban newspaper the Eastern Courier, articulated the mutterings of those Aucklanders uneasy about the rapid increase in the rate of Asian migration in their area. Entitled ‘Inv-Asian’, the article presented a common stereotypical view of Asian migrants: Asians were excessively materialistic, highly status conscious and superstitious. They liked to purchase flashy, expensive cars which they, and their children, then drove very badly. They lived in ostentatious houses clustered in the Eastern suburbs, purchase of which had driven up Auckland property prices and contributed to inflation more generally. Having come to New Zealand with the express intention of educating their children at the expense of the New Zealand taxpayer, they frequently abandoned those children, spending many months back in Hong Kong, Taiwan or Korea pursuing established business interests there. The
children, coming from intensely competitive education systems back in Asia, worked far harder than New Zealand students and commonly outperformed them, gaining top marks in exams, winning prizes and entry to elite professional training courses such as Medical School in numbers quite disproportionate to their population. Moreover, entry to New Zealand under the points system was only the beginning: once here, Asians could bring many more extended family members in under the family reunification category. New Zealand had, in other words, been invaded by an alien and threatening race.

In giving voice to an emerging racism the ‘Inv-Asian’ article stimulated a public debate about the effects of the new immigration policy, allowing those on both sides of the debate to vent their strong opinions on the subject. The feelings of hurt, dismay and outrage that some Asians felt about the level of racism in Auckland were expressed in a number of letters to the editor, opinion pieces and follow-up articles. Numerous letters and articles expressed support for the migrants and abhorrence at the racism shown them. The migrants, who had often been actively pursued by immigration consultants and offices of the New Zealand Immigration Service abroad, felt aggrieved that New Zealanders resented, rather than appreciated, the fact that they had chosen to bring their skills and capital to New Zealand. Dr Manying Ip, of the Asian Studies Department at Auckland University, pointed out that for many migrants New Zealand was not their first choice of destinations outside their home country - many would have preferred Australia, Canada or America. Unlike the economies in those countries, she said, New Zealand’s economy was small and ‘sluggish’, and migrants from booming Asian economies often gave up considerable financial opportunities to shift to New Zealand. New Zealanders, in her opinion, had at least as much to gain from the presence of the new migrants as the migrants had to gain from being in New Zealand.

Included in the Booth article were comments by Bill Birch, Minister of Immigration, who explicitly linked immigration policy with trade and business development policies:

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61 See Letters to the Editor from Sybil Au, Manying Ip, Arthur Loo, Mee-Mee Phipps, Auckland City Harbour News, 5.5.99, p. 6.
We live in the region. It is very important for our trade links with Asia that we identify with the area and have networks back into Asian markets, among the fastest growing in the world. We must grow with them. If we are not seen to be sympathetic and understanding, it would be very bad for our relationships...they must have the opportunity to interface with us in terms of visitors, family re-unification and immigration....Growth in our own economy will come on the back of those fast-growing markets and it is important that we grow with them.63

This comment, similar to many made by Government Ministers during this period, had a somewhat mercenary air, giving the impression that restrictions on Asian migration had been lifted not because of a genuine acceptance of Asia and Asians, but rather because it was economically advantageous to New Zealand to do so. It was the kind of comment designed neither to encourage people to accept and understand the differences Asian migrants brought with them, nor to reassure Asians that their presence was genuinely welcomed in New Zealand. Indeed, many Asians found these comments insulting. One Taiwanese immigrant had earlier expressed it thus: 'If my husband had only been interested in me for my money I would not have married him. I feel the same way about the New Zealand Government’s attitude.'64

The Pakuranga-Howick Chinese Parents’ Association made a formal complaint to the Race Relations Conciliator about the article and Chairman Mr Kim Loo said the community was upset by the article and objected strongly to it.65 Chinese communities, which until this time had been characterised by a determinedly low profile in the political arena, held a political rally in Auckland requesting various members of Parliament to explain and defend their parties’ attitudes to immigration.

A feeling within the Asian community that they were the victims of a pervasive racism must have been confirmed when, three weeks after the ‘Inv-Asian’ article, the issue of English language tuition in schools arose. The influx of Asian children with little or no understanding of English into some Auckland schools was reportedly placing those schools under strain. Resources were being diverted from remedial reading and language reinforcement programmes to those designed to meet the

63 Pat Booth & Yvonne Martin, 16.4.1993, p. 7
65 ‘Issue taken with story’, New Zealand Herald, 29.4.93. The Race Relations Office said however that it was not able to act on the complaint because it fell outside the Race Relations Act.
growing needs of immigrants. In response to this difficulty the Auckland Divisional National Party conference passed a remit in May 1993 seeking a requirement that that immigrant children learn English through an intensive English language school before enrolling in NZ schools. Bill Birch, the by now ex-Minister of Immigration, backed the move. The suggestion that Asian children would be denied access to schools provoked outrage from the Chinese community. Many letters to the editor accused the Government of racism and argued that Asian children should be treated equally with other NZ children. Tony Steel, chairman of Parliament’s education select committee, came out in opposition to the remit, saying that the Government had a responsibility to teach immigrant children English, although immigrants could possibly make a financial contribution to their tuition. Again, the National Party’s remit could have done nothing to assure new Asian migrants that they were genuinely welcomed as equal citizens and residents in New Zealand.

Worryingly for the Government, fear of racial tension was reported to be scaring off Asian migrants and investors – two Asian investors were said to have withdrawn at least NZ$1.5 million from a NZ business scheme because of concerns about growing racial tension in the country. The Inv-Asian article and complaints laid against it by the Chinese Community were cited by the investors as the source of concern. On May 14 Suburban Newspapers apologised for the Asian Inv-Asian story and said ‘Suburban newspapers recognises the overall positive contribution of Asians in our community’. But by now news of anti-Asian sentiment was appearing in the international press. TIME magazine reported on May 17 that ‘New Zealand’s attempt to attract wealthy migrants is having painful social costs.’ TIME said New Zealanders were envious of the newcomers’ wealth and academic success, and that Maori were afraid that an increase in Asian migration would result in pressure for ‘multicultural’

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66 ‘Immigrant English call’, New Zealand Herald, 12.5.93, p.2, also ‘English for Asian call backed by Birch’, New Zealand Herald, 3.5.93, p. 1
67 New Zealand Herald 13.5.93
68 See ‘Asians have had enough’, New Zealand Herald, 4.5.93
69 ‘Immigrant English call’, New Zealand Herald, 12.5.93, p.2, also ‘English for Asian call backed by Birch’, New Zealand Herald, 3.5.93, p. 1
70 For example, ‘Anti-Asian Sentiment in NZ Growing: Claim NZ Asians’, Reuters, 11.5.93, & ‘Cultural Barriers Remain to Growing NZ-Asia Links’, Reuters, 11.5.93.
71 Auckland City Harbour News, 14.5.93, p.1
policies which would ‘dilute Maori claims to an equal voice in New Zealand’s future’.  

All this could not have happened at a worse time for Prime Minister Jim Bolger, who departed for a ten day trip to Asia in mid-May, visiting three countries of increasing importance to New Zealand as export markets: Japan, Korea and China. The goal of the trip, he said, was to shift the focus of New Zealanders to Asia, and to these countries in particular. ‘The message of the trip’, he said, ‘is that NZ is a part of Asia, that it wants to trade with Asia, it wants to be understood in Asia, and it wants to welcome tourists from Asia.’ Referring to the racial issues that had arisen before and during his trip, he later said that ‘while some New Zealanders might have difficulties with the increased emphasis on Asia, it was important they understood that their children’s future would inevitably be bound up in what happened in the Asian region.

Bolger’s enthusiasm for Asia and the economic opportunities it presented led him to attempt a re-orientation, not only of New Zealand’s economic focus, but also its geography, and most controversially, its sense of national and ethnic identity. Having already welcomed the Japanese Prime Minister, visiting New Zealand in early May, to ‘the farthest corner of Asia’, Bolger then made the comment while in Japan that he was ‘proud to be an Asian leader’. National MP Tony Ryall backed Bolger up on this, saying New Zealanders needed to ‘accept that they were now a country of ‘white and brown Asians’.

Predictably, these utterances by Bolger and Ryall were seen by the public less as genuine affirmations of national identity than as the explicit attempts to get ‘on-side’ with potential trade partners that they were. It was a risky strategy by Bolger: the
debates of the previous two months already demonstrated evidence of a rising public unease with the rate of immigration from Asia, clearly in part attributable to a sense of threat experienced by both Pakeha and Maori from the new Asian migrants. For the Prime Minister to peremptorily assign the nation a new ethnic identity in search of better access to an export market for primary produce was remarkably insensitive, especially during a period of rising ethnic consciousness and ‘bicultural’ discourse. New Zealand was still engaged in debates about the appropriate relationship and standing of the two main cultures and was, in some quarters at least, acutely sensitised to issues of ethnic and cultural identity. It was one thing to welcome the arrival of migrants from Asia; it was quite another to do so at the expense of abandoning New Zealand’s own cultural and ethnic heritage. The economic rationalism of the National Government had led them to construe New Zealanders as without any genuine identity of their own, simply economic interests.

While many found it difficult to take seriously the idea of Jim Bolger (previously known as a farmer of Irish Catholic descent) as an ‘Asian leader’, the National government was very serious about the economic potential of Asia and its importance for New Zealand’s economic future. Korea was at this time New Zealand’s second largest Asian market and fifth largest market overall. China was New Zealand’s sixth largest export market. However, New Zealand continued to face restrictions on its exports of dairy, meat, fish and horticultural products to these countries and Bolger was eager to see the restrictions lifted during his trip to the three Asian countries.

Tourism and education were also areas in which the New Zealand market could expand. Between 1990 and 1991 there was an increase of more than 100 percent in the number of Korean tourists arriving in New Zealand, and in 1992 Japan and the United States were the second equal largest source of visitors to New Zealand. While he was in Korea Bolger signed an air services agreement on direct air links between Auckland and the Korean capital, and increased air links between Japan and New Zealand. Korean parents also increasingly viewed New Zealand as a safe place to

79 Tony Verdon, ‘NZ Promotion impresses PM’, New Zealand Herald, 14.5.93, p.5
80 New Zealand Herald, ‘PM shifts focus from Europe to Asia’, 18.5.93, p.9; Tony Verdon, ‘Bolger keen to promote NZ as part of Asia’, New Zealand Herald 7.5.93, p.9
educate their children, and education became a commodity that NZ sold to the Asian markets.⁸¹

That the Government’s agenda of ‘Asianisation’ met local resistance was evidenced by debates such as the ‘Inv-Asian’ one. Some of this resistance no doubt grew from racism but in other respects it reflected a more general unease with the processes of internationalisation, privatisation and marketisation. The Government’s insistence that New Zealand had no choice but to link up with the growing economies of the Asian region had the effect of explicitly linking Asian immigration with a number of other economic realities that were proving difficult for a majority of New Zealand households.⁸² But it was a number of practical difficulties that led Government to rethink some aspects of the 1991 policies, albeit in a way that demonstrated remarkably little sensitivity towards the very region with whom they were attempting to develop good relations.

v. The 1995 Immigration Policy changes

By 1995 it was clear that the new immigration policy had been abundantly successful in attracting skilled migrants to New Zealand, as the number of people approved for residency in New Zealand annually had nearly doubled between 1991 and 1995. Clearly if there were any problems to be identified with the policy they did not include a lack of suitably qualified applicants. But the Government was concerned about several aspects of the policy and its demographic effects and felt the policy needed amending in a number of respects.

⁸¹ Idem
⁸² A 1998 study by economics Professors Podder and Chatterjee, using data from Statistics New Zealand’s Household Economic Survey found that income inequality in New Zealand had increased sharply during the period from 1983 to 1996. During that period the share of income enjoyed by the bottom 80 percent of households fell by seven percent. The share of the next 10 percent stayed still, and the top 10 percent rose by 14 percent. The income share enjoyed by the top 5 percent increased by 25 percent. Economic growth since 1993 marginally improved incomes, but for all but those in the top income bracket, this rise had ‘not been large enough to return them to position they had in the early 1980s. Nripesh Podder & Srikanta Chatterjee, ‘Sharing the National Cake in Post Reform New Zealand: Income Inequality Trends in terms of income sources’, Paper presented to the Annual Conference of the New Zealand Association of Economists, Wellington, 2–4 September, 1998.
A first concern of the Government was that the mechanisms for controlling numbers were inadequate. It had also become apparent that increasing numbers of professional migrants entering under the points scheme were encountering difficulties in gaining admittance to the professional bodies, membership of which was necessary if individuals were to enter practise. Stories abounded of doctors and engineers from non-traditional source countries – selected for their professional qualifications and experience – driving taxis and delivering junk mail in New Zealand because they could not get the New Zealand professional associations to recognise their qualifications, despite those qualifications having been recognised by the New Zealand Qualifications Authority (NZQA).83

Concern was also expressed that the level of migration up to this period had caused some ‘short-term adjustment problems’.84 A Background Paper on ‘Targeted’ immigration streams in 1994 noted that among the negative effects of immigration were those felt by Maori and Pacific Islands people, especially in relation to the labour market. Some Maori had also expressed concern that new migrants were insufficiently aware of the Treaty of Waitangi. Pressure on housing in suburbs where new arrivals tended to congregate, and on schools, especially where large numbers of English as a Second Language (ESOL) migrants ended up, were also identified as problems arising from the new migration streams.85

These concerns led the Government to amend the 1991 policy in several respects. A quota management system was put into place, allowing New Zealand greater control over the number of migrants granted residency approval. Under the 1991 policy, all migrants who attained a certain number of points were automatically granted residency but after 1995 this ‘auto-pass’ system was abolished, replaced by one where the number of points required to gain approval was set monthly, allowing officials to adjust the ‘pass mark’ according to demand. This was to apply to the Business

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Investment Category as well as the General Categories. And applicants under the Business Investment category were now required to have a minimum of $750,000 to invest rather than the previous $500,000 in order to qualify. Moreover, continued residence in New Zealand was made conditional upon the migrants providing evidence two years after arrival in New Zealand that their funds were still being used in the investment manner approved.

A second change was designed to reduce the under-employment of professional migrants. Migrants in about 25 specialist occupations, such as doctors, dentists and electricians, were required to get registration from the statutory authority governing standards in their field before entering the country. Without approval from the appropriate statutory body, a migrant’s professional qualifications would gain them no points. This policy change ended the mismatch between the NZQA (which had previously awarded points for professional qualifications) and the professional bodies, but many professional migrants who had entered New Zealand before the new policy took effect remained unable to practise their profession here.

The third set of changes were the most controversial. Although English language competence had been identified in the 1994 Paper on Targeted Immigration as responsible for only some of the problems posed by new migrants, English language ability was singled out in the policy changes as the key to successful settlement:

It facilitates entry to the labour market, to education and other social services and to economic, political and social life. Conversely, because of the barrier to entry it represents, lack of English language or limited English language ability significantly decreases the likelihood of a migrant settling successfully in New Zealand. Further, research indicates that even migrants with good English language ability are disadvantaged compared to native speakers; lack of colloquial English effectively inhibits the transfer of their human capital. Education therefore tends to be viewed as a tool for migrant social mobility and as a means of transmitting language, societal values and host society culture(s) to migrants, whether directly to the migrant or indirectly through the migrants’ children.

88 Idem.
The Government’s response to problems caused by a lack of English language competence was characteristically motivated by the desire to cut costs. Rather than providing greater resources to support ESOL migrants to learn English, it was thought that any problems associated with ESOL should be minimised by selecting migrants with English language skills and providing those without good English language skills with strong incentives to improve their English. Accordingly, the government introduced an English language ‘bond’. This required non-principal applicants who did not reach a specified standard of English to pay a bond of $20,000. The bond was repayable in full after three months if the required level (level 5 of the International English Language Testing System (IELTS)) was reached within that time, and repayable in part if it was reached after a year. If the standard was not reached after a year, the bond was to be forfeited.

The National Government had implemented a series of ‘user-pays’ policies during their time in office, but the English language bond policy was inconsistent with the basic premise of user-pays in that there was payment but there was no subsequent entitlement to a particular service. The English language bond was not earmarked to pay for any specific services but went back into general Crown revenue. It did not go towards the specific provision of English language tuition for ESOL migrants and adult ESOL migrants had to fund the cost of English tuition themselves, even after having paid a $20,000 bond. It was therefore a punitive measure, designed to punish those migrants who did not pass the IELTS English test within the specified times.

