

Sandra Grey and
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The Contract State and Constrained Democracy

the community and voluntary sector under threat

There is a long-standing acknowledgement by the public, government and academics of the essential democratic role of the community and voluntary sector. The sector is acknowledged as a conduit to government of information on society's unmet needs and preferences (Maddison, Denniss and Hamilton, 2004, p.vii). As Salter observes, organisations

‘working at the grass-roots or flax-roots level ... become aware of trends and emerging issues earlier than the government. In short it is difficult to argue that such groups are not essential to any modern state’ (Salter, 2004, p.9). In New Zealand this role has been acknowledged in law since the mid-19th century (see Tennant, O’Brien and Sanders, 2008; Eichbaum and Shaw, 2006; Mulgan, 2004; Jesson, 1992) and is referred to in a range of recent government documents (see Ministry of Social Development, 2012; Office for the Community and Vountary Sector, 2008; Cabinet Office, 2011). But it is not unchallenged. This article examines how the changing relationship between the state and the community and voluntary sector has resulted in the democratic voice of the sector being heavily constrained.

During 2008 and 2009 we surveyed a purposive sample of community and voluntary sector organisations in New Zealand with the express intention of testing their engagement in democratic decision-making under the Labour-led (1999–2008) and National-led (from 2008) coalition governments. Responses to the survey show clearly that organisations in the sector see themselves as having a major role to play in democratic decision-making. As one of our respondents noted: ‘It is vital that the organisations directly

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involved in delivering services play a significant role in the political decision-making in New Zealand' (health service provider). Additionally, our respondents perceive themselves as having a role in the following areas: speaking up for the most marginalised of our society; ensuring policy meets the real needs of New Zealanders; and ensuring a better society. However, the responses from 153 social service and advocacy organisations from around New Zealand also highlighted that the role of the community and voluntary sector in public debate has not been actively welcomed by governments in recent decades (Grey and Sedgwick, 2013). Responding to the core question

was shown in surveys in which 85.4% believed they had little control over the actions of politicians; 61.6% believed that they will get nowhere by talking to government officials; and 67.4% felt that government will not respond to public opinion.

So, what is constraining the role of the community and voluntary sector in democratic debate? According to respondents to our survey, it is the very nature of their relationship with the state that has contributed to an environment in which debate is discouraged in some cases and barely tolerated in others. For example:

Respondents drew our attention clearly to the fact that those who speak for the marginalised have themselves been marginalised.

of the survey – 'what do you think about successive governments' attitudes to public debate?' – 27.6% of our respondents said debate had been silenced, 42.4% said debate was tolerated (i.e. 'None of our members has been arrested yet!'), and 30% said that successive governments had encouraged debate. Added to this direct response on democratic debate, the written responses to the 32 survey questions further confirmed the existence of a democratic deficit in New Zealand between 1999 and 2009: only 87 of the 595 written responses given in the returned survey forms affirmed that debate was encouraged by two successive governments.

The democratic deficit, as defined by Beetham, refers to a 'substantial and systematic failing in relation to international standards of good practice in some important feature of a country's democratic life' (Beetham, 2013, pp.1-2). With regard to New Zealand, Beetham et al. (2002, p.55-6) pointed to a clear discrepancy between 'high levels of citizen participation in elections and civic associations' and strong feelings of disempowerment among the public. This

[Debate is] not encouraged. People who speak out have been verbally attacked – possibly this had led to loss of contract but this is not clear. Government has been less transparent about its intentions, which is a way of restricting debate. (Health provider)

Our experience from about 2006 onwards was that public criticism or challenge was discouraged and responses from some senior Government Ministers was contemptuous. Public servants were very cautious and very reluctant to openly pursue advocacy issues. (Social service provider)

It's difficult to describe without becoming despondent and emotional. Throughout our organisation we are struggling to remain positive [in the face of] rapidity of changes imposed by current government policy which undervalue, undermine and under fund our area of expertise and all without negotiation! (Social service provider)

Respondents drew our attention clearly to the fact that those who speak

for the marginalised have themselves been marginalised. They explained that speaking up on behalf of their communities was frequently interpreted as self-interest, and that their knowledge and expertise was dismissed, distrusted or treated as unsubstantiated anecdote. Added to this, their expressed aim – to give more than they receive – had been heavily constrained by the mandatory need to meet compliance requirements.

