

# 15

## The New Zealand Policy Agendas Project

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### 15.1 New Zealand's Political System

New Zealand comprises a set of small and geographically remote islands in the South Pacific. Today it has a population of nearly 4.7 million, with roughly 30 percent residing in and around the city of Auckland located on the North Island. Human habitation likely began around 1300 AD when people from Eastern Polynesia first reached the islands (Smith, 2012: 6–7). Their descendants, the Māori, know the country as *Aotearoa*, “land of the long white cloud.” British colonization formally began in 1840 when the Crown and various Māori representatives signed the Treaty of Waitangi. Over the course of the twentieth century, New Zealand's position with respect to the United Kingdom evolved as the country's independence was recognized and most vestiges of its colonial status were removed. New Zealand has experienced profound political, economic, and societal change in recent decades. Electoral reforms have tempered its strongly majoritarian political system, neoliberal reforms have revolutionized its once highly protected and regulated economy, and immigration from Asian countries is leading New Zealand to consider how it will reconcile its bicultural identity with an increasingly multicultural society.

New Zealand followed the British example and adopted a Westminster system of representative government in 1852. Three key features of this system endure to this day. First, the country remains one of only three in the world to lack a written constitution, despite periodic calls that one should be adopted (Joseph, 2007: 135).<sup>1</sup> Second, the British monarch continues to serve as New Zealand's head of state, though the governor-general performs the largely ceremonial duties of the office, doing so on the advice of the country's democratically elected government in all but the most extraordinary circumstances. It seems unlikely that New Zealand will decide to adopt a

republican form of government anytime soon. In 2011, 53.2 percent of those polled expressed support for the monarchy's retention (NZES, 2002–11). And finally, notwithstanding local government innovations to accommodate the burgeoning Auckland metropolitan area, New Zealand remains a unitary state in which local governments possess a "limited range of functions" and operate under "tight external and fiscal constraints" (Miller, 2015: 32).

As a result of electoral reform in the mid-1990s, New Zealand, once described as the world's "purest" Westminster system (Lijphart, 1984: 97), experienced "a radical shift away from the Westminster model" (Lijphart, 1999: 9–47). From 1914 to 1996, the country used a first-past-the-post (FPP) electoral system to elect members to its unicameral (since 1951) parliament.<sup>2</sup> This generated single-party governments with strong majorities. At a 1993 referendum, voters approved a proposal to replace FPP with a mixed-member proportional (MMP) system that affords voters two ballots, one for a single representative from the geographic electorate in which they reside (as under FPP) and another for a political party according to a closed party list (Vowles, 1998: 12–27). Using the Saint-Laguë method, the system operates to ensure that parties are allocated seats "roughly equivalent to their share of the party vote" (Miller, 2015: 88–94). In conjunction with the switch to MMP, the size of parliament was increased from 99 to 120 seats. The use of separate Māori-designated seats, a practice that dates from 1867, was retained. These seats have been gradually increased in number (Geddis, 2006), and today there are seven.

Since the first MMP election was held in 1996, two main consequences have followed. First, New Zealand's two-party system has evolved into a multi-party system, and second, no single party has won enough seats to form a majority government, though the center-right National Party came close in 2014. Scholars debate the magnitude of the change in New Zealand's party system. On one hand, Alan Ware (2009: 15) claims that the two-party system has "collapsed." Clearly, a wider range of political parties—among them the Green Party, Māori Party, and New Zealand First—routinely win parliamentary seats and play important roles in government. On the other hand, however, Raymond Miller (2015: 159) emphasizes the resiliency of the two major parties and characterizes the new multi-party system as "moderate" in nature. Consider that together the National Party and center-left Labour Party have, on average, received 71.3 percent of votes cast at the seven post-MMP elections. They have thus dominated the coalition and minority governments that have governed since 1996, and as a result, they continue to exert considerable control over the political agenda. Even so, the switch to MMP effected a significant change, depriving the executive of the "unbridled power" that it had once possessed (Palmer, 1979; Palmer and Palmer, 2004).

Two additional reforms merit mention. First, in 1990, New Zealand enacted a statutory bill of rights. The *New Zealand Bill of Rights Act* (NZBORA)

does not permit judges to invalidate contrary legislation, but rather judges are charged with interpreting laws in accordance with the Act's provisions.<sup>3</sup> In addition, the NZBORA requires the attorney-general (AG) to report to parliament on any bill that contains provisions that appear to be inconsistent with the Act's terms.<sup>4</sup> Such bills may nevertheless be enacted into law. As of March 2016, the AG has filed seventy such reports. A second reform was implemented in 2004 when the New Zealand Parliament abolished appeals to the Judicial Committee of the Privy Council, a London-based body and remnant of colonial governance, and established the New Zealand Supreme Court (NZSC) to serve as the country's final appellate tribunal. The NZSC sits in Wellington, the national capital, and is comprised of a chief justice and four to five other judges that are appointed by the AG (as are all other judges) through a consultative and largely non-partisan process. Although both reforms were very controversial at their inceptions, both the NZBORA and the NZSC have become accepted features of New Zealand's political system.