And, as a method of providing incentives to new migrants to learn English, the Bond was ill-designed. The expectation that migrants would learn English within three months – especially when during that same time they were in all likelihood also looking for permanent accommodation, employment, perhaps settling children into schools, as well as coping with life in an unfamiliar country – was unreasonable. Evidence suggests that some migrants simply forfeited their bond rather than choosing to cope with the stress of attempting to study for an exam during the first three months or year of their time in New Zealand. Other principal applicants may have been reluctant to tell their partners they would be expected to sit an English exam after arrival in New Zealand, for fear their partners would then be less enthusiastic about
the move. Some non-principal applicants may thus have been unaware their partners had paid a bond. These types of problems were exacerbated in some of the smaller centres by the lack of appropriate provisions for sitting the IELTS exam.\footnote{Conversation with New Zealand Immigration Service officials, 7.1.2000, See also Experiences of the English Language Bond, A Market Research Report prepared by Forsyte Research for the New Zealand Immigration Service, 7.5.1998.}

The English language bond suffered from problems of political acceptability as well. As Asians made up the greatest proportion of migrants from non-English speaking countries, the English language bond was widely perceived, especially within the Asian communities both in New Zealand and in Asia, as a racist measure, designed to restrict Asian migration.\footnote{David Barber, 'Migrant applications drop off in face of English test', National Business Review, 4.4.96.} Comparisons were made by journalists, commentators and the migrants themselves, with the English Language tests introduced with the Immigration Restriction Acts of 1896 and the Chinese Immigrants Restriction Act of 1907. Immigration consultants reported that prospective immigrants were boycotting New Zealand in favour of Australia and Canada, both of which were perceived as more welcoming than New Zealand.\footnote{Ibid.}

While the perception that the introduction of the bond in 1995 was specifically designed to reduce Asian migration was understandable (especially given the level of anti-Asian rhetoric that accompanied New Zealand First’s election campaign in the run-up to the 1996 election), it was not wholly accurate. Policy documents relating to the decision to introduce the English language bond indicate that fiscal considerations had infinitely more to do with the decision than did racially or ethnically motivated ones.\footnote{New Zealand Immigration Service, Review of New Zealand’s Residence Policies: The “Targeted” Immigration Streams.} The English language bond was conceived by the Government as an economic solution to what were perceived as the fiscal costs stemming from immigration, such as the costs of teaching non-English speaking background (NESB) children English in schools. Nonetheless, there was a certain predictability about the outcome. Given that the majority of those entering New Zealand from non-English speaking backgrounds (NESB) were of Asian origin, it was very clear on whom the bond would impact most.
For those Asian migrants already suspicious that the Government was more accepting of Asian money than of Asians themselves, the bond imparted a more personal message: migrants from non-English speaking backgrounds were less welcome than those from English speaking backgrounds. This was a remarkably insensitive policy to implement during a period when New Zealand was attempting a process of 'Asianisation', and demonstrated a failure on the part of Government at the time to fully consider the connections between ethnicity, language and identity within immigration policy.

One last change was introduced. Economic migrants (those entering under the General skills category and the Business Immigration categories) were to now pay a 'Settlement Services' fee of $200.00 per person, up to $800.00 per family. The settlement fee was used to fund a number of brochures containing information about New Zealand available to new settlers. It also contributed approximately half the Ministry of Education's costs in funding English language tuition in the compulsory school sector. A smaller percentage of the fee went towards migration research.

The overall effect of the 1995 immigration policy changes was to greatly reduce inward migration, particularly from Asia. (Compare Figures 4.3 and 4.7.) The greatest drop came in the numbers approved for residency from Taiwan. In 1995 23 percent of those granted residency in New Zealand came from Taiwan (see Figure 4.6), the most from any one country. By 1996, this number had dropped to 12 percent. And by the 1997/1998 year the number had almost dropped back to the number approved after the initial introduction of the scheme in 1991. Taiwan was no longer even amongst the top ten countries from which migrants came (See Figure 4.8).

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94 In late 1997 the Regulation Review Committee reviewed the Settlement Services Fee because of concern that the Fee was providing services that were not targeted directly at those who paid the fee, and was therefore acting more like a tax. The Fee was consequently divided into a Migrant Levy, which contributed to the cost of English language provision in the compulsory school sector, and a Settlement Information Fee, which was paid by all migrants except refugees, and Samoan citizens (owing to a mistake made by the Minister when reading out the new regulations in Parliament).

95 These included a Report on Current Research and a Bibliography, a literature review on Settlement services, Winkleman's research on Labour Market Outcomes of Migrants and research on the experiences of recent business migrants in New Zealand.

See: www.immigration.govt.nz/research_and_information/.

As the numbers of approvals from Asian countries fell as a proportion of the total, those from South Africa and Great Britain rose. Curiously, while Asian migration stimulated a degree of xenophobia in the resident New Zealand population, the migration of white South Africans, fleeing from the new post-apartheid South Africa also caused controversy, but for different reasons. South Africa under apartheid had
during the 1980s become emblematic of polarised views on race relations in New Zealand. For some New Zealanders, especially those like John Minto, who had been committed to fighting apartheid in South Africa, the arrival of white South Africans seeking to escape violence and political change in their country was an outrage. Minto was convinced that white South African migrants would bring the racist views of apartheid to New Zealand:

The attitudes of these whites are a potential disaster for New Zealand. They have been content to live in South Africa only while they benefited from apartheid. Now that democracy is developing they are keen to continue their white-centred lives elsewhere. In such numbers and in socially and economically influential positions they are a serious social pestilence on multicultural New Zealand.97

A friend of Minto’s, Dick Cuthbert, subsequently established a protest group entitled ‘Stop White South Africans Today’,98 which, judging by the immigration statistics, failed to achieve its goals, although some South African migrants reported that they felt discriminated against since having come to New Zealand. One South African migrant, for example, said ‘My children have been bullied at school. People think that because we are from South Africa we are rich, white racists, which is not true’.99 South Africans might not have felt themselves immediately a part of the New Zealand national community, but clearly the immigration changes of 1995 had acted to turn the ‘tap’ of migration from Asia down, while turning that of ‘traditional source’ countries back up again.

The 1995 immigration policy changes were designed to allow better control of the numbers of migrants coming into the country, overcome the technical problems caused by differences in the methods of professional accreditation between the NZQA and the professional bodies, and to minimize some of the costs imposed on the national community by the rapid absorption of high numbers of non-English speaking, ethnic minority migrants. Most of the policy changes achieved their goals effectively. But the introduction of the English Language Bond had undermined the Government’s intentions in several respects. It undermined the credibility of the

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98 David McLoughlin, North and South, April 1994, p.49.
Government's claim that immigration policy was to be non-discriminatory with respect to race, ethnicity or nationality. It could argue that the discrimination was on linguistic, not racial criteria, but the link between language and nationality was clear to everyone. The bad press the language bond policy generated throughout Asia had led many prospective migrants in Asian countries to reject New Zealand as an immigration destination. Given that the Government's intentions in introducing the points system in 1991 included the development of personal, trade and investment links with Asia, the Bond was clearly ill-suited to achieving those interests.

The rapid increase in Asian migration that had occurred between 1991-1995 had revealed the ethnic core of the New Zealand political community. Much as earlier waves of non-British migrants had stimulated xenophobic attitudes and a reassertion of the centrality of 'Pakeha' and Maori culture and language to New Zealand, the new Asian migrants had triggered racially-based fear and loathing amongst some sectors of the New Zealand population. But the National Government, convinced that the ethnicity of well-qualified, experienced migrants with capital should be irrelevant, failed to fully anticipate local antipathy against them. Or, if they had anticipated it, they had assumed that it would dissipate in time, and that in the meantime, anti-discrimination measures would be sufficient to protect migrants against the worst excesses of discrimination. Either way, they failed to put in place policies which would mitigate the minor disruptions caused by a flow of migrants from unfamiliar and non-English speaking backgrounds had caused. But, and more invidiously, in introducing the English Language Bond the Government had appeared to side with those who wished New Zealand to retain its traditional ethnic core. Despite its internationalist rhetoric, and its neo-liberal disinterest in ethnicity or nationalism, National had re-imposed a policy which was racially discriminatory in effect, if not intention.

v. Immigration, nationalism and the 1996 election

Despite the drop in inward migration following the 1995 policy changes, immigration policy again became headline news in 1996, emerging as one of the defining issues in that year's general election. The 1996 election was the first to be held under the new
Mixed Member Proportional Electoral System (MMP), and a comparatively new political party, led by an ex-National Minister of Maori Affairs, Winston Peters, was aiming to mine votes from the middle ground between National and Labour. New Zealand First campaigned on an explicitly nationalistic ticket, drawing support from an unstable and uneasy mix of elderly, disenchanted ex-National voters, wooed by Mr Peters’ criticisms of the National Party’s handling of the superannuation issue together with a largely Maori group of disenchanted ex-Labour voters, attracted by the large Maori presence in the party.

Mr Peters – himself part-Maori – led an election campaign focussing on the threats to sovereignty posed by the increasing presence of overseas capital in New Zealand, and on business immigration policies designed to lure capital, in particular Asian capital, to New Zealand. What his elderly voter base seemed to have in common with the Maori voter base was a nationalism based on opposition to foreign investment (which for Maori in particular implied the further alienation of New Zealand land and other resources), including that which stemmed from Asian migration. He called for a major reduction in the numbers of migrants accepted to New Zealand: a maximum of 10,000 per annum, including those accepted under all categories of immigration except the humanitarian and refugee quota. A probationary period for migrants was also to be introduced during which a person gaining permanent residency would have to have a ‘relatively unblemished record for four years’ before they could be granted New Zealand citizenship. New Zealand First also promised to convene a Population Summit to ‘assist Parliament in devising a future Population Strategy for New Zealand’.

Peters launched New Zealand First’s immigration policies in Howick,100 a suburb which had attracted a sizeable number of the new Asian migrants during the 1990s (so many in fact that it had been colloquially dubbed ‘Chowick’). His claims that while the party’s policy was anti-immigration it was not anti-Asian were undermined by comments made in that speech about the ‘rows of ostentatious homes in this very suburb, occupied in some cases by children whose parents have no ties to this country other than the price they paid for the house, and who prefer to remain outside its

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100 Andrew Young, ‘Peters sells immigration cutback’, in New Zealand Herald, 4.2.996
shores'. Such comments were clearly aimed at the new Asian migrants in the suburb, some of whom continued to operate businesses abroad.

New Zealand First’s anti-immigration campaign received considerable coverage in Asia. At least 13 top English language newspapers and magazines throughout Asia ran stories featuring Mr Peters or his campaign.\(^{101}\) Malaysian Prime Minister Mahathir Mohamad, on a visit to New Zealand in March 1996, warned that Peters’ campaign risked damaging New Zealand’s relationship with Asia and stymieing its attempts to integrate with the region.\(^{102}\) It would, he argued, be seen by Asian countries as discrimination.\(^{103}\) Mr Peters, recalling earlier comments made by Prime Minister Bolger, responded by telling Mr Mahathir to stop lecturing New Zealanders:

> This country is not part of Asia. Nor do New Zealanders want it to be, no matter what advice Dr Mahathir might have received from Jim Bolger. We in New Zealand are no less nationalistic in our approach than are Dr Mahathir and other Asian leaders.\(^{104}\)

The overt nationalism – and covert racism – of New Zealand First’s campaign paid off. After launching the anti-immigration policy, New Zealand First’s popularity doubled, increasing from 7 percent to 14 percent within a month.\(^{105}\) Interestingly, Maori support for the party was particularly high. Many Maori voters clearly felt abandoned by the party they had traditionally supported, Labour, when it taken its radical swerve to the right under the fourth Labour government. Many Maori also felt that the National government’s drive to integrate New Zealand into the global economy would result in the further alienation and marginalisation of Maori interests. Immigration policy, with its explicit emphasis on the need to attract foreign capital to New Zealand, would in particular marginalise Maori interests, just as the earlier streams of European migration had.

Dr Ranginui Walker, Head of Maori Studies Department at Auckland University, was one of the more vocal Maori opponents of immigration, especially Asian business

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\(^{101}\) Graeme Hunt, ‘Asia takes note of rising xenophobia’, *National Business Review*, 17.5.996


\(^{103}\) John Armstrong, ‘Visit by Malaysian PM stirs debate on Asian policies’, *New Zealand Herald*, 27.3.96.

\(^{104}\) James, 6.5.1996, p. 18.

\(^{105}\) John Armstrong, ‘Visit by Malaysian PM stirs debate on Asian policies’, *New Zealand Herald*, 27.3.96.

\(^{189}\) National Business Review- Consultus poll, April 1996.
immigration, which he labeled ‘neo-colonial’ because of its links with the internationalisation of capital. He argued that under the Treaty of Waitangi, Maori had agreed only to the entry of migrants from Europe, Australia and the United Kingdom. For him, the Business Immigration policy amounted to the sale of New Zealand citizenship, on a par with the sale of other state assets and land to ‘foreigners’. Maori, he argued, would be adversely affected by the introduction of skilled and unskilled workers who would compete with unemployed Maori in the labour market.106

This was a view shared by John Tamihere, Chief Executive of the Waipareira Trust: ‘Maoris are at the bottom of the heap, so when new blood comes in Maoris are the ones jostled out of position.’ 107 For Tamihere, the immigration debate was clearly one about nationhood and race relations, not simply economic development. Diane Black, secretary of the Auckland District Maori Council and committee member of a Maori training organisation expressed concern about migrants’ knowledge and understanding of Maori issues. She worried that migrants taking up positions in health care and education would have little or no understanding of Maori culture, or the Treaty, but dealt with Maori when they were at their most vulnerable: when they were young and when they were sick.108 Peters hoped to capitalise on such attitudes with his nationalistic message.

At the 1996 election the New Zealand First party received 14.4 percent of the nationwide party vote, including a very large percentage of the Maori vote109, giving them all of the Maori seats and the balance of power in the new MMP parliament. New Zealand First’s subsequent decision to form a coalition government with the National Party was both controversial, and ultimately politically suicidal, primarily because

107 Ron Taylor, ‘Shape Up or Ship Out’, *New Zealand Herald*, 30.3.96.
108 *Idem.*
109 In the Maori seats New Zealand First wildly out-pollled all the other parties in the party vote in all seats except Te Tai Tonga. They scored 41.57 percent of the vote to Labour’s 31.95 in Te Pukenui O Te Whenua; 44.02 percent to Labour’s 32.28 in Te Tai Hauauru; 47.53 percent to Labour’s 31.08 in Te Tai Rawhiti; and 45.38 to Labour’s 29.06 percent in Te Tai Tokeru. In Te Tai Tonga Labour won the party vote by 35.39 percent compared to New Zealand First’s 32.47 percent, but New Zealand First’s Tutekawa Wyllie took the seat with a narrow 1.41 percent lead over Labour’s longstanding MP for the area, Whetu Tirikatene-Sullivan. Figures from the Electoral Commission, *The New Zealand Electoral Compendium*, Wellington, December 1997.
National was the party most closely associated with the policies of internationalisation, privatisation, marketisation and expansionary immigration – to all of which nationalistic New Zealand First voters were opposed. The sense of betrayal expressed by many New Zealand First voters when the party formed a coalition with National tarnished the record of MMP almost before it had started.

Curiously, once in office, immigration almost immediately fell off their political agenda. New Zealand First did, however, deliver on its 1996 election campaign promise to hold a Population Conference. As had been agreed in the National-New Zealand First coalition agreement, this took place – in Wellington, November 1997. The Conference was in large part designed to take the sting out of the racism many had perceived in Peters’ anti-immigration election campaign, allowing the focus instead to move to a broader discussion of ‘population’ issues.

The conference attracted a wide range of demographers, statisticians, social policy and labour-market analysts, economists and members of the various ethnic communities. Presented at the conference was a large body of information about demographic trends in New Zealand’s population together with research specifically on the social and economic outcomes experienced by recent migrants to New Zealand. In opening the Conference, Prime Minister Bolger noted that the Population Conference represented the first attempt, since the 1946 Population Committee was convened, to comprehensively address the issues relating to population, rather than just immigration.