Persistent comments from our survey respondents on the constraints on democratic engagement focused our minds on how this had evolved: how could organisations born out of civil societies' needs, generated by voluntary effort and concern for communities and funded by government grants over many decades in New Zealand be redirected and their attentions otherwise focused? The answer, we argue, lies primarily in the 'contract' and the type of relationships contracts generate between government and the community and voluntary sector.

The neo-liberal contract state and society

It has been 18 years since *The State Under Contract* was published, in which John Martin stated that the contract model:

replaces hierarchy and command as the mechanism by which the parts are linked together ... to achieve the purposes of government.

... It has unquestionably assisted the achievement of considerable efficacy gains – if for no other reason than to require agencies to attempt to articulate the purpose for which they exist. I do, however question its universal applicability ... and the implications for political accountability. (Martin, 1995, p.37)

The mechanism of the contract, as Martin intimated, now inhabits a myriad of spaces between the individual, civil society and the body politic in New Zealand. These contracts are for the most part classical as opposed to relational (Martin, 1995): that is, they centre on a fee for service arrangement and the functions of provider/purchaser are separated. In these classical contracts the funder specifies the duration, outcomes and sanctions for non-compliance, and

the funder's needs rather than those of the community have a medium for assertion.

The responses from our survey participants show that the mechanism of the contract has the uncanny capacity to generate fear, to focus minds on the survival of the fittest and to sideline public debate, forcing the attention of providers onto meeting the demands of funders.

Services are now 'fighting' for survival which leaves little time or energy for public debate. (Social service provider)

[Governments are] only interested in review and cost-cutting. Only the Māori Party is still entering into community dialogue. (Feminist social service provider)

Under National, Ministers and officials have their own agendas ... and consultations ... appear often to be a waste of time. Other times advice is taken but to further their purpose and not that of the sector. (Advocacy organisation)

Contracts not only mediate relationships between the state and the community and voluntary sector; they determine the structure and outcomes of the relationships. As one of our respondents put it, their organisation has had the ability to negotiate 'within parameters set by Labour Government – the issue re: where the parameter[s] lie are as relevant now as then' (education organisation).

However, there are no guarantees that community needs, once recognised and given policy priority by the state, will remain 'relevant':

[We lost funding due to] change of work; change of government policy. (Social service provider)

They [National] changed priorities and our issues/conditions have been moved down the list. (Mental health provider)

What the survey responses intimate is that the move to contracting has led to a transformation of civil society (against the wishes of the community and voluntary sector) while maintaining a

semblance of democracy. This trajectory is discussed by Milbourne and Cushman (2013, p.489), who note that 'what appears to be trust is a facade for power, meaning is managed, distorted or imposed by the dominant participant', in this case the state. According to Carmel and Harlock (quoting Newman, 2001), this so-called 'partnership' also presents an 'illusory unity' which masks the differences between providers, which are 'profoundly shaped by their particular, and varied social origins' (Carmel and Harlock, 2008, p.159).

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Peck, Theodore and Brenner (2012) have described this process as a 'contradictory dialectic' represented by 'roll-back (de-regulatory) and roll-out (re-regulatory)' processes. The former, they say, is rationalised as 'deregulation, devolution, and even democratisation', whereas the latter 'is marked by widespread adoption of "market conforming" regulatory incursion – from the selective empowerment of community organisations and NGOs as (flexible, low cost, non-state) service providers ... to hybrid governance in the form of public-private partnerships' (Peck, Theodore and Benner, 2012, p.23). As is demonstrated in comments by the minister of social development, Paula Bennett, in the 2012 Ministry of Social Development pamphlet *Investing in Services for Outcomes*, the location of responsibility and power in this contract environment is clear:

