

Colin James, with Ellie Argyle

A Way of Thinking about Vested Interests¹

In 2010–11 three government policy initiatives aroused controversy and accusations of special treatment for ‘vested interests’: a change in workplace relations law to meet the demands of a film company; special treatment for a company in the ultra-fast broadband roll-out; and a gambling-licences-for-convention-centre deal. Were the accusations justified? And what is a ‘vested interest’ and where does it fit in New Zealand’s democracy?

Everyone has interests and expresses and pursues those interests in various ways, individually and with others who are like-minded and directly, or by seeking favourable rules or the backing of those in authority. In a sense all interests are ‘vested’, since they are attached to and, in a sense, ‘clothe’ the person or entity holding or pursuing them. And in an open, democratic society, their pursuit

is logically an unexceptionable, natural human interaction.

But the term ‘vested interests’ has acquired negative overtones of unfair, nefarious or anti-social behaviour: that is, their successful pursuit, and sometimes just their pursuit, is seen as in some way damaging. For that reason, and because this article does not treat the topic as a matter of ethics, it is more useful to talk of ‘special interests’, and to distinguish legitimate and unexceptional pursuit of those interests in an open, democratic way from pursuit of them in such a way that it injures the general public interest.

The inequalities that matter

In a well-functioning modern democracy all citizens are equal members, which does not imply equality of outcomes, but does imply that there is a general public interest in interests not being pursued in such a way as to advantage some and disadvantage others by creating substantial new inequalities, or maintaining or exacerbating pre-existing substantial

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inequalities. (In this article ‘citizen’ is used generically and includes ‘permanent residents’.) Citizens’ equal membership extends, since the expansion of social services in the 20th century, to being ‘able to enjoy a standard of living much like that of the rest of the community and thus ... able to feel a sense of participation and belonging to the community’ (Royal Commission, 1972).

In practice citizens have *inherent inequalities*, some inherited and genetic, some gender-determined, and some acquired in the very early years of life, and they have *attitudinal inequalities* which determine how they prefer to operate in society, including whether they are leaders or followers. These

And citizens form associations such as charities and not-for-profit organisations to protect or advance the individual interests of others less likely to be able to pursue their interests without help, and to promote animal welfare or protection of the physical environment, to seek to enhance a suburban or urban landscape, or to push for policy change they believe will make society or the economy more equitable.

There is nothing inherently injurious to the general public interest, as defined above, in these activities. If the competition is equal, the pursuit of any one interest will not reduce the realisation of any other interest, more than the realisation of that interest is reduced by the realisation of

interest groups seek to gain benefits from the government but do not control decision-makers; corporatism, with interest groups formally incorporated into the system of government, as when wage bargaining was formally regulated by the Arbitration Court, and when in the 1950s and 1960s governments informally arbitrated among interest groups, often behind closed doors; and a ‘market liberal’ model in which the role of the state is limited and there is more reliance on unregulated choices by individuals and private firms in a free market.

In fact there are few genuinely open markets. In almost all markets both information and power are asymmetrical, usually in favour of larger or more concentrated participants and in practice. That goes for interest group interaction in Mulgan’s first model. And governments of different parties favour different interests. This is only partially and crudely self-correcting through elections, protests, organised campaigns, petitions and so on.

Moreover, once a policy or legislation is in place it becomes a new status quo, and the longer it is in place, the more likely it is to become accepted by the public as the norm and then not be repealed or reversed by a subsequent government made up of different parties. Thus, the status quo may become part of the ‘culture’.

The corporate model is not in prospect.