Plenary addresses by the Government Statistician, Len Cook, and by demographers Richard Bedford and Ian Pool identified New Zealand’s ageing population and declining birth rate as significant demographic changes to which migration could present a partial counter. Cook, Bedford and Pool also, however, emphasised the necessity for greater levels of information about immigration and its impact, combined with greater pro-activity on the part of government in responding to the challenges presented by migration:

The challenges for policy making lie in understanding and responding to the complexity as well as to the inexorability of these [demographic] changes; the rewards will come from the fact that, if they are responded to pro-actively and positively, the composition changes could
be exploited to improve New Zealand’s social capital and human capital. In turn, this could be
directed to produce long-term, economic growth sustainable in terms of our environment, with
social security for a culturally mature society.\textsuperscript{110}

It was these two messages – of the need for greater understanding of immigration
outcomes and of the implication of ageing and a decrease in fertility on New
Zealand’s population – that the Government took away from the Population
Conference.

In August 1998 the Ministers of Finance and Immigration agreed to the development
of a major longitudinal survey of migrants, spanning several years, to collect data
about the migrant’s migration, settlement and adjustment experiences. The survey, it
was hoped, would feed in to the development of policy in the areas of immigration,
labour market, business investment and social service policies so as to ‘position New
Zealand to maximise the benefits of contemporary international population
movements for the national economy and society.’\textsuperscript{111}

Also in 1998, National’s Minister of Immigration, Max Bradford, launched another
major recruitment bid to try and attract skilled migrants, particularly from Hong
Kong, Taiwan and Britain. The immigration target was increased to 38,000 per
annum, with the goal of achieving a yearly net migration of 10,000 per annum over a
five to ten year period.\textsuperscript{112} When ex-New Zealand First member, Tuariki Delamere,
gained the portfolio later that year, he suggested the target needed to be raised even
higher, to 50,000, to counteract the large numbers of long-term departures.\textsuperscript{113} At the
same time the language bond was dropped, in recognition of the highly unfavourable
impact it had had on the numbers of Asian migrants applying for residence. It was
replaced by a ‘pre-purchase’ scheme for English language tuition.\textsuperscript{114} Under the pre-
purchase scheme non-principal applicants sat an IELTS English test to determine their
level of English competency. Depending on their score, they were required to

\textsuperscript{110} Ian Pool and Richard Bedford, ‘Population Change and the Role of Immigration’, Paper
\textsuperscript{111} New Zealand Immigration Service, \textit{Research Proposal for a Longitudinal Survey of Migrants
to New Zealand}, March 1999.
\textsuperscript{112} Audrey Young, ‘New Zealand to roll out welcome mat’, \textit{New Zealand Herald}, 3.7.98,
purchase a specified number of English language lessons from contracted providers working to the Education Training and Support Agency.

Despite these two changes to immigration policy the Government faced continued criticism for failing to implement any co-ordinated resettlement policy, a failure that could be directly blamed for some of the poor labour market outcomes experienced by new migrants, and highlighted by research Liliana Winklemann presented to the Conference.\(^{115}\)

By 1998 the New Zealand Immigration Service was clearly strongly in favour of the establishment of a co-ordinated settlement programme, arguing:

> An effective settlement process can enable New Zealand to more effectively recoup the benefits associated with immigration. Positive settlement experiences and outcomes are also of benefit for the migrant and the community. Successful settlement also has an impact on the extent to which a migrant may require services from Government agencies such as those in the employment, welfare, education and health sectors.\(^{116}\)

The Coalition Government was coming to the conclusion that treating migration primarily as an economic policy was not leading to optimum immigration outcomes. Arguments based on efficiency and effectiveness were bringing them closer to a conviction that greater levels of intervention by Government could assist the post-migration process, thereby maximising the economic benefits, and minimising the social costs, that might be expected to flow from a diverse migration flow.

### III.

**Citizenship policy 1991-1999**

The Citizenship Act 1977 remained in force throughout the 1990s, but in 1997 the Department of Internal Affairs initiated a Review of the Act. As it stood the Act

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allowed for the allocation of citizenship by three means: birth, descent and grant of citizenship. It was thought the law might be unworkable in respect of aspects of each of these three categories.

In respect of citizenship by birth, the Immigration Service expressed some reservations about the situation of a child who was born in New Zealand to parents of illegal overstayers, or legally resident parents who held neither permanent residency or citizenship. There was the possibility that, following the ruling in the Taivita v Minister of Immigration case, illegal or non-permanent residents would have children in New Zealand, (children whom would gain automatic citizenship by virtue of their birth in New Zealand,) in order that they themselves would have a better chance of gaining either residency or citizenship status. The judge’s interim ruling in this case was that the rights of a child citizen born to non-lawful residents needed to be taken into consideration when any decision was being taken in respect of whether or not to deport the parents of the child.

The Review of the Citizenship Act 1977 considered whether or not the law should be changed to limit the acquisition of citizenship by birth to those whose parents were citizens, or to those whose parents were either citizens or permanent residents. In both cases citizenship by birth would be denied to those whose parents were either legal temporary residents, or illegal residents.

Any such change to the citizenship legislation in New Zealand was likely to impact disproportionately on Pacific Islands people in New Zealand, as they constituted a large proportion of illegal residents in New Zealand, although in the years between 1991 the proportion of total overstayers that were from the Pacific Islands decreased from about 63 percent in 1991, to less than 40 percent in 1997. The Social Services Review Select Committee also said in early 1998 that there might be “significant errors” in calculations of the numbers of overstayers in the country, over-estimations by thousands, and that this reflected badly on pacific island people in New Zealand. Nonetheless, if the Act had been changed in this way, it would have had implications for considerable numbers of Pacific Islands children and families.
A second area looked at by the Review Committee was the clause in the Act that referred to the citizenship status of those born outside the country. As the Act stood, those born outside New Zealand who qualified for citizenship by descent (ie their parents or parent is a citizen), needed to register as a citizen before the age of 22. If they did not apply for citizenship by the time they turned 22, their citizenship status was lost. As the Act came into force in 1978, the clause applied first to those who turned 22 on 1 January, 2000, and to everyone who turned 22 thereafter. Depending on the citizenship laws in the country in which they were born, some individuals would find themselves stateless as of 1 January 2000. Children born outside New Zealand to Pacific Islands parents who were citizens of New Zealand would be affected. This part of the legislation was considered by Internal Affairs to be of concern, particularly to Maori, who as indigenous citizens of New Zealand, could nonetheless find themselves denied citizenship if they were born overseas, and did not register themselves as New Zealand citizens before their 22nd birthday.

The third area the review committee was concerned with was a clarification of the requirement that people be 'ordinarily resident' in New Zealand for a period of three years before they applied for citizenship. Particularly in the case of business migrants frequent travel out of New Zealand was relatively common, which complicated any assessment as to whether applicants had been 'ordinarily resident' in New Zealand for the requisite period.

However, by the end of the National-Coalition administration in 1999, this review of citizenship policy had not been completed.

**Conclusion**

National’s introduction of the 1991 point-based immigration policy was entirely consistent with its market liberal philosophy. Skilled, educated migrants with access to personal and investment capital were actively recruited in order to improve New
Zealand’s domestic and foreign economic position. Such migrants would, the Government hoped, become independent citizens capable of contributing human and financial capital to the economy and society. The ethnicity of such individuals was of little interest to the Government, except in that a greater diversity would no doubt add richness to the cultural life of the nation and, perhaps, on occasion, produce unfortunate reactions in the host population. The latter would be dealt with through legal anti-discrimination measures. In keeping with its general belief in the efficacy of a minimal role for the state, however, the Government considered itself to have little role in the lives of migrants past the point at which their New Zealand residency applications gained approval.

However, despite the National Government’s determination that ethnicity should be of little or no importance in the selection of migrants, and that government had little responsibility for migrants post-arrival, issues such as language, culture and racism came to exert increasing pressure on policy makers after 1991. The Government’s initial reaction to such issues was to attempt to stem the flow of migrants that might raise such issues, through the abolition of the auto-pass system and the introduction of the English language bond. This response was consistent with National’s desire to minimise social spending but it was hardly consistent with its attempt to position New Zealand as an internationalist nation, fully integrated into the global economic and security environment.

More pressingly, it was incompatible with New Zealand’s economic and social needs. The demographic realities of an aging population and declining birth rate, combined with high rates of outward migration identified at the Population Conference, all pointed to an urgent need for greater numbers of skilled, educated, experienced migrants with access to personal and investment capital. The Government already knew that many such migrants were likely to come from Asia. By the time the Minister of Immigration, Max Bradford, launched a new recruitment drive for migrants from Asia and Britain 1998, the Government had moved some way towards accepting that government intervention, in the form of settlement programmes, might, in fact, produce better immigration outcomes than a non-interventionist strategy. In essence this was a recognition that a laissez-faire approach to issues of ethnicity and identity had not assisted migrants to overcome those difficulties they faced
specifically as a result of their ethnic, linguistic and national backgrounds. The transition from an ethnic sense of national belonging to a civic one had not been achieved.

Undoubtedly many, or even possibly most, of the migrants who came here during the 1990s settled in New Zealand reasonably successfully (although the lack of adequate data on migration outcomes led the Immigration Service to initiate a major survey of post-settlement experiences of migrants in 1999). During the 1990s, however, there was clearly some dissonance between, on the one hand, Government's emphasis on migration as essentially an economic solution to economic problems, and the existence, on the other hand, of a number of problems springing directly from the distinctly human issues of ethnic, cultural and linguistic diversity, which resulted from the new policy. Migrants faced problems in getting appropriate employment and in gaining access to affordable and appropriate English tuition; schools with high non-English speaking rolls reported resource difficulties; Asian-related crime was reported; there was a feeling that New Zealand's bi-cultural framework excluded those of non-Maori, non-British ancestry; and racism from the New Zealand host population was experienced by non-European migrants.

Such problems were not urgent in the sense that they led to widespread ethnic conflict or extreme hardship for new migrants, but they did lower the contribution that migrants were able to make to New Zealand society, and they created a degree of resentment on the part of both migrants and the host population. By the mid-to-late 1990s the New Zealand Immigration Service was concerned that immigration policy was not achieving its goals because migrants unable to use their skills were unlikely to settle well, and that settlement difficulties, if prolonged, led to poor outcomes for migrants, for the communities in which they settled, and for New Zealand as a whole.\(^{118}\)

\(^{118}\) Department of Labour, Briefing to the Minister of Immigration, December 1999.
Chapter Five

The Civil Rights of Non-Maori Ethnic Minorities in New Zealand

Introduction

In the first chapter of this thesis it was argued that in order to be truly self-governing, all citizens, including immigrant minority citizens, are reliant upon the state of which they are members extending to its members a comprehensive set of individual civil, political and social rights. Further, it was argued that immigrant minority groups are especially reliant on the existence of strong legal protections of non-discrimination rights, and, for those who are also members of linguistic minorities, the provision of interpretation and translation rights necessary for them to be able to access their civil rights.

In this chapter the civil rights\textsuperscript{1} extended to immigrant minorities in New Zealand during the 1990s are subjected to scrutiny, and the question is asked as to whether these rights were sufficient to ensure that non-Maori ethnic minorities in New Zealand had equal access to the civil rights of citizenship. The first section of the chapter sets out the major sources of international and domestic human rights law applicable in New Zealand and briefly discusses how international, statute and common law work together in New Zealand. Particular attention is given to the New Zealand Bill of Rights Act 1990 and the New Zealand Human Rights Act 1993. The second section considers how effectively this legislative framework protects the civil rights of immigrant minorities in New Zealand, focusing in particular on two civil rights of particular significance to immigrant minorities: the right not to be invidiously discriminated against and the right to an interpreter or translator.

\textsuperscript{1} Civil rights are generally understood to include political rights, but in this chapter all civil rights except political rights are discussed because the following chapter is devoted to a discussion of the political rights of non-Maori ethnic minorities in New Zealand.
Civil rights include the most basic of human rights and freedoms: the right not to be deprived of life, the right not to be subjected to cruel or inhumane treatment, freedom of speech, freedom of conscience, freedom of movement, freedom of assembly, the right to equality before the law, the right to own property, and the right not to be invidiously discriminated against. Each of these freedoms is critical if the individual is to pursue their interests without interference from the government or their fellow-citizens. In New Zealand such rights are extended to all New Zealand citizens, as well as to those who are not citizens (with a couple of exceptions identified below).

During the 1990s New Zealand had an exceptionally high standard of human rights in regional and international terms. A wide range of civil rights was provided for by a combination of statute law, judicial interpretation, international law, constitutional convention, and by the common acceptance of certain fundamental values within the society. The assumption of legal equality among all legal residents and citizens remains a central feature of the New Zealand constitutional structure (although it is undeniably complicated by the presence of certain rights to which only Maori may lay claim\(^2\)) and is given expression in the law.

Of course, New Zealand’s legal treatment of immigrant minorities has not always been so admirable. In common with other European settler states, New Zealand practised overt and invidious discrimination in relation to a variety of immigrant minorities during the late nineteenth and early twentieth century. Chinese, Indian, Jewish, Lebanese, Dalmatian, and Italian residents were all subject to legal discrimination,\(^3\) with that enacted against the Chinese being particularly pernicious.

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The effect of such discrimination was not only to deny most non-British migrants access to New Zealand, but, also to deny full citizenship and thus citizenship rights to some of those already resident.4

Such overtly discriminatory legislation was gradually withdrawn from the statute books during the post-war period and replaced with legislation prohibiting discriminatory treatment on the grounds of race, ethnicity, culture, and nationality. New Zealand was guided in this process by the newly established United Nations (UN), itself heavily influenced by post-war revelations of the holocaust perpetrated against Jews and other minorities by Nazi Germany5, revelations which could not have more graphically illustrated the evil consequences of racial discrimination. An abhorrence of those consequences, against the backdrop of the general horrors of the Second World War, gave added urgency and gravitas to the United Nation's project of promoting international peace and security, and of developing a comprehensive body of international human rights law.

In 1948 New Zealand voted in favour of the UN General Assembly's adoption of the Universal Declaration of Human Rights, described by Eleanor Roosevelt as the 'Magna Carta for all Mankind'.6 When the United Nations spelled out the measures member states needed to take to give effect those rights in two further instruments – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – New Zealand ratified these documents and their associated protocols, thus binding itself to the provisions they contained. New Zealand continued to ratify and become bound by international human rights treaties, including, in 1975, the International Convention on the Elimination of All Forms of Racial Discrimination. Through this process, through the incorporation of international law into domestic legislation, and through judicial interpretation, New

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4 Chinese residents in New Zealand for example were denied the right to naturalise (become British citizens, or NZ citizens after 1948) until 1951. See Manying Ip, in Stuart Greif, (ed.), Immigration and National Identity in New Zealand, Palmerston North, Dunmore, 1995.
Zealand built up the framework of human rights law that existed when the National Government took office in 1990.

The legal framework National inherited was based on the precept that unfair discrimination on the grounds of race, ethnicity or culture was fundamentally wrong and that the law should protect every individual from it. During its administration the National Government broadened and strengthened New Zealand’s human rights law through the introduction of a number of statutes containing provisions designed to protect the civil rights of minorities. Most significantly, they passed the Human Rights Act 1993 which considerably strengthened New Zealand’s anti-discrimination legislation. They were, however, slow to acknowledge that simply strengthening the law would not ensure that immigrant minorities could in fact access their civil rights on an equal basis with other New Zealanders. In particular, the National and National-Coalition Governments failed to recognise firstly, the way in which under-funding of those institutions responsible for administering the law could limit their ability to give full effect to the law, and secondly, they failed to acknowledge fully the challenge that growing racial, ethnic, cultural and linguistic diversity posed to the law and government administration. The importance of translation and interpretation rights in allowing linguistic minorities to fully access their civil rights in New Zealand, for example, was not reflected either in law or administrative practice. In part this failure may be linked back to the country’s poor record in relation to minorities historically. The reluctance to allow in migrants from non-traditional sources evident in New Zealand immigration policy until the early 1990s meant that few non-European migrants were accepted into the country before the mid-1990s, and questions concerning their civil rights did not arise very often before then. An increase in the number of immigrant minorities migrating to New Zealand as a result of National’s new immigration policy in 1991 meant that such questions were likely to arise more frequently than they had previously. Yet the National Government seemed ill-prepared to meet the challenges posed by the diverse stream of migrants the new policy facilitated.