I will discontinue contracts where providers have continued to not meet Government expectations. This is an example of focused contract management that will support providers to deliver high quality,

effective services. (Ministry of Social Development, 2012)

A classic case is that of Supergrans Christchurch, who were forced to close after 17 years of providing 'in-home mentoring to hundreds of people'. Supergrans, which received 67% of its funding from the ministry, found that the expectations of the ministry did not match the organisation's values. Their manager, Sue Yorke, was quoted as saying that Supergrans was a 'victim of its own success', adding:

The Supergrans way of supporting people requires time to build a relationship and trust, and the move to working with more people for shorter periods of time isn't conducive to helping people make substantive changes in their lives. (Mathewson, 2013)

The mechanism was as simple as replacing the social contract with the competitive contract. To quote Adamson's rendition of Gramsci, the competitive contract now inhabits the space between 'large scale bureaucratic structures of the state and economy on the one hand and the private sphere of family, friendship, personality, intimacy on the other' (Adamson, 1987/88, p.320). For Gramsci, civil society is traditionally occupied by voluntary organisations/associations, interest/pressure groups, mass media and academic institutions, all of which may reproduce a 'common moral language' (Green and Ward, 2004, p.4), and thus influences public opinion and policies or, alternatively, seeks to change them.

If the funder has the contract as the focal point for relations with the community and voluntary sector, then

of necessity the provider must follow their lead. The contract facilitates predetermined terms, conditions and outcomes, outcomes which can be assessed and measured, though hardly, as Durie has observed (2004), represent real gains that reflect the aspirations people have. The survival of community and voluntary organisations in the contract environment is predicated on winning the contract against competition and the corollary of this structure is that blame for failure will inevitably fall on the provider. In *Investing in Services for Outcomes*, mentioned above, the Ministry of Social

participants in Social Impact Bonds' through amalgamation which satisfies the provision of multiple services exacerbates the same tendency. In this sense, if one was to envisage a viable rehabilitation programme for ex-inmates, it would require mental health provision, housing, education, legal aid and employment, which could be represented by a group of NGOs and be funded under one contract.

The community and voluntary sector is fully aware of this focus and the imminent threat to their existence; our survey saw respondents readily

think it has lost its mission. Instead of focusing on helping the most needy, including the homeless and youth, the mission had become intent of self-preservation. It has become too risk-averse. There is not enough passion. (Heather, 2013)

And Pat Hanley, in a select committee submission, noted that, based on his first-hand experience in the community and voluntary sector,

These issues are not simply about funding relationships but rather are an expression of a perceived, long term threat to the ability of organisations within the sector to serve our communities and remain viable as not-for-profit, non-governmental, community based and values led organisations.

Furthermore, by ignoring the community the contracting environment

[d]isempowers those intended to benefit [from it] because they are not a party to the contract and have no effective means of affecting the terms of the contract, nor its implementation. (Hanley, 2006, p.63)

The contract, then, is a mechanism that has firmly come between the community and voluntary sector's need for independence (an independence based on being accountable and efficient in terms of community needs) and the demands for accountability, effectiveness and efficiency in the (government) funders' eyes. Even the auditor-general's 2006 report on principles that should guide the government in funding arrangements with the sector was at pains to point to a crucial issue:

Because of the pressure for accountability, public entities have tended to opt for a control approach when managing the risks in their relationship with NGOs. Contracts are seen as the way to achieve this control. (Office of the Auditor-General, 2006, p.15)

As Shaw accurately noted, this split between funder, purchaser and provider 'greatly increased the use of

... Annette King, noted that 'NGOs that are funded by the health system are too scared to speak out because they fear losing their funding' ...

Development's deputy chief executive of family and community services, Murray Edridge, said:

We have a real opportunity to improve how we manage contracts and eliminate some of the existing issues including, gaps and duplication, providers with multiple contracts with both MSD and other government agencies and short-term contracts which leave little stability for the community organisations we fund. (Ministry of Social Development, 2012)

The contract has become a means to increase, on the one hand, competition between NGO providers for an unknown market of funding, and on the other pressure for rationality and joined-up provision of services in the name of broad-based service delivery.