In the last decades of the twentieth century, New Zealand also revolutionized its economy. The Labour Party came to power at the 1984 election. It embarked on a program of dramatic economic reform that included deregulating the financial markets, dismantling trade barriers, discontinuing subsidies, instituting a goods and services tax, restructuring the public service, and transforming state assets into state-owned enterprises tasked with earning a profit (Smith, 2012: 218; Kelsey, 1997). As Jonathan Boston and Chris Eichbaum (2014: 374) observe, "few, if any, democratic countries have witnessed such widespread policy changes in such a short period of time." Subsequent governments have remained committed to the general contours of these reforms.

Finally, New Zealand society also changed significantly in recent decades. The Treaty of Waitangi attained new political salience in the 1970s as a "Māori renaissance" flourished (Fleras and Spoonley, 1999). The government responded by establishing a process through which Māori grievances concerning land and resources could be resolved (Ward, 2015), officially acknowledging New Zealand as a bicultural society comprised of Māori and Pākehā (as New Zealanders of European ancestry are commonly known), and recognizing Māori as an official language. Although Māori remain New Zealand's largest minority group, comprising 14.9 percent of the population in 2013, New Zealand society is growing more diverse as a result of immigration from Asia (Spoonley, 2015). The proportion of the population that identifies as Asian nearly doubled between 2001 and 2013, rising from 6.6 to 11.8 percent.<sup>5</sup> With projections that Asians will overtake Māori to become the second largest minority group in two decades, some Māori leaders worry that New Zealand's commitment to biculturalism will wane.<sup>6</sup>

## 15.2 Datasets of the New Zealand Policy Agendas Project

Two datasets exist. One includes decisions issued by the New Zealand Supreme Court (2004–15) and the other includes all Questions for Oral Answer (“Question Time”) asked during the 49th Parliament (2008–11). Every decision and oral question was coded at the document level according to the CAP coding scheme by a number of specially trained undergraduate research assistants who worked under close supervision. For policy content, two students coded each observation at the major topic and subtopic levels. For each observation where the original coders disagreed on their CAP code, a team of coders, led by a research supervisor, collectively examined and assigned a final code. Coding discrepancies were resolved by a team of undergraduate researchers and at least one research supervisor. Thereafter, research supervisors reviewed the data by major topic code to assess coding consistency.

### 15.2.1 *New Zealand Supreme Court*

This dataset includes all “leave” and “merits” decisions issued by the NZSC from its inception on 1 July 2004 through 31 December 2015 as reported online by the Ministry of Justice and the New Zealand Legal Information Institute.<sup>7</sup> The NZSC sets its own agenda. Parties must apply to the Court for leave to appeal, and the justices evaluate these applications in light of criteria set forth in the *Supreme Court Act 2003*.<sup>8</sup> Only when the Court decides to *deny* leave to appeal is it required to issue a written decision in response to an application. We call these “leave decisions.” The dataset contains 558 of them. Cases for which leave is granted result in written decisions on their merits, and we call these “merits decisions.” The dataset contains 215 of them. In addition to coding each decision’s policy content, we also recorded the date of the decision, the outcome of the decision (i.e., whether the appellant or respondent prevailed), the names of the parties and their lawyers, and the names of the participating judges.