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7 The notable exception was in the late 1970s when Pacific Islands people were targeted in a government crackdown on 'overstayers'.
The historical development of New Zealand's human rights legal framework

Classical liberal convictions about the sanctity of the individual, and of individual 'rights', derived from the Lockean concept of 'natural rights', found early legal expression in the American Declaration of Independence (1776), the French Declaration of the Rights of Man and of the Citizen (1790) and the American Bill of Rights (1791). It was not until the mid-twentieth century that the ideals contained in these two documents were to reach full fruition in a system of international law based on the concept of universal and inviolable 'human rights'. At the historic 1945 meeting in San Francisco where the United Nations Charter was born, member states determined to 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'. Repeatedly throughout the Charter member states determined to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'.

When, in 1948, the United Nations adopted the Universal Declaration of Human Rights the individual gained a legal personality in international law hitherto enjoyed only by sovereign states. This was significant because it bestowed upon individuals the 'legal capacity to enjoy rights or owe duties' at the international level. As

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8 Earlier international treaties and legal doctrines expressing humanitarian ideals existed in the nineteenth and early twentieth century, (the Slavery Convention of 1926, the Forced Labour Convention of 1930, the Geneva Convention of 1864, and the creation of the ILO in 1919, for example) but none set out a comprehensive list of 'human rights' in the way the United Nations did in 1948. See Hunt and Bedggood, pp. 40-43. Also, Brownlie, 1964.


11 Hunt and Bedggood, p. 39
Hersch Lauterpacht, eminent international lawyer and human rights advocate, commented after the adoption of the Declaration:

The individual has acquired a status and a stature which have transformed him from an object of international compassion into a subject of international right.\(^\text{12}\)

The nature of those rights was spelt out in the Declaration, Article I of which asserted:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

And Article II:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The Declaration then set out the legal, civil, political, economic, social and cultural rights considered crucial to individuals if they were to live free and dignified lives. These included the rights to: life, liberty and security of person; not to be held in slavery or servitude, not to be subject to cruel, degrading treatment; to recognition as a person before the law, to equality and non-discrimination before the law; to a fair trial; to freedom of thought, speech, conscience, religion, opinion, expression, assembly and association, to elect and stand as political representatives, to gain access to public service, and to self-government.

The 1948 Declaration of Human Rights thus represented a wholly new recognition within international law of the liberal view of the individual: a creature whose individual identity ought to be recognised in law, whose individual rights and freedoms ought to be considered inviolable, and who ought always be considered an end in him or herself, never simply the means to another's conception of the good. Yet the UN Declaration did not fully endorse the individual of classical liberalism,

\(^{12}\) Quoted in Hunt and Bedggood, p. 39.
who required only *negative* liberty from the state. As a creation of the mid-twentieth century, the United Nations, and the Declaration of Human Rights it developed, sought also to protect those *positive* freedoms advocated by social liberalism. Articles 22 through to 27 of the UN Declaration of Human Rights insisted that for human beings to live lives of dignity they required economic, social and cultural rights, including those to a ‘standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care’\(^{13}\), education, social services and social security and the right to work. These social and economic rights were considered ‘indispensable for his dignity and the free development of his personality’.\(^{14}\)

Over the next 21 years the United Nations developed the International Bill of Rights, described by Hunt and Bedggood describe as the ‘backbone’\(^{15}\) of international human rights legislation. It comprised the 1948 Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political rights, both adopted in 1966, and the Optional Protocol on Civil and Political Rights, also adopted in 1966. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, (separated out into separate documents because of tension between classical- and social-liberalism’s negative and positive views of liberty) each set out in more explicit terms what member states needed to do in order to implement the general rights enumerated in the Universal Declaration. This process of explicitly laying out the specific obligations placed upon member states by certain articles contained in the Universal Declaration of Human Rights was extended through the drafting of a range of specialized instruments, each dealing with a group of rights, or the rights of a certain group of individuals. By the end of 1997, ninety such specialized instruments or Declarations had been adopted, including the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the Declaration on the

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\(^{13}\) Article 25, United Nations Declaration of Human Rights, 1948.


\(^{15}\) Hunt and Bedggood, p. 44.

Right from the start New Zealand was an enthusiastic participant in the United Nations and its various fora, not least because as a small and isolated nation it was particularly dependent upon the international security arrangements established by the United Nations Security Council. But New Zealand also demonstrated a very strong commitment to international human rights and ratified a range of international rights instruments, including the following major international treaties:

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Year NZ bound by Treaty</th>
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<tbody>
<tr>
<td>Convention Relating to the Status of Refugees</td>
<td>1960</td>
</tr>
<tr>
<td>Protocol relating to the Status of Refugees</td>
<td>1973</td>
</tr>
<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
<td>1975</td>
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<tr>
<td>International Covenant on Civil and Political Rights</td>
<td>1978</td>
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<tr>
<td>International Covenant on Economic, Social and Cultural Rights</td>
<td>1978</td>
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<tr>
<td>Convention on the Prevention of all Forms of Discrimination Against Women</td>
<td>1984</td>
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<tr>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
<td>1989</td>
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</tbody>
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¹⁶ Faculty of Law, 'International Human Rights Materials. Volume I', Course notes for LAWS 343, Faculty of Law, Victoria University of Wellington, 1998.
Some of these treaties, or provisions within them, were of greater relevance to immigrant minorities than to other groups, most notably, the International Convention on the Elimination of All Forms of Racial Discrimination. While the UN Charter and the Universal Declaration on Human Rights were both insistent on the application of all rights to all people, regardless of race, this particular Convention explicitly prohibited discrimination on the grounds of race and required member states to take a number of actions in order to combat racial discrimination.

Ratification of these international human rights instruments had extremely significant, albeit complex, implications for New Zealand's domestic protection of human rights. To understand these implications, and assess the protection these international treaties afforded to immigrant minorities in New Zealand, it is necessary first to understand the way in which international and domestic law interact, and in particular, the way in which international human rights law affected the protection of civil rights in New Zealand.

First, because the signing of international treaties is undertaken by members of the executive branch of the New Zealand government, who hold no law-making power,

17 Department of Foreign Affairs and Trade,  New Zealand’s Consolidated Treaty List, Wellington, Department of Foreign Affairs and Trade, 1996.

18 This itself has been the subject of criticism by the New Zealand Law Commission, who have suggested that the international treaty ratification process should be subject to greater parliamentary scrutiny. See Law Commission, Report 45 The Treaty Making Process: Reform and the Role of Parliament, Wellington, Law Commission, 1997. It also became a subject of more public concern, when New Zealand prepared to sign the OECD Multi-lateral Agreement on Investment in 1998. See, for example, ‘Binding nation to investment rules not democratic’, New Zealand Herald, 14.10.97, p.13, ‘Too many pacts for Parliament’, Independent, 23.5.97, p.5.
an international treaty does not have full legal effect in the domain of domestic law unless it is incorporated into domestic law by Parliament. There are numerous examples of such incorporation in New Zealand law. It happened, for example, with the Race Relations Act 1971 which referred to obligations under international law in its long title ... 'An Act to affirm and promote racial equality in New Zealand and to implement the International Convention on the Elimination of all Forms of Racial Discrimination'. Similarly, the Bill of Rights Act 1990, incorporated several passages from the International Covenant of Civil and Political Rights, and the Human Rights Act 1993 referred in its long title to its obligations under International law. These domestic acts (discussed in detail in the next section), which represent some of the most significant protections of immigrant minorities' civil rights in New Zealand, were developed specifically in order that New Zealand might comply with its obligations under international law.

International law can, however, exert some power over domestic jurisdictions, even when not incorporated into domestic legislation. It can provide principles as opposed to rules of law which may be followed by New Zealand courts, and the rulings in which judges have taken international law into account become part of New Zealand common law. But the ability of international law to shed light on how a domestic law should be interpreted is limited. Justice Richardson stated in 1981 'if the terms of the domestic legislation are clear and unambiguous they must be given effect in our Courts whether or not they carry out New Zealand's international obligations'. The relationship between international and domestic law is, however, a developing one, with international law set to become more influential over time. An illustration of this developing relationship was found in Taivita v Minister of Immigration. In this

20 For example, the Human Rights Act 1993, section 5(j) which empowered the Human Rights Commission to investigate domestic legislation and policy for conflicts with the Act, referred to the 'spirit and intention of the Act', allowing principles taken from international law to be considered as well as the 'letter' of the domestic law.
22 See K J Keith, 1998, for numerous examples of the ways in which international law has been used in domestic rulings.
case the Human Rights Committee was described by the NZ Court of Appeal as 'in substance a judicial body of high standing, which is, in a sense, a part of this country's judicial structure', indicating a greater acceptance of the jurisdiction of international law by local judiciary.

Declarations made by the United Nations constituted another source of international law. The United Nations Declaration on Human Rights, for example, whilst not a treaty, was considered part of international customary law by some commentators. Indeed, Paul Hunt and Margaret Bedggood have argued:

Although the position is not certain it appears that a rule of international customary law forms part of New Zealand's domestic law, even if the rule has not been enshrined in an enabling Act of Parliament.

The reporting requirements associated with some international human rights treaties provided a further means by which international law influenced domestic law and procedure. These requirements obliged signatory states to submit periodic reports detailing the ways in which they were complying, or failing to comply with, their responsibilities under the treaties. The reports were considered by the United Nations Human Rights Committee, who could draw public attention to the failure by a state to meet their treaty obligations. Concern about possible embarrassment over such adverse publicity might well have acted as a silent deterrent to signatory states.

Of particular relevance to immigrant ethnic minority groups in New Zealand were the Periodic Reports submitted by the NZ Government to the Committee on the Elimination of Racial Discrimination, in accordance with article 9 of the Convention on the Elimination of Racial Discrimination. Participating in this process involved New Zealand in defending its record in relation to eliminating racism before an international body, providing detailed information about how it had met requirements under each of the articles of the Covenant, and responding to a number of questions.

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26 This is true of the International Declaration on Human Rights because of its long history, and the number of subsequent national and international laws giving legal force to its provisions. See Paul Hunt and Margaret Bedggood, 1995, p. 43.
put to it by the Committee about aspects of ‘race relations’ that the Committee found concerning. When, for example, the New Zealand Government presented their 10th and 11th Periodic Reports to the Committee in 1996, they faced questions on (among other things) the mistreatment of prisoners at Mangaroa Prison, whether immigration policy was ethnically biased, progress in closing the gaps between Pacific Islanders and other New Zealanders, whether radical Maori nationalists were straining relationships between Maori and non-Maori, and whether the Human Rights Act provided full protection against racist organisations.28 The requirement that the New Zealand Government produce detailed reports about its efforts to eliminate racism, and submit these reports to the scrutiny of an international body, provided another example of how international law might stimulate domestic development of human rights protections.

Further protection of human rights was provided by those international treaties containing provisions or protocols which allowed national citizens to take a complaint directly to the United Nations Human Rights Committee if they believed the state had failed to meet its obligations under international law. New Zealand acceded to the First Optional Protocol of the Covenant on Civil and Political Rights in 1989, since which time five cases against New Zealand appeared before the UN Human Rights Committee.29 While the UN Human Rights Committee did not have the jurisdiction to invalidate any legislation that it found to have breached an obligation under the Covenant it could hold up a breach to international attention, and thus embarrass non-compliant nations.30

Significantly, New Zealand did not accede to article 14 of the Convention on the Elimination of Racial Discrimination, which would have allowed individuals to lodge petitions against the NZ Government with the Committee on the Elimination of Racial Discrimination. New Zealand’s decision not to accede to Article 14 was commented


29 For example, Maori made an application to the International Human Rights Committee alleging that the 1992 “Sealords” Fishing Deal breached their human rights.
on by the Committee when it considered New Zealand’s 10th and 11th Report to that Committee and individual committee members urged it to change its stance.31

International law had clearly strengthened the legal protection of New Zealanders’ civil rights in a number of significant ways during the post-war period: it prompted the development of New Zealand’s most significant domestic human rights legislation, international legal bodies acted as scrutineers of New Zealand’s human rights record, and the developing significance of international law for domestic interpretation meant that international law supplemented and strengthened the human rights provisions of New Zealand domestic law, as well as provided alternative legal avenues to domestic law.

There are two main sources of domestic law in New Zealand: statute law, and the common law that arises from judicial interpretation. British common law applied in New Zealand after colonisation in 1840, so that those civil rights protected by British common law had effect in New Zealand from that time onwards. The Imperial Laws Application Act 1988, confirmed the incorporation of the Magna Carta 1215, the Bill of Rights 1688, Habeas Corpus and British common law - as far as it was already part of law before the passing of the Imperial Laws Act - into New Zealand law. New Zealand has never had a entrenched constitution or Bill of Rights; like the Westminster system on which it is based the constitutional principles on which it operates are derived from a mixture of common law, statute law and constitutional convention. Similarly, the legal and political protections of civil rights remain vested in a combination of law, constitutional convention, and values common within the society. Importantly, these were the same liberal conventions and values which informed the United Nations in their development of international human rights.

The two most important pieces of legislation protecting the civil rights of New Zealanders were the New Zealand Bill of Rights Act 1990 (BORA), and the Human Rights Act 1993. The Bill of Rights Act 1990 was passed by the departing Labour

Government in a much less ambitious form than that initially conceived by its architect Geoffrey Palmer, Labour Minister of Justice and Deputy Prime Minister (and, for a short period, Prime Minister). Despite being considerably watered down in a number of significant ways\textsuperscript{32} it nonetheless contained the most comprehensive and explicit outline of contemporary civil rights in New Zealand in the 1990s. It set out four main types of rights: those to Life and Security of the Person, Democratic and Civil Rights, Non-Discrimination and Minority Rights, and Search, Arrest and Detention Rights. It did not include social or economic rights. The Act applied only to acts done by the legislative, executive or judicial branches of the New Zealand government, including all those acting in a public office. As such, it was concerned solely with the rights and freedoms held by those within New Zealand’s legal jurisdiction against the New Zealand state.

The influence of the International Covenant on Civil and Political Rights was clearly evident within the Act. (The long title of the Act stated that it was designed to ‘affirm New Zealand’s commitment to the International Covenant on Civil and Political Rights’). Like the International Covenant on Civil and Political Rights, the Bill of Rights Act affirmed the liberal view of the individual as requiring a range of rights and freedoms in order that they be autonomous.

Although the Bill of Rights Act 1990 was not entrenched – it required only a simple majority of the House of Representatives to be overturned and did not have the ability to over-ride inconsistent pieces of legislation\textsuperscript{33} – some, such as Geoffrey and Mathew


\textsuperscript{33} Some argued this was a severe limitation of the Bill, but provisions did exist to minimise the likelihood of inconsistent legislation being passed. Where a Bill was introduced to Parliament that appeared to be inconsistent with the Bill of Rights Act, the Attorney-General was required to bring this inconsistency to the attention of the House of Representatives (section 7). Revisions to the standing orders in 1995 required the Attorney General to present a report to the House on any proposed legislation containing a breach of the Bill of Rights Act before the second reading of the Bill, and that the report be published as a parliamentary paper. On a number of occasions the presentation of such reports by the Attorney General led to either the removal of offending provisions within a Bill, or the
Palmer, claimed that in fact the protections afforded were nevertheless very robust. They argued that as long as the Bill of Rights Act 1990 remained a statute it had ‘binding force on the actions of the executive government, upon which it act[ed] as an important restraint,’ and that whilst a government could remove the BORA, few governments were going to want to be known as one which removed the Bill of Rights, or as one which enacted quantities of legislation publicly recorded as breaching the Bill of Rights Act.\textsuperscript{34} There is a great deal of force in this argument and it would be difficult to conclude that the Bill of Rights Act 1990 provided anything but solid and effective protection of the negative rights of citizenship.