The two tendencies can, of course, realise the same end in the contract environment. Reduced numbers of NGOs able to compete in each successive tendering round produces survival uncertainty for small providers and can lead to monopolistic behaviour. Additionally, the state's desire to deal with either preferred providers or the

and repeatedly acknowledge that the government sets the parameters of the competitive contract:

Particular policy was adopted and implement[ed], but mainly within economic parameters/drivers re: productivity and not necessarily, or as priority, within community/family development agenda. (Education provider)

Need to guard the independence of the 3rd sector and ensure, through contracting, we are not just pseudo-government agencies. (Social service provider)

Similarly, in a recent study of 11 non-profit organisations one respondent commented: 'people don't listen to what you are saying or understand where you are coming from', which effectively results in 'the political feelings of the day or the governments views of the day determin[ing] our approach' (Elliot and Haigh, 2012, p.15). Furthermore, recently-resigned city missionary at the Wellington City Mission, Susan Blaikie, remarked that the organisation

has put self-preservation ahead of caring for the city's poorest. ... I

the contractualist devices as a means of regulating relationships between purchaser and provider organisations' (Shaw, 1999, p.97). This point was confirmed in a 2004 survey looking at the relationships between the Ministry of Health and providers. One community and voluntary sector organisation said their greatest concern was fear of speaking out induced by contract behaviours and the advocacy lobbying issues (Health and Disability Sector NGO Working Group, 2005, p.16). In an April 2013 Radio New Zealand interview, opposition spokesperson for health, Annette King, noted that 'NGOs that are funded by the health system are too scared to speak out because they fear losing their funding' (Radio New Zealand, 2013).

The climate of fear and risk-aversion created by a neo-liberal contract state and the relationship this generates with the community and voluntary sector seems to easily nullify repeated and acknowledged ideals of and for the sector (even held by the state), which stands as an accepted and unquestioned contradiction in the funder's mind. In 2005, Brenda Ratcliff, director of the Office for the Community and Voluntary Sector, in a briefing to the incoming minister described the sector as 'an avenue for the expression of diverse voices', providing 'networks', 'relationships' and a 'dialogue' between the government and the community. Further, she stated that the NGO sector can 'develop local solutions to local problems', facilitate an 'early warning system' for problems, and is in the best position to 'innovate' or take 'risks' in finding viable solutions (Office for the Community and Voluntary Sector, 2005, pp.1-3). Three years later, then director Alasdair Finnie, in a similar briefing, maintained a supportive stance, noting that: 'With total revenue exceeding \$8 billion, these organisations offer citizens access to public services outside the state sector. They also provide a voice for many parts of our society, particularly for those who are disadvantaged' (OCVS, 2008, p.ii). Even in the state sector, the 2011 Social Sector Forum² reported in their briefing to the incoming government that:

We want to do more to harness the expertise of communities, non-

government organisations and private sector organisations that provide social services. Communities usually know what services and support they need. ... Local organisations are often best placed to respond to local needs, to join up services, and to try new things to help people succeed. (Social Sector Forum, 2011)

However, responses to our survey showed that government funders do

power differential between provider and funder:

We do not want to draw attention to ourselves in case we lose our funding. (Education and service provider)

We shouldn't be seen to be criticising our partner publicly. (Feminist social service provider)

Creating 'distrust' may jeopardise contract negotiations. (Employment and social service provider)

In all, 35.3% of the organisations who responded had been subject to loss of contracts ... when programmes had been either disestablished or terminated or when funding was re-targeted.

not readily allow 'diverse voices', the 'voice of the community' or public 'dialogue' involving the community and voluntary sector. The mechanism of the contract in some cases explicitly prohibits commentary (15% of our respondents said there were 'gag clauses' in their contracts):

[Our contract states we are] basically not to enter into public debate. (Family centre)

... there is a general expectation of no surprises in relation to public statements that are critical. (Religious social service provider)

In some contracts [it can be] more explicit about not commenting unless agreed with funder, other pressure not to rock the boat is more subtle. (Advocacy organisation)