National interest versus special interest

A modified version of the ‘market liberal’ model was applied by the incoming Labour government in 1984. It stopped listening to arguments by individual firms and sectors (or individuals) for their special benefit. The criterion for successful arguments put to the government was that a change would deliver national benefit. This did not mean sector groups or large firms stopped pressing cases that were beneficial to the sector, firm or individual. But it did mean that to gain that benefit, a case had to be presented that the benefit to the sector/firm/individual was also a benefit to the economy as a whole, and the case had to argue for generic, not special action (though it should be added that the

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inequalities are unexceptional elements of a normal, diverse human society. But there are also *manufactured inequalities*, created – by action or omission – in the law and by the state’s practices, by custom or social structures and traditions, and by economic interaction. Such inequalities deny true justice and inhibit citizens taking a full part in their society and nation. So the focal question in this article is: does the successful pursuit of a special interest manufacture substantial new inequalities or maintain or exacerbate existing manufactured inequalities, and are those inequalities substantial? If so, it is arguably incompatible with true democratic practice and in that sense not in the general public interest.

Citizens join together formally and informally in interest groups to collectively pursue individual interests. Unions, business associations and political parties are examples. Firms are a hybrid: a firm has an individual interest, but is also a collective in the sense that all those engaged or employed in it have an interest in the firm being profitable.

others’ interests. Of course, in practice some secure more of their interests than others, and some inequality of outcome is compatible with a just society in a well-functioning democracy. It can also be argued, (loosely) following John Rawls (Rawls, 1972), that if some secure an advantage (gain or benefit) through successfully pursuing their interests, that is compatible with a just society if others are not disadvantaged. There might also be a general acceptance of long-established differences – a ‘culture’ – which arguably is not necessarily undemocratic.

But large and persistent inequalities of outcomes are not compatible with a just society, because then the citizens are no longer equal members. Thus, the word ‘substantial’ is important in assessing the impact of the pursuit of special interests.

How to gain advantage

Richard Mulgan (Mulgan, 2004) identified three types of interaction between interest groups and governments: a pluralist model, in which the political system operates like an open market where

criteria themselves as to what constituted national benefit favoured some arguments over others).

Broadly speaking, this national benefit 'rule' still applies, but in recent years some well-connected individuals or firms have persuaded ministers to respond favourably to specific cases they have made which benefit them directly. They have, in effect, finessed Mulgan's interest-group market.

- In September 2010 the Australian Media Entertainment and Arts Alliance union, backed by several international actors' unions, ramped up a bid by New Zealand Actors Equity for minimum conditions for filming the *Hobbit* film series. Sir Peter Jackson, the director, said these claims put at risk Warner Brothers' commitment to the film, and specifically to the film being filmed in New Zealand: Warner Brothers did not want to deal with a unionised workforce. After lawyers representing Warner Brothers met the minister of economic development, Gerry Brownlee, and the prime minister and tourism minister, John Key, the government agreed on 27 October to promote special legislation in Parliament specifying that film workers were contractors and could not demand a collective agreement or take strike action. The legislation passed. The deal also gave Warners up to \$34 million in tax concessions.

The deal did have a large national interest component in work, business opportunities and promotional benefits. It included a commitment that all DVDs of the films would include a tourism promotion video. Nevertheless, it prompted criticism that the law had been changed to meet the demands of an individual company – a response at odds with the post-1984 principle. Professor Paul Roth of Otago University, an academic specialising in employment law, said the deal was a case of New Zealand 'teetering into third world status' (quoted in McLean, 2010, etc). It also clearly disadvantaged the particular employees affected and, if replicated

elsewhere, would disadvantage employees generally.

This was a case of specific concessions to a firm in return for it spending money here.

- In legislation promulgated in late 2010, successful bidders for contracts to build fibre networks for the ultra-fast broadband project were granted a period of eight and a half years during which the Commerce Commission (the regulator of the telecommunications sector) could not inquire into, or order changes to, the terms under which retailers of broadband services could access the fibre. Since Telecom's network arm, Chorus, was expected to, and

- On 13 June 2011, prime minister and tourism minister John Key, economic development minister David Carter and Auckland mayor Len Brown announced a deal with Sky City Entertainment under which Sky City would build a \$350 million, 3,500-seat convention centre in Auckland by 2015, in return for which the government would favourably consider additional gambling licences and/or an extension of its gambling licences beyond their 2021 termination date. Sky City said the regulatory changes were needed to assure it of revenue in return for the risk it was taking. The government said it would get a convention centre,

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eventually did, win most of the network building contracts, this was seen by competitors, retailers, consumers and all political parties other than National as potentially giving Chorus near-monopoly rents, and this unusual alliance successfully campaigned through March–May 2011 to have the 'regulatory holiday' removed – though the government did still guarantee that fibre builders would not be out of pocket if the Commerce Commission did order cuts in access terms.