The other major piece of human rights legislation in existence for most of the 1990s was the Human Rights Act 1993, passed by Bolger’s National Government. Like the two Acts it replaced (the Race Relations Conciliator Act 1971 and the Human Rights Act 1977), its main intention was to prohibit unfair discrimination. When the National

withdrawal of the Bill altogether. On the other hand, the Transport Safety Bill was passed despite the Attorney General having presented a report expressing concern that the random breath testing provisions it contained breached the Bill of Rights Act. See Geoffrey Palmer & Mathew Palmer, \textit{Bridled Power. New Zealand Government Under MMP}, Auckland, Oxford University Press, 1997, pp. 272-3.

It could be argued that the protection afforded by the Attorney-General's responsibility to report any proposed Bills that, in his opinion, breach the Bill of Rights Act was very limited, as the Attorney-General needed only bring a proposed bill to the attention of the House during the first reading, not any subsequent readings. The section applied only to Bills, not to regulations or orders-in-council. The appropriateness of having an Attorney General who was a member of Cabinet has also been questioned, given that Cabinet was where governmental decisions to support particular legislation originate. Moreover, it was possible for the positions of Minister of Justice and Attorney-General to be held by the same person. For further discussion see Grant Huscroft, ‘The Attorney-General, the Bill of Rights, and the Public Interest’, in Huscroft and Rishworth, 1995, pp.133-159. However, Geoffrey Palmer, architect of the Bill of Rights Act, has argued that while the Bill of Rights Act would not necessarily prevent the Government passing laws which breach its provisions, it did seem, on the whole, to be providing 'a set of navigational lights' which guide parliament in its law-making role, as was envisaged in the White Paper on the Bill of Rights. Government Green Paper, \textit{A Bill of Rights for New Zealand}, p.6, quoted in Palmer and Palmer, p.272.

The desire to maintain parliamentary sovereignty was evidenced by Section 4 of the Bill of Rights Act, which expressly disabled the courts from declining to give effect to legislation on the grounds of inconsistency with the rights and freedoms affirmed in the Act. UN Human Rights Committee, \textit{Consideration of Reports Submitted by Parties Under Section 40 of the Covenant on Civil and Political Rights, New Zealand Report}, 1994, CCPR/C/SR.1395, 9 April 1995. However, the Act also stipulated that wherever the reading of an Act of Parliament could be given a meaning consistent with the Bill of Rights Act that reading was to be preferred, although it could be ignored if there was no compatible reading. Constitutional lawyers Palmer and Palmer argue that the Bill of Rights affected both statutory interpretation and substantive application of the law by New Zealand Courts. Palmer & Palmer, 1997, pp. 273-277.

\textsuperscript{34} \textit{Idem.}

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Government took power in 1990 these two Acts, combined with the newly introduced Bill of Rights Act 1990, formed the main sources of legal protection against discrimination on the grounds of race, ethnicity, nationality or culture in the public sphere. Three years earlier, in 1987, the Human Rights Commission Act 1977 had been reviewed and significant changes recommended, including that discrimination be prohibited on ten new grounds, and that the powers and remedies available to the Human Rights Commission be strengthened. Consequently, the Labour Government introduced a Human Rights Commission Amendment Bill in 1990 but did not manage to get it passed. That Bill was overtaken by the Human Rights Bill 1992, which addressed some of the inadequacies identified in New Zealand’s anti-discrimination law under the Race Relations Act 1971 and the Human Rights Act 1977.

So, in 1993 the National Government passed the Human Rights Act 1993 (HRA), consolidating and amending the Race Relations Act 1971 and the Human Rights Commission Act 1977, but retaining the offices of both the Race Relations Conciliator and the Human Rights Commission. The 1993 Act extended the grounds or bases on which it was unlawful to discriminate (to include disability, age, political opinion, employment status, family status and sexual orientation), while retaining the already existing grounds of race, colour, ethnic or national origins, nationality or citizenship, and ethical or religious belief. It also extended the areas (places or situations) in which discrimination was prohibited, so that they now included partnerships, industrial and professional associations, qualifying bodies and vocational training bodies. Functions of the Human Rights Commission included, as previously, education about and promotion of human rights; investigation of complaints of breaches of the Act and public commentary on international and domestic developments in human rights law.

The Race Relations Conciliator was to continue to have responsibility for those sections of the Act specifically dealing with racial discrimination. The complaints-

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36 For an outline of some of these criticisms, see Mai Chen, ‘Eliminating Race Discrimination in New Zealand: Generating the Political Will and Improving Laws’, Paper given at the International Symposium on Anti-Discrimination Law, Edinburgh College of Art/Heriot Watt University, Edinburgh, May 1993.
based part of the law, which required the Office of the Race Relations Conciliator to investigate claims of discrimination on the grounds of race, colour or ethnic or national origin, placed primary emphasis on the resolution of such complaints through a process of conciliation between the parties concerned. This could involve an apology, a promise that the behaviour would not happen again, a compensation payment, and possibly all three. Only in those cases where conciliation failed to resolve the matter could a case of racial discrimination be referred to the Complaints Review Tribunal, which acted as a court and could order damages to be paid or other settlement to be made.37

Unlike the Bill of Rights Act 1990, which only concerned relations between the individual and the state, the Human Rights Act 1993 also applied to relations between the individual and the private sector. But like the Bill of Rights Act 1990, the Human Rights Act 1993 did not have status of supreme law, meaning it did not over-ride any existing piece of legislation, even if that legislation was in breach of the Human Rights Act. This was explicitly stated in Section 151 (1) which read: ‘except as expressly provided in this Act, nothing in this Act shall limit or affect the provisions of any other Act or regulation which is in force in New Zealand’. Policies of the New Zealand government were also expressly exempted from having to comply with the new grounds on which discrimination are prohibited in the 1993 Act (Section 151 (2)).

However, the Human Rights Act 1993 contained a ‘sunset’ clause (Section 152) which had said that from the beginning of 2000, all exemptions allowed under Section 151 were to expire, and all legislation, regulations and policies of the New Zealand Government were to be consistent with and bound by the Human Rights Act after that time. The Human Rights Commission and the Race Relations Conciliator were given the statutory duty of examining all New Zealand legislation, regulations, policies and administrative practices to identify those which breached the Human Rights Act. They were then to report to the Minister of Justice on any conflicts with the Human Rights

Act by the end of 1998.\textsuperscript{38} The aim of this project, known as ‘Consistency 2000’, was to identify those laws, policies and regulations that were inconsistent with the Human Rights Act in order that they might be amended.

But in October 1997 Cabinet made a decision to halt the Consistency 2000 project and the review process it entailed. In fact, in 1998 the National-New Zealand First Coalition Government attempted to introduce a Human Rights Amendment Bill which would have not only removed the section of the Act outlining the Commission’s duty to examine and report on law and government policy and practice, but also the sunset clause in Section 152. In the event, that Bill was not passed, being overtaken by the Human Rights Amendment Act 1999, which postponed to December 31, 2001, rather than removed altogether, Government’s exemption from having to comply with the Human Rights Act. In other words, from 2002 all Government legislation, regulations and policies would need to comply with the Human Rights Act 1993. There was some debate over whether the Human Rights Act 1993 would acquire the status of higher law after December 31, 2002,\textsuperscript{39} with general agreement being that even if it did not acquire this status, it was likely to have a heightened status.

Subsequent to Cabinet’s announcement, the Human Rights Commission ceased any work on the Consistency 2000 project. The project was continued in a greatly truncated form by the Public Law Team at the Ministry of Justice who were required to produce six-monthly reports detailing progress that had been made by the various Government agencies in moving towards compliance with the Act.\textsuperscript{40} The Race Relations Conciliator and the Human Rights Commission were given an opportunity to comment on the reports before they were presented to the House.


\textsuperscript{39} See \textit{Rights and Freedoms in New Zealand: The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993}, Grant Huscroft and Paul Rishworth, (eds.), Wellington, Brookers, 1993, for a debate as to whether the Human Rights Act 1993 could become a piece of higher law after December 31 if section 152 were not removed.

Before Cabinet's decision to scale down the Consistency 2000 project the Human Rights Commission had already made some progress on the project. Their conclusions, detailed in a 1998 Report, included recommendations that the provisions within New Zealand as to how those laws already examined might be improved so as to give all people adequate protection under the law from unfair discrimination.\(^{41}\) The areas of greatest concern identified before they ceased the project related to discrimination based on age and disability, and not to racial or ethnic discrimination, which after all, were not new grounds under the 1993 Act.\(^{42}\)

In addition to the international law by which New Zealand was bound, and the Bill of Rights Act 1990 and the Human Rights Act 1993, legal protection of New Zealanders' civil rights could be found in a wide range of other statutes, some of which are discussed below. Together with New Zealand common law, and the common law found in comparable jurisdictions, the national and international sources of human rights law outlined above formed the framework of human rights law in New Zealand during the 1990s.

No part of this framework was entirely discrete; common law influenced statutory interpretation; international law influenced the development and reading of domestic law; and even though neither the Human Rights Act 1993 nor the Bill of Rights Act 1990 were higher law, they acted as important guides and restraints on both the drafting of new legislation and interpretation of existing legislation. Thus the law continued to evolve, providing protection in a number of ways and from a number of sources. How well did this framework protect the civil rights of ethnic immigrant minorities in New Zealand during the 1990s? It is to this question that the next section turns.

\(^{41}\) Idem.

\(^{42}\) Idem.
II

Laws protecting civil rights of particular significance to ethnic and immigrant minorities in New Zealand

There are six types of civil rights of especial importance to ethnic minorities: non-discrimination rights, the right to a translator or interpreter, religious freedom, the rights of ethnic, religious and cultural minorities, the rights of ethnic minority children and the rights of refugees. In the following section the expression of each of these rights in international law is outlined first, followed by an outline of how this international law has been translated into domestic law. Where applicable this is followed by a discussion of case law arising from the domestic and international protections of that right between 1990-1999.

(i) Non-discrimination rights

The principle of non-discrimination is fundamental to the concept of human rights. Each of the instruments in the International Bill of Rights stated that the rights they outlined were to be applied to all, regardless of race, ethnicity, culture and so on. But the principle of racial non-discrimination was given fullest expression in the International Convention on the Elimination of All Forms of Racial Discrimination. The non-discrimination rights set out in this Convention were designed to ensure that the basic human rights set out in the Universal Declaration of Human Rights were not denied to any individual on the basis of their racial identity. It committed member states to ‘pursue by all appropriate means and without delay’ the elimination of all forms of racial discrimination within their countries, and required them to develop effective legal protections against, and remedies for, such racial discrimination. Further, Article 2 of the Convention not only prohibited invidious discrimination, it permitted and encouraged ‘positive discrimination’ – that is, it allowed states to treat disadvantaged racial groups differently if that equal treatment would enable the disadvantaged minority to access their human rights and freedoms equally to other groups.
The International Convention on the Elimination of All Forms of Racial Discrimination was given force in domestic law first via a number of pieces of legislation, most significantly the Race Relations Act 1971, the Human Rights Commission Act 1977, the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993.

The Race Relations Act 1971 was enacted specifically so that New Zealand could comply with the convention before it became bound by it after ratification in 1975. It had set out the grounds on which discrimination was prohibited, (by reason of colour, race, or ethnic or national origin), the areas in which discrimination was prohibited (access to public places and facilities; provision of goods and services; employment; land, housing and other accommodation; advertisements) and established the position of the Race Relations Conciliator. In keeping with Article 2 of the Covenant on the Elimination of All Forms of Racial Discrimination which allowed for measures to ensure the equality of disadvantaged groups, Section 9 of the Race Relations Act allowed for measures to ensure equality of disadvantaged racial, ethnic or national groups, while Section 9A made it a criminal offence to incite racial disharmony.

Under the 1971 Act the main function of the Race Relations Conciliator was to investigate complaints of racial discrimination under the Act. Should the complaint be found to be justified the Conciliator was to attempt a settlement between the parties, or refer the complaint to a proceedings commissioner.

In 1977 the Race Relations Act was joined by the Human Rights Commission Act 1977, which established the Human Rights Commission and the Equal Opportunities Tribunal. The new Act identified several non-racial grounds on which it was illegal to discriminate: sex, marital status, religious or ethical belief, and the protection applied to five areas of public life: employment, education, access to public places, vehicles and facilities, provision of goods and services, land, housing and accommodation. Section 27 of the Act prohibited 'discrimination by subterfuge': that is, it prohibited those actions which, although they seemed not to be contradiction of
the Act, had the effect of giving preference to an individual on the basis of one of the prohibited grounds of discrimination.

The main functions of the Human Rights Commission were to investigate breaches of the Act, to attempt conciliation where breaches were found to have occurred and, when such conciliation was unsuccessful, to refer the case to the Proceedings Commissioner. The Proceedings Commissioner could then decide whether a case should be forwarded to the Equal Opportunities Tribunal, which could grant a number of remedies, including the granting of limited damages should the aggrieved party’s complaint be upheld. There was also provision for the Equal Opportunities Tribunal to refer a case to the High Court. The Human Rights Commission also had an educational function and was required to promote understanding of and respect for human rights in New Zealand through public education programmes and statements.

Several amendments to the Race Relations Act 1971 were made at the time of the introduction of the Human Rights Commission Act 1977. First, the prohibition against discrimination on the grounds of _ethnic and national origin_ was extended to include a prohibition against discrimination on the grounds of _nationality and citizenship_ (Section 3 (4)). Secondly, Section 9A (forbidding the incitement of racial disharmony) was replaced by a new Section 9A, which still related to racial disharmony but removed the requirement that intent be proved, and removed the criminal element of the offence. After the passing of the Human Rights Commission Act 1977 the Race Relations Conciliator became a member of the Human Rights Commission, and could take civil proceedings against a defendant under the Human Rights Commission Act, a power he (all Race Relations Conciliators to date have been male) did not possess under the 1971 Act. The Office also became responsible for the promotion of good race relations in New Zealand.

With the introduction of the Human Rights Act in 1993 the protection against unfair racial discrimination was extended in several ways. First, under the 1993 Act all areas applied to all grounds – whereas under the 1971 Race Relations Act education was not an area in which racial discrimination was prohibited. A complaint of racial
discrimination by an educational institution had, therefore, to go through the Human Rights Commission rather than the Race Relations Conciliator. By making all _grounds_ apply to all _areas_ (places or situations where discrimination was prohibited), the 1993 Act effectively increased the power and effectiveness of the Office of the Race Relations Conciliator.

Secondly, under the 1993 Act the level of damages which the Complaints Review Tribunal could order increased significantly from those available to the Equal Opportunities Tribunal under the Human Rights Commission Act 1977.

The 1993 Act also extended the legal protections against racial disharmony, racial harassment and indirect discrimination:

- Section 61 of the Act concerned ‘racial disharmony’ and was designed to prosecute people who engaged in group denigration. It stated:

  1. It shall be unlawful for any person -

     (a) To publish or distribute written matter which is threatening, abusive or insulting, or to broadcast by means of radio or television words which are threatening, abusive or insulting:

     or

     (b) To use in any public place...within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive or insulting; or

     (c) To use in any place words which are threatening, abusive or insulting if the person using the words knew or ought to have known that the words were reasonably likely to be published in a newspaper, magazine, or periodical or broadcast by means of radio or television,-being matter or words likely to excite hostility against or bring into contempt any group of persons in or who may be coming to New Zealand on the grounds of the colour, race or ethnic or national origins of that group of persons.

- Section 63 concerned ‘racial harassment’:

  1. It shall be unlawful for any person to use language (whether written or spoken), or visual material, or physical behaviour that -

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(a) Expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that persons; and

(b) is hurtful or offensive to that person (whether or not that is conveyed to the first-mentioned person); and

(c) Is either repeated, or of such a significant nature that it has a detrimental effect on that other person in respect of the areas to which this subsection is applied by subsection (2) of this section.

• Sections 131 and 134 of the Act made it a criminal (as opposed to a civil) offence either to incite racial hatred, or to engage in racial harassment, and specified penalties for those convicted of such offences (up to three months imprisonment or a fine of up to $7000). These penalties were significantly more severe than those existing under the Human rights Commission Act 1977. These two sections provided an avenue for criminal prosecution not available under the 1971 and 1977 Acts.