BUT workers ALWAYS have to get anything going into media or the public realm checked and approved. (Religious social service provider)

Even when there were no overt gag clauses in government contracts, respondents rationalised their caution about public comment or noted the contractual provisions which point to the

While gag clauses might have been few, over half of the 153 community and voluntary sector organisations who responded to our survey felt that speaking out would lead to contract termination. And the fragility and uncertainty of the contract environment is evident in the survey responses. In all, 35.3% of the organisations who responded had been subject to loss of contracts in the last ten years when programmes had been either disestablished or terminated or when funding was re-targeted. Even personnel changes in the funder organisation could mean that a constructive relationship was gone.

Exacerbating the fear and further influencing the relationship in the contract environment is the Charities Act 2005 and the Charities Commission, which have become tools for disciplining the community and voluntary sector. Registration under the act confers charitable status and allows a tax exemption, alongside supposedly encouraging public 'trust and confidence in the charitable sector' (section 10(1)(a)). Over 25,500 charities are registered in New Zealand (Barker and Yesberg, 2011), and since 2007 the commission has received 30,000 applications for charity status, of

which it has declined 1,350, and removed 1,000 organisations (Fowler, 2010).

Controversially, trading operations owned by charities are not subject to income tax, hence the exemption (Barker and Yesberg, 2011, p.41). What qualifies one for charitable status is called, in brief, the four 'heads' of charity: the relief of poverty, the advancement of education, and the advancement of religion or 'any other matter beneficial to the community' (Commissioners for Special Purposes of the Income Tax v Pemsel [1891] AC 531, 583, in Barker and Yesberg, 2011, p.42). According to Barker and Yesberg, the issues of purpose and activities, in addition to the understanding of advocacy, have become the interpretive mechanism by

question on whether funding arrangements prohibited public comment, with many of these groups stating that they did not seek or receive government funding in the first place. For a number of groups it was an explicit choice: 'We do not receive government/contract funding but do this so we can be free to advocate on behalf of community on health and policy issues' (health provider).

Additionally, the contract environment presents a litany of other barriers to the community and voluntary sector's engagement in democratic debate:

Bureaucrats seem to know what is best for all, community doesn't count. (Social service provider)

is given to the sector, and minimal (minimised) contributions are sought on key political/social/economic issues, in processes such as taskforces, ministerial working groups, etc. (Education provider)

Most of our concerns were less about the intent of policy than the manner or detail of implementation. In our experience the Labour-led government had a particular bent for reporting as a substitute for accountability that led to some distortions of process that actively inhibited achievement of stated goals. (Social service provider)

That final comment sets out the high cost of compliance in the new contract environment, something that has also been noted by Jan Dowland of Platform Charitable Trust:

A disproportionate amount of energy is expended on administering a clumsy, highly specified, over engineered system diverting precious resources away from the real work. The dictates of the system have dominated the discussions between DHBs and NGOs, rather than how to improve the lives of people with addiction and mental health issues. (Platform Charitable Trust, 2009, p.4)

The community and voluntary sector, which has for decades provided grass-roots knowledge to help problem-solving in communities, is ignored, dismissed or disputed, leaving the partnership between provider and funder bereft of informed consent.

Conclusion

For many of our community and voluntary sector respondents the contract environment under both Labour- and National-led governments has led to heightened fears surrounding several issues: funding being cut; difficulties in maintaining independence while taking government contract funding; restrictions on what services they can provide to whom, and how these will be provided; and the redirection of their labour to meet the efficiency and accountability demands of government funders. The expectation

The supposed 'equal' relationship is one that in reality focuses attention on meeting the demands of government funders rather than the needs of the communities.

which the act has excluded organisations from charitable status. 'Advocacy is a non-charitable purpose', the act states (section 5(3)), supported by the decision in *Bowman v Secular Society* ([1917] AC 406), the result of which is that, as Barker and Yesberg note, 'Many charities now fear that advocating for their causes risks jeopardising their charitable status' (p.43). Respondents' feelings in our survey are summarised in the following statements:

The Charities Commission has the potential to stifle NGOs from advocating and lobbying. (Advocacy organisation)

There is still a strong fear that groups will lose their charitable status and/or funding from certain quarters if they engage in lobbying or advocacy. (Advocacy organisation)

Some organisations in the community and voluntary sector respond to this situation by choosing not to seek government funding. Forty-three of our 153 respondents did not answer the

Government officials seem to be the biggest barrier to change. They minimise the knowledge and expertise of NGOs at times. (Disabilities social service provider)

Government has been prepared to engage on issues but are often poorly informed as the trust and engagement of officials appear very low. (Advocacy organisation)

Role in policy planning is being made more difficult; very effectively undermine[d]. This government in particular does not value consumer input as a partnership voice (at least in the health sector) and appears to be captured by 'expert professionals' and private sector economic interests for short term political gains. (Feminist health provider)

Insufficient knowledge exists about the economic inputs/outputs and outcomes provided by not-for-profits, particularly those that are community based. As a result insufficient value and recognition

is not that the government will provide funding without any strings attached. However, the contract environment ignores the power differential between provider and funder, reducing it to a relationship of equals supposedly doing 'business' together. The supposed 'equal' relationship is one that in reality focuses attention on meeting the demands of government funders rather than the needs of the communities. This is both an attack on civil society and its democratic role, and will result in community needs, which do not easily fit the outcome measurement criteria set by central government agencies, being left unmet. The community and voluntary sector, as responses to our survey illustrate, is acutely aware of the difficulties being caused by the neo-liberal contract environment, unduly funder-centric and focused on apportioning

risk, accountability obligations and enforcement measures. Recovering the true and full democratic voice of the community and voluntary sector requires a rethinking of the contract environment. This may require the abandonment of the contract and its replacement with a funding regime that enables genuine respect for, and trust of, both the community and its representatives (the community and voluntary sector); a funding system that enables a full democratic role for the community and voluntary sector, allowing them to fulfil their self-defined role of meeting the needs of their communities.

1 The Office for the Community and Voluntary Sector and the Department of Internal Affairs commissioned a report to 'explore the nature of Social Impact Bonds (SIBs) ... to identify ... policy and market constraints to their extensive use'. Essentially this is a means of introducing money from private or philanthropic investors into 'social programmes without increasing public debt and without the need to decrease existing spending' (Ross Philipson Consulting,

2011). The government repays funds depending on the level of success in achieving the specific social outcomes.

2 The Social Sector Forum has been described as a cross-agency vehicle made up of the chief executive officers of the Ministry of Social Development and the Department of Building and Housing, the director-general of health, the secretaries of Justice and Health and senior officials from the SSC, Treasury and the Department of the Prime Minister and Cabinet.

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Upcoming Events

Date	Title	Speaker	Venue
Thursday 5 September 12.30pm-1.30pm	Climate confusion: why the international climate change negotiations have unravalled, and what, if anything, can be done about it?	Professor Stephen Howes, <i>Australian National University</i>	Railway West Wing, Room 501
Thursday 12 September 12.30pm-1.30pm	The Future of Renewable Energy	Dr Eric Martinot, <i>Institute for Sustainable Energy Policies</i>	Government Building, Lecture Theatre 4
Friday 13 September 12.30pm-1.30pm	Valuing Nature and the Problem of Incommensurable Values	Dr Geoff Bertram, <i>Institute for Governance and Policy Studies</i>	Government Building, Lecture Theatre 2 (Access via Stout Street)
Monday 16 September 5.30pm-7.00pm	Insights on Models of Change: A Global and Pacific Perspective	Duncan Green, <i>Oxfam Great Britain and Barry Coates, Oxfam NZ</i>	Government Building, Lecture Theatre 1 (Access via Stout Street)
Friday 20 September 12.30pm-1.30pm	From Millennium Development Goals to Sustainable Development Goals	Barry Coates, <i>Oxfam NZ</i>	Government Building, Lecture Theatre 2 (Access via Stout Street)

For further information on IGPS Events visit our website <http://igps.victoria.ac.nz/>