The ultra-fast broadband project is in effect a public-private partnership (PPP) between the government-owned Crown Fibre Holdings and companies building the fibre network. PPPs typically involve a trade-off between the government and the private company to give the contracting company reasonable assurance that it will be able to operate profitably.

much needed for tourism, without having to stump up money itself.

This prompted criticism that gambling licences were for sale to a favoured company. Key said the additional licences would not worsen problem gambling because it would be foreigners who did the gambling, and that the changes would be subject to 'full public submissions' because additional licences needed a change to the Gambling Act, which imposed a moratorium on casinos. A subsequent Audit Office report faulted officials in the Ministry of Economic Development for not following strict tendering rules. (Other critics said the deal added to the risk of more gambling addiction or just more gambling, and more individual and societal cost.)

The message from these examples was that rules can be bent if the deal is attractive enough and if you can get the

ear of the prime minister or other senior ministers.

In each case it could be, and was, argued that there was national economic benefit:

- jobs and associated spending and promotional benefits flowed from the Hobbit deal;
- the country's businesses and consumers will benefit from the broadband roll-out as they did from railways and the telegraph;
- the country gets a convention centre which will bring high-spending international conferences to Auckland, benefiting transport, accommodation and other businesses and potentially generating more

expensive legal actions, which can 'burn off' less-powerful and wealthy opponents.

There are also documented examples in the United States of academics writing research papers for payment for drug companies and companies opposing action on climate change, thereby manipulating public opinion. Debatable examples of such powerful interests are those who make and market alcoholic drinks, and fatty and sugary drinks and food. Some academics say these interests are too influential with politicians and block legislation aimed at reducing the damaging effects of their products on some people. The companies argue that the science is not clear (unlike with smoking), and that in any case to block

government made up of the Labour Party and the Greens.

Some also argue that the pursuit of apparently altruistic interests can result in injury to the general public interest in the sense of manufacturing a substantial new inequality, or maintaining or exacerbating a substantial existing inequality: for example, environmental interest groups campaigning against certain economic activities, where a successful campaign would result in the loss of jobs.

Do some special interests have a back-door route to influence? Government departments and other agencies routinely deal with special interests in the form of 'stakeholders' to ensure that policies and programmes are workable, and take into account those whom policies and programmes most affect. This is unexceptional if any adjustments to policy or programmes are made in line with national interest criteria. But there is a risk of capture.

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–to which might be added the particular circumstances of a small country, where some projects can be achieved only by joint action by the government and a private firm. But the economic benefit was at the cost of favouring powerful interests – 'concentrated interests' –which could get the ear of politicians. This is injurious to the general public interest (as defined above) in the sense that a rules-based system is an important protection of the individual interests of those who do not have power; that is, 'dispersed interests'. The obvious parallel is New Zealand's often-expressed interest in, and need of, a rules-based international order, since New Zealand is a very small nation-state with negligible military and economic strength.

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access or artificially raise prices through taxes or price control would penalise those who use the products in moderation for pleasure, and interfere with personal freedoms, an important ingredient of a democracy. Gambling attracts similar contests of views.

To these examples of successful pursuit of special interests might be added the influence in New Zealand of Federated Farmers, which persuaded the government to postpone indefinitely agriculture's inclusion in the greenhouse gas emissions trading scheme, and whose farmer-members are the beneficiaries of a decision to use some of the proceeds of the partial sales of state-owned enterprises to seed investment in water storage dams to provide more water for irrigation (though it can also be argued that this can enable more efficient use of river water, and thus, if there is no additional allocation, limit the take from aquifers).