• Section 65 concerned ‘indirect discrimination’ (the old ‘discrimination by subterfuge’) and said that:

Where any conduct, practice, requirement, or condition that is not apparently in contravention of any provision of [this Act] has the effect of treating a person or group of persons differently on the prohibited grounds of discrimination in a situation where such treatment would be unlawful under any provision of this...Act...that conduct, practice condition or requirement shall be unlawful...unless the person whose conduct or practice is in issue...establishes good reason for it.

• Section 73 (1) retained the ‘measures to ensure equality’, permitted under the Race Relations Act 1971 and the Human Rights Commission Act 1977.

The Human Rights Act 1993 was thus the major piece of anti-discrimination legislation in place during the 1990s. It was complemented by the New Zealand Bill of Rights Act 1990, Section 19 (1) of which stipulated that everyone had the right not to be discriminated against by the state on the grounds of (among other things) ethnic or
national origin, race, colour, religious or ethical beliefs. Further, Section 19 (2) stated:

Measures taken in good faith for the purposes of assisting or advancing persons or groups of persons disadvantaged because of colour, race, ethnic or national origins...religious or ethical belief do not constitute discrimination.

As it was a relatively new Act during the 1990s, and as the non-discrimination provisions contained within the Act were similar in some important respects to those contained within the Human Rights Acts of 1977 and 1993, case law citing the Bill of Rights Act in relation to immigrant minorities was relatively undeveloped throughout the 1990s. Fifteen months after its introduction, neither Section 19 (freedom from discrimination) nor section 20 (rights of minorities) had been invoked in relation to the rights of immigrant minorities. Most complaints relating to discrimination against immigrants during the 1990s invoked the Race Relations Act 1971, or, after 1993, the Human Rights Act which replaced it.

While the Bill of Rights Act 1990, the Human Rights Act 1993, and various international treaties to which New Zealand is a signatory formed the main source of legal protection against unfair discrimination in the New Zealand during the 1990s, there were a number of other statutes which explicitly prohibited discrimination on the grounds of race, ethnicity, colour, national origin, or belief system in particular situations. Such Acts provided for immigrant minorities a further protection against discrimination, and included:

- Section 28 (1) of the Employment Contracts Act 1991, which allowed an employee to take a personal grievance case against an employer who has discriminated on these grounds, and as such represented an alternative legal avenue to employee who considered they had been discriminated against. If discrimination was found to have occurred the complainant could seek reimbursement of wages, reinstatement and/or compensation.

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44 After the Human Rights Act was introduced in 1993 the Bill of Rights Act referred to the definition of the prohibited grounds of discrimination contained in the Human Rights Act.
• The Police Amendment Act 1989 Section 14 had a similar clause.

• The Hire Purchase Act 1971, Section 20(5) said that consent to a hire purchase arrangement ‘shall be deemed to be unreasonably withheld if it is withheld by reason only of the colour, race, or ethnic or national origins of any person.’

• The Property Law Act 1952 Section 33A (1) made it illegal to prohibit or restrict the transfer, assignment, letting, subletting, charging, or parting with the possession of the property or any part thereof, by any party to the disposition or his successor in title, to any person by reason only of the colour, race, or ethnic or national origins of that person or of any member of his family.’

• The Residential Tenancies Act 1986 44 (4) stated that ‘...a landlord’s consent shall be taken to have been withheld unreasonably if it is withheld on the grounds of the colour, race, ethnic or national origins...or religious or ethical belief of any person.’

• The Broadcasting Act 1989 stated that it was a function of the Broadcasting Authority to ‘encourage the development and observance by broadcasters of codes of broadcasting practice appropriate to the type of broadcasting undertaken by such broadcasters in relation to ...safeguards against the portrayal of persons in programmes in a manner that encourages denigration of, or discrimination against, sections of the community on account of ... race ...or as a consequence of legitimate expression of religions, cultural or political beliefs’... (Section 21 (1) (e) (iv)). Those who felt a broadcaster had breached the code of broadcasting practice could appeal to the Broadcasting Standards Authority who would then investigate whether or not a breach has occurred.

• Section 3 (3) (e) of the Films, Videos and Publications Classification Act 1993 stated that material was objectionable if it:

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46 This list is intended to be indicative, not comprehensive.
represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic that is a prohibited ground of discrimination specified in section 21 (1) of the Human Rights Act 1993.

- Section 4 (a) of the Mental Health Act 1992 stated that none of the procedures prescribed in relation to the assessment and treatment of mental health patients shall be invoked in respect of any person by reason of their political, religious or cultural beliefs.

Legislation such as this protected individuals’ rights not to be unfairly discriminated against in these specific circumstances, and provided alternative avenues for those seeking legal action against an alleged act of discrimination. In such cases, the Human Rights Act, the Bill of Rights Act, common law, and international law could be used to strengthen the case.47

How effective was the framework of non-discrimination law outlined above in protecting immigrant minorities against discrimination? Legal analysis of anti-discrimination law remained under-developed during the 1990s, in part because the emphasis of the Human Rights Act 1993 was on conciliation rather than prosecution, with the result that the vast majority of complaints were handled by the Office of the Conciliator, and generated no common law at all. The conciliation process over which the Conciliator presided occurred in private, with most of the discussion and the deliberation process confidential to the parties concerned. During the seven year period between 1993 and 2000, only a very few cases were actually referred by the Proceedings Commissioner to the High Court. On the other hand, of course, the lack of legal proceedings relating to racial discrimination could be presented as evidence of the success of the conciliation process.

47 Although, in the case of an individual wishing to take a personal grievance against an employer on the grounds of racial discrimination, the Employment Contracts Act 1991 required that individual to make a choice between taking it under the ECA or the Human Rights Act 1993. They could not seek relief under both jurisdictions. The difficulty identified with this limitation by the Office of the Race Relations Conciliator was that ‘complainants can find themselves in the position of having
But protection of non-discrimination rights did not rest on the letter of the law alone. Also important was the ability of those responsible for implementing the law to be able to fulfil their role appropriately. Without adequate funding and resources those responsible for administering both the letter and the spirit of the law were compromised in their ability to do so. Some of the criticisms discussed below relate specifically to the letter of the law, while others concern the resources available to ensure compliance with the law.

\((i(a))\) Difficulties with Section 61 (exciting racial disharmony)

The Office of the Race Relations Conciliator, who had sole responsibility for administering Section 61, called it 'the most contentious and difficult provision of the 1993 Act':

The provision is directed at group defamation. In other words, the Office is unable to investigate if individuals are adversely affected. It should be extended to situations where words or conduct that are threatening, abusive or insulting to an individual because of his or her race could be deemed unlawful without the need to prove that other members of the same race are affected;

The Office also argued that the Act was made difficult by the requirement that, to be found in breach of the Act, a comment be considered 'likely to excite hostility or cause contempt', and they suggested replacing it with the requirement that a comment be 'seriously threatening'. This, they said, would bring the Act much closer to the statutes such as the Anti-discrimination (Racial Vilification) Amendment Act 1989 (NSW) which allows complaints to made in respect of acts of racial vilification.

The Office of the Race Relations Conciliator further commented that because the protections against racial disharmony contained in this section had to be balanced against the free speech protections contained in the Bill of Rights Act 1990, invoked one jurisdiction, perhaps inappropriately, but unable to resort to the other’. See the Office of the Race Relations Conciliator, *Post Election Briefing Paper, 1999*, p. 10.


prosecution under this section was difficult. Similarly, Section 63, 3 and 134 were considered difficult to work with.\textsuperscript{50}

\textit{i(b) Lack of protection against discrimination on the basis of language}

Neither the Bill of Rights Act 1990, nor the Human Rights Act 1993 specifically prohibited discrimination on the grounds of language. A person who wished to allege that they had been discriminated against for speaking, or being unable to speak, certain languages, was required to show that language could be inferred from one of the existing grounds within the Human Rights Act 1993 – either ‘race’ (s21(1) (f), or ‘ethnic or national origin’ (s21(1)(g)),\textsuperscript{51} or ‘indirect discrimination’ (s25).

A case in point here was Epsom Normal School’s 1995 decision to give itself discretion to turn down potential students who had been resident in the area for less than a year. If the students could speak English they were given entry; if they could not, entry was denied. The policy was introduced in response to the large number of non-English speaking background children attending the school. The school also began charging students with poor English skills extra tuition fees of up to $870 per annum as an ‘enrolment requirement’. Both policies prompted claims of discrimination to the Human Rights Commission and the Race Relations Conciliator.\textsuperscript{52}

Upon investigation the Race Relations Conciliator noted that the issue for the school was, at heart, one of funding, rather than language or race. A lack of funding to deal with the high level of non-English speaking background students had led both to the decision to exclude certain students, and the consequent perception, particularly in the Asian community, that the school was racially discriminatory.\textsuperscript{53}

Here was evidence of the crucial relationship between government funding and proper implementation of the law. Presumably, had Epsom Normal School been adequately

\textsuperscript{50} Conversation with the Office of the Race Relations Conciliator, October, 2000.
\textsuperscript{52} \textit{Ibid}, p.76.
funded to deal with the English language needs of non-English speaking background children they would not have introduced the measures they did. The school faced the numbers of non-English speaking background children as a direct result of the Government’s 1991 immigration policy which, although it radically altered the countries from which migrants came, had not been introduced in concert with provisions to cope with the language and cultural issues the new migrants both faced and posed. In other words, although the school’s decision clearly involved linguistic discrimination, the cause of that discrimination was to do with a lack of adequate government funding, and linguistic discrimination, and not to do with racial discrimination. Without a legal prohibition on linguistic discrimination, the students and their parents had limited legal redress in this situation.

Similar complaints of racial discrimination were laid with the Human Rights Commission and Race Relations Conciliator after an English language criterion policy was introduced by the Department of Immigration in 1993, where those non-principal applicants who did not reach a required level of English proficiency were charged a ‘bond’ of $20,000. Although the bond was refundable in part if a level of proficiency was acquired within a year, the majority of those affected by the bond, predominantly Asians, felt the bond was a form of racial discrimination, effected through linguistic discrimination. As noted below however, immigration law lay outside the Race Relations Conciliator’s jurisdiction.

There were good arguments for linguistic discrimination to be prohibited under the Human Rights Act. Indeed, the lack of specific protection against linguistic discrimination was noted as cause for concern by the United Nations Human Rights Committee, in their consideration of New Zealand’s Report on Human Rights under Article 40 of the United Nations Covenant on Civil and Political Rights in 1994. Mr. Ketzmer, of the UN Human Rights Committee, urged the New Zealand Government to bring the grounds for discrimination set out in the Human Rights Act 1993 in line with the grounds recognised in the Covenant which included a prohibition against discrimination on the grounds of language (Article 26). Such an approach, he said,

would ‘eliminate cases where an individual’s ability or lack of ability to use a particular language could be viewed as grounds for discrimination, unless knowledge of that language was a genuine requirement, in applying for a job for example.’

(i(c) Exceptions in law prohibiting discrimination in employment)

Human rights lawyers Mai Chen and Jerome Elkind have argued, separately, that the exceptions provided in the Human Rights Act clause prohibiting discrimination in employment left the way open for some unfair discrimination. Chen argued that the only grounds for exception to the prohibition on discrimination in employment should have been “Bona Fide Occupational Qualification”, and that many of the exceptions specified in the Act were not consistent with that of Bona Fide Occupational Qualification.

A 1998 case illustrated that the prohibition against discrimination on the grounds of national origin did provide good protection. The Human Rights Commission took a case on behalf of two South African qualified medical doctors against a decision by the Northern Regional Health Authority to hire only New Zealand trained doctors. In a significant judgement Justice Dame Sylvia Cartwright found that North Health’s policies infringed both the Human Rights Act and the Bill of Rights Act because the Authority indirectly discriminated against overseas-trained doctors on the grounds of their national origin.

On the other hand, a complaint of discrimination on the grounds of ethnic origin, made by a number of foreign doctors because their qualifications were not recognised by the Medical Council was not upheld by the Race Relations Conciliator. Looking to similar cases in overseas jurisdictions, including a case that had been taken to the European Court of Justice, it was found that the general view internationally was

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that this was not a matter of discrimination, but rather the right of a country to protect the safety of its citizens.\textsuperscript{58} The Race Relations Conciliator, aware that there was ‘still a lingering suspicion that an injustice had occurred, particularly given the fact that the doctors’ immigration had been facilitated by the fact that they had medical qualifications’, recommended instead that the matter be dealt with by an inquiry involving relevant bodies such as the Department of Labour, the New Zealand Qualifications Authority, and the Department of Immigration.

\textit{(d) Lack of protection against discrimination in the membership of clubs}

Chen and Elkind have also both argued that the areas where racial or ethnic discrimination are prohibited under the Human Rights Act need to be extended. Both, for example, have identified the failure of the Human Rights Act to prohibit discrimination in clubs as a unreasonable limitation of the law. Section 44 of the Act makes it unlawful for persons who supply “goods, facilities or services to the public or any section of the public” to discriminate with respect to their provision, but section 44(4) says “nothing in this section shall apply to access to membership of a club or to the provision of services or facilities to members of a club.”

The similarity of our law in this area to that of British law, Elkind argues, meant that New Zealand Courts could rely on a British case, \textit{Charter v Race Relations Board}, in which the House of Lords held that a private club which denied membership to an Indian man was not breaching the UK Race Relations Act. The Lords argued that because the club had a selection process, and could, if it wanted to, deny entry to a prospective member, it was not providing services to the public or even a ‘section of public’. ‘The fact that the applicant was the only person ever denied membership and the fact that he was denied membership specifically because he was Indian did not place the club within the terms of the Act.’\textsuperscript{59}


Chen’s suggested remedy to this situation in New Zealand would be to include a new type of area, called an area of “public opportunity”, in the Act. Discrimination in areas of public opportunity would be prohibited, and clubs would be defined as such an area.60

Others, however, such as Janet McLean, argue that equality of treatment as a value sometimes competes with other values. In the case of determining club membership she argues another highly held value predominates: that of freedom of association. Section 44 (4) protects freedom of association by allowing clubs to determine who they should have as members, but disallowing them from discriminating amongst their members.61 However, until a case is heard in which Section 44 (4) is cited, the question of whether the section allows invidious racial discrimination remains unsettled.

i(e) Cumbersome requirements in the protections against discrimination in the area of access to public accommodations or transport

Section 134 of the Human Rights Act 1993 made it an offence to refuse access to certain public accommodations or vehicles of public transport by reason of colour, race, or ethnic or national origins. Persons who wished to claim they had experienced a breach of this section could make a complaint to either the Race Relations Conciliator, or to the police. If they chose the latter route, however, the consent of the Attorney-General was required for a prosecution to proceed. The same requirement existed under section 24 of the Race Relations Act 1971, and section 24 was never used.62 The requirement that a complainant seek the consent of the Attorney-General made this section of the Act overly cumbersome, effectively limiting availability of the right to take legal action against this form of discrimination.

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62 Elkind, p. 236.
i(f) Human Rights Act and Race Relations Conciliator have no jurisdiction over
immigration law

Section 153 (3) (a) of the Human Rights Act stated that ‘nothing in this Act shall
affect any enactment or rule of law, or any policy or administrative practice of the
Government of New Zealand, that relates to immigration.’ This section thus gave the
New Zealand government discretion to operate a discriminatory immigration policy if
they wished to do so. There are many good reasons why the Government might have
wanted to discriminate among prospective immigrants. Nonetheless, the Race
Relations Conciliator expressed concern that Section 153(3) was ‘too widely drafted’,
and that it was important that the Conciliator be able to address discrimination which
affected migrants.63

i(g) Human Rights Act and Race Relations Conciliator have no jurisdiction over
complaints made by non-citizens

Section 153 (3) (b) further stated that ‘nothing in this Act shall affect any enactment
or rule of law, or any policy or administrative practice of the Government of New
Zealand, that distinguishes between New Zealand citizens and other persons, or
between British subjects or Commonwealth citizens and aliens.’ Section 153 (3) (b)
thus denied non-Commonwealth, non-citizen residents in New Zealand access to some
of the human rights provisions of the Human Rights Act and the redress provided by
the Race Relations Conciliator.

i(h) Societal and Structural Discrimination

So far the discussion has been concerned with the legislative framework which set
down ethnic minority individuals’ right not to be discriminated against. However, the
Race Relations Conciliator from March 1996, Rajen Prasad, and Mai Chen have
argued that while anti-discrimination laws existed to address individual grievances,
more action was needed to address discriminatory attitudes within society and
structural forms of discrimination. Chen suggested a move towards systems of
‘incentives for not discriminating’ as a way to begin addressing structural

63 Office of the Race Relations Conciliator, Post Election Briefing Paper, December 1999

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discrimination, and, like the Race Relations Conciliator, emphasised the very important role public education about discrimination has in limiting it.