### 15.2.2 *Parliament—Oral Questions*

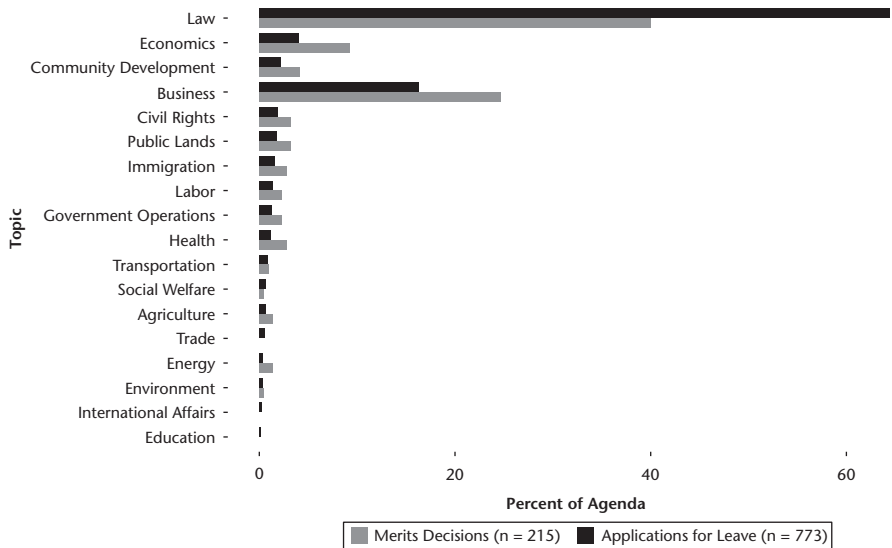
This dataset includes all 3,004 Oral Questions asked during the 49th Parliament (2008–11). In addition to coding each question’s policy content, we also recorded personal characteristics of the MPs who asked and answered the questions, including their political parties, genders, ethnicities, and seat-types (electorate versus list). “Question Time,” as it is colloquially known, operates differently across the Westminster world. In New Zealand (since 1996), up to twelve oral questions are asked at 2 p.m. on each day that parliament sits. These questions are allocated among the political parties in

proportion to the size of their parliamentary delegations. The parties decide which of their members will ask questions as well as the content of those questions. They must lodge their questions with the Office of the Clerk in the morning of the day on which they are to be asked. A list of each day's questions is published prior to Question Time.

### 15.3 An Example

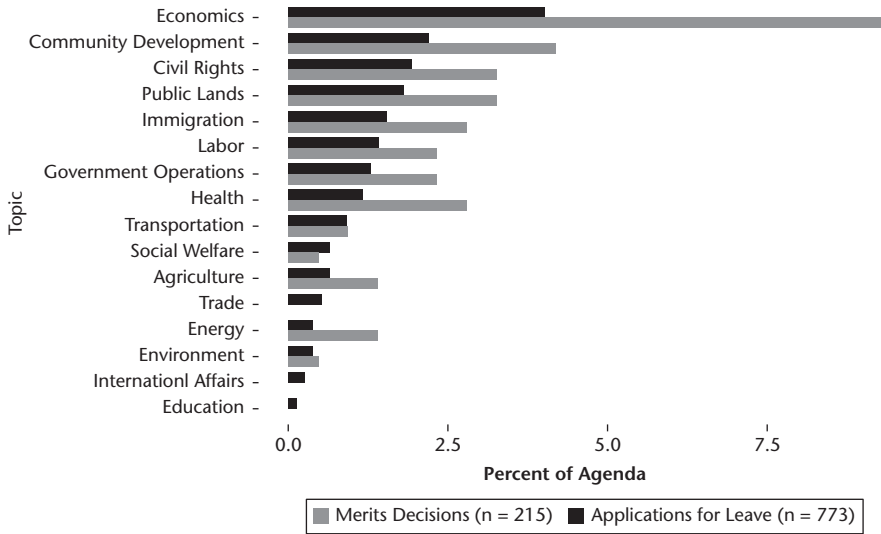
To the extent that datasets of judicial decisions exist, they tend to focus on legal issues as opposed to policy content (Spaeth et al., 2017; Haynie et al., 2007). CAP datasets, thus, represent an innovative development that promises new insights into the political and policymaking roles of courts. They not only afford us a view of a court's policy agenda, but they also allow us to compare the that agenda with the policy agendas of other institutions. Here we offer an example.

Figures 15.1 and 15.2 show the proportion of the NZSC's agenda space devoted to major policy areas. By looking at the applications for leave to appeal, what we call the Court's "leave agenda," we see the types of policy areas that parties sought to litigate before the Court. In other words, it shows us, the agenda-setting efforts of societal forces. Figure 15.1 clearly shows that