In all these cases, those special interests would be treated differently by a

The self-reinforcing loop

In the strict version of Mulgan's 'market liberal' model the special interest pursued is theoretical or principled or ideological, and usually argued on the grounds that the resultant policies are in the national interest. Nevertheless, if successful this can result in a privileged class or caste emerging which has a special interest in upholding the theory/principle/ideology. A loop can develop in which those whom a set of policies advantages can ensure that the policies are not overturned or, instead, are reinforced. This is common in autocratic states. In the Soviet Union a privileged oligarchy was able to pass on its privileges to progeny because of its hold on power. The ruling Communist Party in China maintains power despite deep changes in the ideological orthodoxy.

Some argue that a modified version of Mulgan's 'market liberal' model was developed in Anglo-American countries over the past 30 years. A set of theories arguing for 'more market' or a new 'market liberalism', ascribing primacy to market mechanisms over government regulation and action, gained enough adherents to influence and/or command cabinets and legislatures in Britain, the

United States, Canada, Australia and New Zealand, and over time to varying degrees in other countries. The beneficiaries of the policies had the connectedness and wherewithal to lobby successfully to keep the policies in place, despite changes in the party composition of governments. This created a self-reinforcing loop which largely survived even the global financial crisis precipitated by the crash of the lightly-regulated US banking system in 2008.

Market liberalism over time became the orthodoxy, even under centre-left governments, in part through promotion and in part through adaptation and acquiescence. This kept the influence loop in place. A paper by Martin Gilens and Benjamin Page (Gilens and Page, 2014), as reviewed in the market-liberal *Economist* magazine (Economist, 2014), found 'a vicious cycle in which politicians adopt policies that favour the better-off; this gives the wealthy more money with which to lobby politicians, which leads to more favourable legislation and so on. The surge in inequality over the last 30 years could perhaps be attributed, in part, to this process.' The paper found that 'if a proposed policy change had low support among the wealthy (one in five in favour) the policy was adopted about 18% of the time. When four in five wealthy people supported a plan, the prospects for adoption rose to 45%.' Alan Kohler, a conservative commentator at the Australian *Business Spectator*, has written that 'the two great vested interests of the modern world are American bankers and the Chinese Communist Party' (Kohler, 2013). The Gilens paper was interpreted in the media as concluding that the United States is an oligarchy.

In effect, the creation of an oligarchic loop amounts to capture of the policy-making process, and in that process the creation of 'rents': that is, returns from investments or labour in excess of what a market free of policy and other distortions would deliver. This clearly amounts to the manufacture of an inequality which can be substantial.

It might be argued that a milder version of this has applied in New Zealand. Political parties depend on donations for their operational and campaign funding.

Businesses are the biggest donors to the National and Labour parties, and in this election cycle the Greens have been shown to have similarly benefited from a 'green' business donor. All three parties insist they do not make policy adjustments in response to specific donations. The National Party's practice is that all such donations are made to the party organisation and MPs are not notified. Some businesses have a policy of making donations to all significant political parties. But businesses do pick and choose. The National Party's general policy line favouring business coincides with higher donations from business than are made to other parties. Some of the Labour Party's bigger business

well-educated are disproportionately represented in major political parties, and can influence policy – including, for example, interest-free loans for students.

One way in which an oligarchic loop can develop is through the advantage that a relatively small, well-organised, well-connected, well-financed and tightly focused ('concentrated') interest group with much to gain from a policy or set of policies (a special tariff, for example, or lower top marginal or company tax rate) has over 'dispersed' interests – the large numbers of unorganised people who individually have less to lose (or to gain) and for whom the transaction costs of mobilisation are greater.

Are there also examples in New

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donors are those who would benefit from Labour's industry policies. Labour also receives significant funding from unions, which reflects both the party's origins in the labour movement and consequent special constitutional rights for unions, and its pro-union labour relations policy. The Conservative Party was formed by a wealthy businessman.