The Race Relations Conciliator thought it particularly urgent that a new race relations ‘agenda’ or ‘framework’ be developed for New Zealand. In his first (1996) Annual Report of the Office of the Race Relations Conciliator Dr Prasad wrote:

The rapidly changing social and demographic terrain in New Zealand impacts on our race relations. While New Zealand has followed policies of assimilation and integration at different points in its history, there is no agreed national agenda or strategy for race relations that is well understood and widely accepted. Much of the current debate on race relations vacillates between the promotion of biculturalism or multiculturalism, with the two often depicted as polar opposites. There are widely different understandings of these terms and as such they are problematic as representations of the national race relations agenda.65

He further argued that the development of a race relations agenda would need to identify specifically the ‘race relations’ goals of government, and spell out the rights of Maori, Pakeha and non-Maori, non-Pakeha. Space needed to be made available for a range of different cultural groups to ‘celebrate their own cultures and traditions while participating in New Zealand as citizens.’

The juxtapositioning of biculturalism and multiculturalism has not been helpful and has been seen as undermining the aspirations of tangata whenua. It has also been argued that when the country had resolved its bicultural relationships, it would then turn to its multicultural relationships. This strategy asks a culture to stay frozen until others are ready to negotiate its relationship with them. In the meantime many cultures have established themselves in New Zealand and are already part of the cultural mosaic of New Zealand. Rather than keeping them waiting, a multi-ethnic agenda begins to celebrate the cultural diversity that is already part of New Zealand.66

In 1999 the Race Relations Office held a series of nation-wide meetings with interested groups as a first step in developing a race relations ‘agenda’, entitled Agenda New Zealand. However, in June that year Agenda New Zealand ran into precisely the confrontation between biculturalism and multiculturalism Prasad had

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been concerned about. Tau Henare, who had retained his portfolio of Minister of Maori Affairs after New Zealand First left the coalition in 1998, made explicit his feelings towards not only multiculturalism, but the rights and status of other ethnic minorities in New Zealand by attacking Agenda New Zealand and Prasad himself. The Agenda was, according to Henare, an ‘invitation for people to vote for multiculturalism’ and an attempt by the Race Relations Conciliator to ‘change our constitution under the covers’. The Race Relations Office should, Mr Henare concluded, be closed because it did not give priority to Treaty of Waitangi issues.67 While the Prime Minister, Jenny Shipley, was quick to dismiss Henare’s comments, her Government was reliant upon the continuing support of the ex-New Zealand First MPs, including Henare, and Agenda New Zealand was never presented to Cabinet during 1999 as it was supposed to have been. In this instance it was clear that the interests of immigrant minorities in New Zealand had fallen victim both to a zero-sum play-off between the interests of Maori and other ethnic minority groups, and to the power given to minority parties under the new proportional electoral system.

Questions of the Government’s commitment to improving race relations also arose in relation to funding of the Race Relations Office. Repeatedly throughout the 1990s Prasad, and his predecessor, John Clark, complained that the Office was severely under-funded.68 Clark had stated in 1995 that:

The simple fact is that the effectiveness of the work done [of the RRC] is dependent on proper funding being made available. Race Relations Conciliators have for years endeavoured to obtain appropriate funding for the Office. Although some extra funding was made available in the 1993/4 year this was, in my view, still clearly insufficient to enable the work of the Office to be carried out as it should be.69

The 1996 Annual Report of the Race Relations Conciliator reported that the Office was under-funded by $500,000, and Dr Prasad argued that the funding shortfalls had

severely constrained the ability of the office to develop and promote effective education campaigns.

By the end of 1999 the Office of the Race Relations Conciliator still felt that underfunding was limiting the ability of the Office to carry out its functions, particularly with regard to education, as widely as it should.

...there is a growing awareness that much more could be achieved with even a slight improvement in resourcing. Although the workload has increased almost four-fold over the past decade the funding has remained static. This is the critical issue which now faces the Office.70

In the face of increased level of immigration from non-traditional sources such as Asia during the 1990s, and the potential for racial disharmony this posed, the National and National-Coalition Government’s failure to adequately fund the Office of the Race Relations Conciliator, combined with its lack of overt support for Agenda New Zealand, meant that it did less than it could have done to protect immigrant minorities in New Zealand from the effects of unfair racial discrimination.

Despite the shortcomings New Zealand’s anti-discrimination law, detailed above, it must also be noted that the Race Relations Office described the anti-discrimination law in New Zealand as ‘generally sound’71. It also commented, however, that the Human Rights Act 1993:

...on the one hand deals with delicate and sensitive interpersonal relationships and on the other, with denials of basic rights and freedoms. It is at the heart of social justice and human rights issues. Because of this, such legislation requires continuous review. It cannot be left on the statute books and left to fend for itself as it can easily become outdated.72

This comment highlighted the Race Relations Office’s view that the Government needed to be responsible for more than simply the passing of anti-discrimination legislation if it wished to be effective. It needed also to keep a close eye on the effectiveness of the law and identify barriers to its proper implementation. In these respects the National and Coalition Governments of the 1990s did not do enough to

70 Office of the Race Relations Conciliator, Post Election Briefing Paper, December 1999
ensure that the body entrusted with the statutory duty to fight racial discrimination (the Race Relations Conciliator) was adequately funded to do the job, one part of which was to comment on the law and its effectiveness.

(ii) The right to an interpreter or translator

The inability to understand the language of law is a major obstacle facing linguistic minority individuals in attempting to access their civil rights. International law protected the rights of linguistic minorities facing criminal charges to gain access to an interpreter (but not written translations) in the International Covenant on Civil and Political Rights, Section 3 (f) of Article 14 of which specified:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
   (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

In New Zealand the statutory right to an interpreter was provided in some, but not all, areas of public life. Sections 21 to 27 of the New Zealand Bill of Rights outline legal rights and freedoms, under the heading Search, Arrest and Detention. Section 23 stated that those arrested and detained by the police:

(a) Shall be informed at the time of the arrest or detention of the reason for it; and
(b) Shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and
(c) Shall have the right to have the validity of the arrest or detention determined without delay of habeas corpus and to be released if the arrest or detention is not lawful.

The police, as those who arrest and detain, had special responsibilities designed to ensure these rights are protected. In this they were guided by the procedures set out in the police Interviewing Suspects: Policy and Procedural Guideline. Section 9, entitled, ‘Suspects requiring special consideration’, required the police to use interpreters in interviews if there was a communication difficulty.73

See for example Police v Macklin[1989], Sinclair v R [1946], R v Curry [1990], for
Section 24 (g) of the Bill of Rights Act specifically stated that everyone who was charged with an offence had the right to have the free assistance of an interpreter if they did not understand or speak the language used in court. There was, however, no automatic right for witnesses to have interpreters. Such provision was left to the discretion of the judge.

It could also be argued that the right to an interpreter was implicit in several other sections of the Bill of Rights dealing with an individual’s rights before the law:

(i) s24(a): the right to be informed promptly and in detail of the nature and cause of the charge;
(ii) s24(c): the right to consult and instruct a lawyer;
(iii) s24(d): the right to adequate facilities to prepare a defence;
(iv) s25(e): the right to be present at the trial and to present a defence;
(v) s25(f): the right to examine the witnesses for the prosecution;
(vi) s27: the right to observance of the principles of natural justice.

The way in which these sections could be understood to provide the right to not only an interpreter, but also written translations, was illustrated in a judicial review in the High Court of Alwyn Industries Ltd and Kar Wong v The Collector of Customs (1996.) The applicant, Kar Wong was a naturalised New Zealander, but his operational language was stated as ‘Cantonese or Mandarin’. He and his company, Alwen Industries, were facing 67 charges of illegal importations of goods into New Zealand under the Customs Act. Mr Kah Wong filed a motion in 1995 seeking that all the briefs of evidence supplied by the Collector of Customs be provided in written cases where it was argued evidence should not be admitted in court if the accused was incapable of understanding police questioning. See also R v Butcher [1992], R v Cullen [1992], R v Kirifi [1992], R v Mallinson [1992], r v Dobler [1992], r v Ngahre, R v Tunui, [1992], for comments by judges on the need for suspects to understand rights conferred under section 23 of the New Zealand Bill of Rights Act 1990 for evidence to be admitted in court. (Source: Kasanji, Lalita, Let’s Talk. Guidelines for Government Agencies Hiring Interpreters, Department of Internal Affairs, Wellington, 1995, p. 31)

However, Article 14 3 (e) of the International Covenant on Civil and Political Rights stated that everyone charged with a criminal offence should be entitled to ‘examine, or have examined, the
Chinese. The District Court Judge who heard the application declined to make the order, indicating that English was the operative language in New Zealand and that there was therefore no obligation on the respondent to provide a translation.

The applicant applied for a judicial review in the District Court. The trial was expected to last up to four months, and as was usual practice in long trials, an arrangement had been reached whereby the plaintiff would supply ahead of the trial a brief of evidence in order to expedite the hearing. Mr Kar Wong was unable to communicate with his solicitors in English, and had the assistance of an interpreter at all times. The question then arose as to whether it was possible for the applicant to 'meaningfully instruct' counsel or to be 'meaningfully present' in court with only an oral translation of evidence at the trial. Counsel for the applicant claimed that a refusal by a District Court Judge to require the written evidence to be presented by the prosecution during the trial to be translated into the applicants' language (Chinese) constituted a denial of the applicant's rights under the NZ Bill of Rights Act, citing the above sections of the Act (along with Section 24, and the Human Rights Act 1993). What the applicant wanted was for all the evidence to be translated into Chinese in order that he might familiarise himself with the written evidence before the trial and instruct his counsel accordingly.

In considering the application Justice Robertson looked to the case of US v Mosquera in which the judge stated:

Oral interpretations and written interpretations serve very different purposes. While an oral interpretation can provide momentary understanding of representations contained in a document, a criminal defendant may need and want to review the document alone and with others to achieve a full understanding... Without written translations they would have to rely on their memory of an oral interpretation that occurred under circumstances where they might feel ill-at-ease and have difficulty concentrating.

witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him'.

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The judge also stated that the defence might be compromised if a client could not contribute adequately at the pre-trial investigation stage because of failure to understand the evidence relied upon by the prosecution. In his Judgement Justice Robertson found that 'the applicant...has a right to have the relevant material translated in accordance with the purposive interpretation of the Bill of Rights Act 1990 which has been adopted and applied by the Court of Appeal.' This was a significant finding with implications for future cases in which the witnesses or defendants do not speak English.

A potential alternative avenue for expediting the exercise of linguistic minorities' right to an interpreter was to be found in Section 65 of the Human Rights Act 1993. This Act – as we have seen – did not prohibit discrimination on the grounds of language, but it did, in section 21, prohibit it on the grounds of either race or ethnic or national origin. Given that the inability to understand English was often a direct consequence of nationality, there was room to argue that refusal to provide an interpreter could in some cases lead to 'indirect discrimination'. Section 65 of the Human Rights Act 1993 could allow such arguments to be made. 65. Indirect discrimination - Where any conduct, practice, requirement, or condition that is not apparently in contravention of any provision of this Part of the Act has the effect of treating a person or group of persons differently on one of the prohibited grounds of discrimination in a situation where such treatment would be unlawful under any provision of this Part of the Act, other than this section, that conduct, practice, condition, or requirement shall be unlawful under that provision unless the person whose conduct or practice is in issue, or who imposes the condition or requirement, establishes good reason for it.

So the two major domestic pieces of human rights legislation guaranteed the right to an interpreter at least in some situations, even if the right was not specified. A number of alternative legal avenues were also available, which stated the right to an interpreter in other specific circumstances:

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75 Judgement of Justice Robertson, High Court of Auckland, 24 April 1996, M 1402/96.

76 Kasanji, 1995, p.29.
The right to an interpreter was explicitly provided by the Children, Young Persons and Their Families Act 1989. Section 9 (2) (a) and (b) stated that where the first or preferred language of a child or young person appearing before the Children's Court or family group conferences, or their parent or guardian, is not English, that the services of an interpreter be provided for the child and/or the parent or guardian.

Sections 9 and 10 of the NZ Bill of Rights Act 1990 stated that everyone has the right not to be subjected to medical or scientific experimentation without consent, and the right to refuse to undergo any medical treatment. To ensure this right was equally available to non-English speakers in New Zealand Section 20 (d) of the Health and Disability Commissioner Act 1994 stipulated that interpreters be provided where they were needed in order for patients to give informed consent.

The Mental Health (Compulsory Assessment and Treatment ) Act 1992, Section 6 made it the duty of the court or tribunal or person exercising power over a patient to ensure that wherever possible the services of an interpreter were provided for a patient whose first or preferred language was not English.

The ability to understand English was important in another respect. New Zealand citizens were not only invested with certain civil and political rights, they also faced certain citizen obligations, such as the obligation to pay income tax, to register on the electoral roll if eligible to vote, and to serve as a juror when requested to do so. Failure to comply with these citizenship obligations could result in prosecution or other disciplinary action. Citizens were excused from serving on a jury if they did not have an adequate understanding of the language of the court, but failure to reply to a Jury Summons, could result in a fine of up to $300 (although this penalty was only very rarely applied). In this respect New Zealand performed well, in that it provided potential jurors with information about Jury duty in a number of languages.

To assist non-English speaking New Zealanders to comply with NZ tax laws the Inland Revenue Department established in 1996 a bilingual interpretation service on a three month trial basis. The policy developed in response to the demand from ethnic
groups for easier access to tax information. The bilingual interpreters were accessed through an 0800 number, trained in NZ tax policy, and able to provide information and answer questions about tax policy in eight different languages, including Cantonese and Mandarin. If the question could not be answered by the interpreter, a three-way service with a third person expert in the particular taxation area was available. The interpreter helped the IRD and the person making the query communicate. However, this service was discontinued before the year was up after a decision at management level to stop allocating funds for the project, despite the fact that the service was found to be effective and well-utilised. The reasons for discontinuing the service were financial ones. Linguistic minorities could have been assisted to comply with their legal obligations under tax laws, had more funding been available to keep the interpretation service open.

The provision of an interpreter or translator was protected by statute in some, but not all areas, and that the law in this area was evolving during the 1990s. This seemed to be indicative of general government policy in relation to the language needs of non-English, non-Maori speakers. The sense that government policy was uneven and ad-hoc in this area was borne out by the preliminary findings of a study carried out by Alison Hoffman and Steven Chrisp of the English Language Institute at Victoria University. Hoffman and Chrisp surveyed over 100 government agencies in early 1997 about their provision of services in languages other than Maori and English. Around 80 percent of the agencies surveyed said they had no policy with regard to the provision of across-the-counter, telephone, or written services in languages other than English. The survey did find a willingness to respond to need on a case-by-case basis, but such decisions were usually left to the discretion of government officials. As Hoffman and Chrisp pointed out, it did 'not appear to be a service which individuals have access to as a right'. In other words, the right to an interpreter or translator was not adequately carried into administrative practice by New Zealand law. Those who could not speak English during this period may have been limited in their ability to

78 Ibid, p.208.
access the civil rights to which they were entitled. This was in part a reflection of the fiscal restraints under which Government was operating, and in part a reflection of general failure by the Governments of the day to acknowledge the crucial relationship between language and access to the law.

(iii) The protection of minorities' freedom of thought, conscience and religion

Ethnic minorities were among those New Zealanders who belonged to minority religions and participated in associated religious practices. Religious freedom was protected in a number of international instruments including the International Covenant on Civil and Political Rights, Article 27 of which stated:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Religious freedom was also protected in a number of pieces of domestic legislation including:

- The New Zealand Bill of Rights Act 1990, Section 13 of which stated:

  Everyone has the right to freedom of thought, conscience, religion and belief, including the right to adopt and hold opinions without interference.