**Figure 15.1.** New Zealand Supreme Court agenda with law and business (May 2004–May 2013)

Source: Comparative Agendas Project—New Zealand



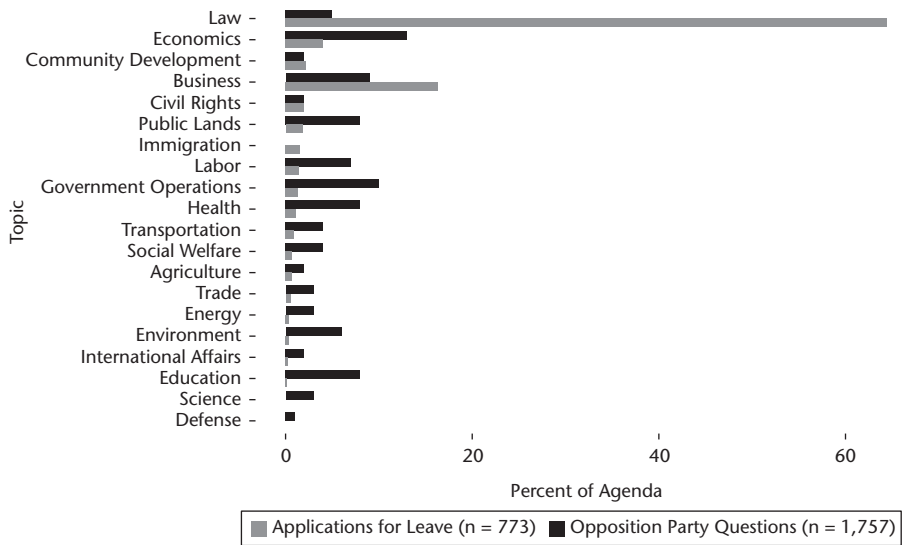
**Figure 15.2.** New Zealand Supreme Court agenda without law and business (May 2004–May 2013)

Source: Comparative Agendas Project—New Zealand

law and business cases predominate, with the former comprising 64 percent and the latter comprising 16 percent of all applications for leave. Criminal appeals account for most of the cases within the law category. Many of them are last-ditch efforts to avoid incarceration filed by indigent defendants operating without the benefit of legal representation. Notably, beyond law and business, no other policy area reaches 5 percent of the leave agenda.

Shifting our attention to the cases that the NZSC selects for review, what we call the “merits agenda,” we see that the Court’s agenda-setting process produces a relatively less concentrated policy agenda. Together, law and business cases still predominate, but law accounts for less than half (40 percent) of the merits agenda. Presumably, this reflects the justices’ ability to sift the meritorious from the unmeritorious criminal appeals. By comparison, the Court affords a larger proportion of space on its merits agenda to business cases (24.7 percent). In fact, twelve of the remaining fourteen policy areas receive more attention from the Court as compared to the leave agenda (only social welfare and trade consume less agenda space); but, even so, none of these policy area crosses the threshold of 10 percent (see Figure 15.2). Thus, the policy content of the NZSC’s merits agenda, as with its leave agenda, is skewed, making the difference between the two agendas a matter of degree rather than kind.

In political systems, courts can serve as forums for challenges to government policy. Comparison of the NZSC and Question Time data enable us to explore the extent to which this is true in New Zealand (see Figure 15.3).



**Figure 15.3.** Comparing New Zealand Supreme Court agenda and opposition party question time agenda (Nov. 2009–Nov. 2011)

Source: Comparative Agendas Project—New Zealand

We use the rate of applications for leave by major policy area to measure the extent to which societal forces seek to use the NZSC to advance their policy interests. Figure 15.3 shows the rate of these applications relative to the policy content of questions asked by the Opposition parties during Question Time in the 49th Parliament.<sup>9</sup> It illustrates considerable disparity in the policy content of these two agendas. Most clearly, opposition MPs display far less concern than do litigants in law and business matters and far greater concern in a wider range of other policy areas. The disparity in these two agendas is most likely driven by the fact that New Zealand’s legal system is more receptive to litigation pursued by persons seeking individualized redress, such as criminal defendants seeking to appeal their convictions or persons involved in civil disputes with other private persons, than it is to public interest litigation that seeks to challenge government policy writ large. As a unitary state that lacks a written constitution, New Zealand has historically not seen litigation as politics by other means, and hence, “judicial power is simply not part of New Zealand’s constitutional culture” (Palmer, 2015: 159).

**Notes**

1. New Zealand’s principal governing arrangements are codified in an ordinary statute, the Constitution Act 1986 that replaced and repealed the Constitution Act 1852.

2. In 1951, the upper house, known as the Legislative Council, was abolished, leaving the House of Representatives as the sole lawmaking body.
3. NZBORA 1990: ss. 4, 6.
4. NZBORA 1990: s. 7.
5. Statistics New Zealand “2013 Census QuickStats about Culture and Identity” <<http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-culture-identity/asian.aspx>.
6. 2013 Census QuickStats about national highlights.
7. <http://www.courtsofnz.govt.nz/the-courts/supreme-court/judgments-supreme> and <http://www.nzlii.org/nz/cases/NZSC/>.
8. *Supreme Court Act 2003* § 13.
9. For present purposes, we define Opposition parties to include Labour, the Green Party of Aotearoa New Zealand, and Jim Anderton’s Progressive Party and thus exclude those parties that entered into confidence-and-supply agreements with the National Party Government (the ACT, the Māori Party, and United Future).

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