Whether this form of funding of political parties reflects the influence of injurious special interests is a matter for debate. Donor Sky City did benefit from ministerial adjustment of a tender process, but there is no evidence that that was the result of its donation, as distinct from its proposition just happening to fit well with ministers' aims to expand tourism.

It can be argued that the much higher proportion of children of tertiary-educated parents who go on to tertiary education than of the children of less-educated people is a loop. The

Zealand of group special interests winning office to press the case? Some cite the Canterbury Regional Council's impasse over water allocation and control: some councillors wanted more control to combat contamination of waterways and draining of aquifers, which was affecting city water; others, representing farmers, opposed that. In the opinion of one who was involved, farmers became concerned that they would be outvoted after the 2010 elections, and the government replaced the councillors with commissioners. It is beyond the scope of this article, however, to make a detailed analysis of this event.

There does not appear to be any evidence in New Zealand of payment of MPs to represent or speak on behalf of interest groups, and there is no evidence that parties have been 'captured' by an interest group as a result of the presence of a former activist for that group.

The risk to the winners

Excessive pursuit of special interests to the point that they are injurious to the general public interest can lead to damaging political or other reaction which negates the gains won by pressing those interests, and in doing that may lower general welfare. A recent New Zealand example may have been the hard line taken by Federated Farmers against inclusion in the greenhouse gas emissions trading scheme, and against proposals for firm measures to reduce fertiliser run-off pollution of waterways. Fish and Game New Zealand, the pressure group for recreational fishers and hunters, labelled this 'dirty dairying', a phrase which caught on and may have contributed to firming up public opinion against dairy farmers and for stronger measures.

More broadly, the embedding of high income and wealth inequalities by the success of the oligarchic loop may in time provoke a populist response which rolls back the loop's influence and gains. Populism is seldom rational and coherent.

Prevention and reversal

Prevention of the oligarchic loop requires a strong, rules-based system which takes account of the interests of the least and less powerful. Exposure and reversal require strong institutions, a rules-based system,

and rigour in policy-making and political decision-making and in the operations of government departments and agencies to prevent capture and resultant rents.

One institutional dimension is transparency: sunlight is the best disinfectant. This focuses on roles of the media, the parliamentary process and the three parliamentary officers, the auditor-general, the ombudsman and the parliamentary commissioner for the environment, who can speak on behalf of 'dispersed interests'. To these might be added the Office of the Children's Commissioner. Some think, though some doubt, that a register of lobbyists would help. In all cases there are examples of strong sunlight but also some clouds.

Another relevant institution is the Commerce Commission, which has multiple roles, including controlling monopolies and setting pricing parameters for oligopolies, finding and fining cartels, and inquiring into and putting a stop to excessive exploitation of market power to disadvantage consumers and suppliers. Other channels are courts; citizens' campaigns; protests and petitions' citizens-initiated referendums (though none have been acted on so far); a citizens assembly or jury (tried in Canada and Ireland but not yet in New Zealand); collaborative governance, as through the Land and Water Forum, involving 59

interest groups, which produced consensus on the foundations of water policy; working groups involving experts; and electronic channels for consultation and feedback. (Fuller discussion is contained in the note on which this article is based.)

In summary

The cornerstone criterion by which pursuit of a special interest is judged to be injurious to the general public interest is whether it manufactures a substantial inequality or maintains or exacerbates an existing substantial, manufactured inequality. That the level of income and wealth inequality is high in New Zealand and has risen greatly since the 1980s, and so has put full citizenship beyond the reach of large numbers of citizens, suggests that the level of successful pursuit of injurious special interests has also been high, at least in the sense of a loop having developed which generates and protects policies that benefit those who have already benefited. Within that loop there are examples of specific injurious interests. That suggests that there is cause for an informed and comprehensive inquiry and a programme of action, aimed at each citizen having full, equal membership of society, the essence of a democracy.

¹ This article abridges a note posted at <http://igps.victoria.ac.nz/Vested%20Interest%20Paper.pdf>.

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