Section 15 stated:

  Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or private.

\[\text{Ibid, p.208}\]
Section 23 (3) of the Human Rights Act 1993 stated that employers must ‘accommodate the religious practices of employees so long as these do not unreasonably disrupt the employer’s activities’.

A number of other acts specified ways in which those carrying out public duties or roles could carry out their duties in such a way as to preserve the rights of individuals to freedom of thought, conscience and religion.

- Section 25A (2) (a) of the Education Act 1989 stated that a school principal could release a student from attending a particular class or subject at school if ‘the parent has asked because of sincerely held religious or cultural views.’

- The Adoption Act 1995 made it possible for the Court to exempt adoptive parents from the requirement that the child they adopt be given both a surname and one or more ‘given’ names, if the court was satisfied that it is ‘contrary to the religious beliefs or cultural traditions’ of the adoptive parents for the child to bear a given name.

- Similarly, the Births, Deaths and Marriages Registration Act 1995 made allowances for the ‘religious or philosophical beliefs, or cultural traditions’ of people who did not wish to register a first name for their child.

- The Coroners Act 1988 section 8 (e) and (f) required a coroner, when deciding whether or not to authorise a doctor to carry out a post-mortem examination, to have regard to the ‘desirability of minimising the causing of distress to persons who, by reason of their ethnic origins, social attitudes or customs, or spiritual beliefs, customarily require bodies to be available to family members as soon as possible after death’; or ‘find the post-Mortem examination of bodies offensive.’

- The Mental Health Act 1992 section 5 stated that:

> Every court or tribunal that conducts any proceedings, and every court, tribunal, or person that or who exercises any power, under this Act in respect of any patient shall do so—

> (a) With proper respect for the patient’s cultural and ethnic identity, language, and religious or ethical beliefs;
The first three statutory provisions noted immediately above may also be understood as legal exemptions, in that they allowed individuals who belong to minority religious or cultural groups to be exempt from a law in those circumstances where to apply that law to them would require them to act in a way that was contrary to their religious or cultural beliefs. Thus, New Zealand legislation protected both the general, and in some areas, specific, rights of minorities to freedom of conscience, thought and religion.

(iv) Protection of the rights of ethnic minority children

The International Convention on the Rights of the Child contained a number of provisions of specific relevance to immigrant minority children. Article 14 affirmed the rights of the child to freedom of thought, conscience and religion. Article 20 stated that where a child is to be removed from its family environment due regard should be paid to the child’s ethnic, religious and linguistic background. Article 28 stated that a child should be educated to develop respect for his or her own cultural identity and language. Article 30 specified the rights of ethnic, religious or linguistic minority children.

New Zealand signed the International Convention on the Rights of the Child in 1990, and ratified it in 1993. The international obligations it imposed on New Zealand were given force in domestic legislation, most comprehensively in the Children, Young Persons and Their Families Act 1989, which contained a number of requirements that regard be given to the ethnic and cultural needs of the children or young people dealt with under the Act.

Section 7 of the Act made it the duty of the Director General of the Children and Young Persons Service to ensure that policies and services of the Department ‘recognise the social, economic, and cultural values of all cultural and ethnic groups.’ Section 13 (f) (iii) and 13 (g) (i) of the Act stated that where a child or young person was to be removed from their family, whanau, hapu, iwi and family group, and could

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80 See pages 53-54 of this thesis.
81 For a fuller discussion of the protections of religious freedom afforded by the Human Rights Act, see Huscroft and Rishworth, 1995, chapter 7.
not be returned there... 'the child or young person should live in a new family group, or (in case of a young person) in an appropriate family-like setting, in which he or she can develop a sense of belonging, and in which his or her sense of continuity and his or her personal and cultural identity are maintained', and that that child or young person should, where possible be given into the care of a person who was a 'member of the child's or young person's hapu or iwi ... or, if that is not possible, who has the same tribal, racial, ethnic, or cultural background as the child or young person'.

Likewise, section 146 (1) (d) (i) allowed the Court before which a young person was appearing to hear about the 'heritage and the ethnic, cultural, or community ties and values of the child or young person...' and 187 (1) (a) required the Service to specify formally the 'educational, social, cultural, and religious needs of the child or young person'. Also worth mentioning, were the Residential Care Regulations (1986) and the Residential Code of Practice (1991), which stated that any young person detained in the care of the Director General of Social Welfare would be treated as an individual whose rights and dignity should be acknowledged and respected, and that allowances should be made for his or her differing cultural backgrounds.

While the Children, Young Persons and Their Families Act 1989 provided important protections for the rights of children and young people, the Children and Young Persons Service, whose responsibility it was to protect children under the Act, received considerable criticism for failing to do so throughout the 1990s. Primarily, the Service's defence was that it had been consistently under-funded.82 If this was true, then clearly the protections provided by law were reduced when resources required to implement that law were insufficient. Under-funding in the social services areas thus adversely affected minority children's access to their civil rights during this period.

82 See 'Children have no voice, powers, hope', in The Press, 11 July, 1997, p.3.
(v) The rights of ethnic, national, religious or ethnic minorities

In 1992 the United Nations General Assembly Declaration proclaimed, by consensus, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. This Declaration required states to protect the existence and identity of minorities, and to adopt legislative and policy measures to do so (Articles 1 and 2). Of particular relevance to this discussion is Article 4 (1), which says 'states shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law'. The Declaration additionally required states to provide opportunities for ethnic minorities to learn their mother tongue (Article 4(3)), and to 'participate in fully in the economic progress and development in their country' (Article 4 (5)).

New Zealand, along with all other states present, assented to the adoption of this Declaration. In its incorporation into domestic law, however, the positive right to 'opportunities for ethnic minorities to learn their mother tongue' outlined in the Declaration, became in Section 20 of the New Zealand Bill of Rights Act 1990, the negative right not to be denied the right to use a mother tongue:

A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practice the religion, or to use the language, of that minority.

The positive right suggested by the Declaration would involve the provision of language classes for all linguistic minorities, a commitment to which the New Zealand Government was clearly reluctant to legally bind itself.

(vi) Protection of the rights of refugees

The two main international instruments outlining the rights of refugees were the 1951 UN Convention Relating to the Status of Refugees and the 1967 UN Protocol relating to the Status of Refugees. New Zealand was a signatory to both. There was however no domestic legislation relating to refugees in New Zealand, although this was a
matter under policy consideration in 1998.\textsuperscript{83} The UN Convention specified some important protections of the rights of refugees. Article 33 of the Convention contained the provision of "non-refoulment", by which governments undertook not to return a refugee, in any manner whatsoever, to a country where the refugee's life would be threatened for a reason defined under the Convention.\textsuperscript{84}

Article 4 stated: 'The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.'

Article 16 stated:

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

To fulfil its obligations under the 1951 Convention on Refugees New Zealand operated an annual quota under which it would accept up to 800 refugees (reduced to 750 in 1997)\textsuperscript{85}. The determination as to whether an individual meets the criteria of a 'refugee' was carried out by the United Nations High Commissioner for Refugees, who then recommended to New Zealand certain individuals it should accept as refugees.

\textsuperscript{83} Discussion with New Zealand Immigration Service Official, 18.3.98.
\textsuperscript{84} New Zealand Immigration Service, 'Refugee status in New Zealand - Policy', Policy paper Pol 4-1, 2/96, 1 (c).
\textsuperscript{85} The quota was reduced in the 1997/1998 fiscal year because at that time the New Zealand Government assumed financial responsibility for the travel of quota refugees to New Zealand.
The procedures for treatment of asylum seekers (those who arrive in New Zealand seeking refugee status, but not under the aegis of the United Nations High Commissioner for Refugees) were determined by the New Zealand Immigration Service, via a two-stage process. The Refugee Status Section of the Immigration Service made an initial determination, after which asylum seekers had an automatic right of appeal to the Refugee Status Appeal Authority, a body established by Cabinet, and which operated under terms of reference, processes and procedures endorsed by Cabinet. The UN Human Rights Committee noted with approval in their consideration of New Zealand's April 1995 Report on Human Rights, that a representative of the Human Rights Commissioner attended hearings of the Refugee Status Appeal Authority.86

During the period when their case was under consideration asylum seekers were granted special assistance by the government. They received legal aid for the presentation of their case to the Refugee Status Appeal Authority and help in accessing employment, health, education and social welfare.87

Conclusion

Taking its cue from the developing framework of international human rights law New Zealand had by the end of the 1990s built up a solid body of law to protect the civil rights of those within its jurisdiction. It had a legal system premised on the assumption of legal equality among all citizens, and in which non-citizen residents had virtually the same civil rights as citizens. It had also incorporated within its statute law a wide

87 Ministry of Foreign Affairs and Trade, Elimination of Racial Discrimination, 10th and 11th Report of the Government of New Zealand, Human Rights Series, No. 1, May 1996, Wellington, p.45. The case in 1997 of an Irish asylum seeker, Danny Butler, who was sent back to Ireland after his appeal had been declined by the Refugee Status Appeal Authority highlighted a perceived need for legislative provisions to cover such cases. (See 'Tough line taken on illegal arrivals', The Dominion, 26.1.98, p.2.) The fact that Danny Butler remained in New Zealand for seven years while his case went through the appeal process prompted Max Bradford, Minister of Immigration, to limit the appeal process to around six to nine months in 1998. Financial concerns, as well as legal ones appeared to underlie this decision. The Minister's office estimated the costs associated with benefits paid to asylum seekers to be in excess of $8 million a year. See Minister of Immigration, Press Release, December 1997.
range of provisions designed explicitly to ensure that minority status did not translate into an unintended inequality before the law. This legal protection of equality, and New Zealand's favourable human rights record no doubt helped persuade many migrants that New Zealand would be a good place to live in.

Nonetheless, this chapter has argued that there are a number of ways in which the civil rights of non-Maori ethnic minorities in New Zealand could be further protected. One of the most significant areas of need is language policy. Many ethnic minority individuals, especially those who are first generation immigrants to New Zealand experience difficulty with the English language. The inclusion within the Human Rights Act of a prohibition against linguistic discrimination would perhaps be worthy of examination in future.

A related area is that of the right to an interpreter or translator. The finding of Justice Robertson in Alwyn Industries Ltd and Kar Wong v The Collector of Customs was a positive legal development in terms of protecting the legal rights of non-English speakers in court, but the discretion given to judges as to whether to provide translation and interpreting services for witnesses appearing before them requires examination. Likewise, the uneven and unregulated provision of interpreters and translators within government departments and agencies increases the risk of uneven access by non-Maori minorities to public services provided by government agencies.

The inclusion of a prohibition against linguistic discrimination within the Human Rights Act would assist with this last point. But great improvements might also have been made in the way in which public policy relating to ethnic minorities was developed. Clear articulations of the difficulties encountered by non-English speaking background people might have helped identify legal barriers to their equal treatment before the law. Unfortunately the agencies most likely to carry out such work, the Ethnic Affairs Service of the Department of Internal Affairs, and the Race Relations Office, consistently reported under-funding as a barrier in the carrying out of their roles. The decision to halt the Consistency 2000 project also represents a lost
opportunity for New Zealand to assess thoroughly its existing laws and regulations for their impact on the civil and political rights of non-Maori ethnic New Zealanders.

The Human Rights Act 1993 was criticised for failing to protect against some forms of discrimination in employment, and for not prohibiting discrimination in clubs. These remain areas of New Zealand law that need to be given some consideration. The impact of Section 153 (3) (a) and (b) of the Human Rights Act on those New Zealand citizens and residents who wish to assist family and friends to immigrate to New Zealand likewise needs to be assessed.

These were some of the specific shortcomings that could be identified in New Zealand law. There were, however, a range of wider issues to be addressed. Some of these were to do with the environment in which New Zealand law was developed, enacted and carried out. With the increasing ethnic diversity of New Zealand’s population there was a need for those who develop and enact legislation to be aware of the differential way in which laws may impact on different ethnic groups within the community. During the 1990s, the main source of policy advice regarding the legal interests of non-Maori ethnic minorities came from the scaled-down Ethnic Affairs Service, and the Ministry of Pacific Island Affairs. The Justice and Law Reform Select Committee, charged with examining prospective law changes, and receiving submissions on such changes, was simply governed by the Standing Orders, which contained no requirement that the interests of ethnic minorities be taken into account in the drafting of legislation.

The Australian Advisory Council on Multicultural Affairs gave some consideration to the need for a greater understanding of the impact of ethnicity on equal treatment before the law in its discussion paper Towards an Agenda for Multicultural Australia in 1988. They identified a need for ‘professionals working in the area of law to be more responsive and sensitive to cultural diversity’, and the need for ‘professionals working within the legal system to be trained to understand the cultural barriers that they are likely to encounter in their practice’.88 Had the race relations ‘Agenda’

developed by the Race Relations Conciliator 1999 not have been effectively stonewalled by the National-Coalition Government in 1999, it might have gone some way towards articulating similar concerns to those expressed in by the Australian Advisory Council on Multicultural Affairs. It might also have heightened awareness of the specific legal issues faced by non-Maori ethnic minorities.

Also relevant to immigrant’s’ enjoyment of their civil rights is the relationship between access to civil rights and access to social rights. Over the 1990s New Zealand economic and social policy accorded market mechanisms a greater role in determining social and economic outcomes, progressively reducing the government’s commitment to social and economic equality. Yet poverty, lack of education, transport, or fluency in an official language, and lack of adequate participation in society may all reduce an individual’s ability to access their formally equal civil and political rights. Where social and economic policies had a disproportionately adverse impact on ethnic minorities, as some policies have been demonstrated to do, a much greater potential existed for the civil rights of ethnic minorities to be effectively curtailed. There was therefore a need for greater examination of the differential impact of social and economic policies on non-Maori ethnic minorities, especially Pacific Island minorities. New Zealand committed itself to providing its citizens with social and economic rights when it signed the International Covenant of Economic, Social and Cultural Rights in 1968.

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In conclusion, an examination of the law as it protected the civil rights of minorities in New Zealand reveals a law that was on the whole robust in its protections. The National Government contributed significantly to the protection of the civil rights of immigrant minorities through the introduction of the Human Rights Act 1993. The law, however, as the Race Relations Office pointed out, is a living thing, requiring governments to keep a close eye on it to ensure it is responding adequately to the changing needs of society. The National and Coalition Governments of the 1990s demonstrated a fairly indifferent attitude towards addressing the specific barriers to their civil rights experienced by the rapidly growing number of immigrant minorities. One of the most significant barriers identified in the discussion above was the lack of adequate funding for various government agencies responsible for meeting the civil rights of immigrant minorities: the Office of the Race Relations Conciliator, the education system, various public welfare agencies, and the Inland Revenue Department. Overcoming the barriers required more than just strong legal protections of civil rights; it required a commitment by Governments to identify and remove such barriers.

It should probably be acknowledged that New Zealand faced these issues later than many other similar democracies in part because of the very narrow range of immigrants selected to come into the country before the late 1980s. After the introduction of the new points-based immigration policy in 1991, (itself designed to be non-discriminatory and internationalist in outlook), the ethnic minority component of the New Zealand population grew rapidly. This surely placed a responsibility on the National administration to remove existing barriers to the attainment of legal civil equality by ethnic minority groups in New Zealand. But, in keeping with its ideological commitment to neo-liberalism, the National and Coalition administrations of 1990-1999 were firmly of the view that what mattered most to individuals was that their negative freedoms be strongly protected and that they be allowed to get on and pursue their interests without interference from the state. Yet, clearly neither the letter of the law nor its spirit and implementation was purely neo-liberal. The provisions for 'measures to ensure equality' contained under Section 73 (1) of the Human Rights Act 1993, and 19 (2) of the New Zealand Bill of Rights Act meant that the Government
could operate positive discrimination programmes when desired, and, indeed, it did so in a number of areas. In this, the Governments of 1990-1999 recognised the important links between civil, political, social and cultural rights. However, whether this recognition was sufficient to enable immigrant minorities to access fully their citizenship rights and freedoms, and to fulfil their obligations as citizens, was debatable.

There is of course a dynamic relationship between the law and politics. The Government’s central role in the legislature means that the law develops at least in part as a result of political pressures. There is thus a relationship between civil rights and political rights. It is to the question of how well the political rights of immigrant ethnic minorities were protected during the 1990s that the next chapter turns.

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90 See Chapter Four of this thesis on New Zealand’s immigration policy.