

The autonomy and governance of New Zealand universities

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ABSTRACT

Although many of the proposals in the White Paper have been shelved, they have certainly not been buried. Indeed, it is very probable that some of them will find their way back onto the policy agenda, perhaps within the context of the next round of reviews. With this in mind, the following paper analyses and assesses the degree of autonomy enjoyed by New Zealand universities under both 'Leaming for Life' and the policy regime envisaged by the White Paper. In order to undertake this task, we first explore the meaning and nature of university autonomy and, building on the work of Lane (1981) and various other scholars, outline the different kinds of autonomy that are relevant to the academic context. The paper also seeks to compare and contrast the autonomy of New Zealand universities with their counterparts in other similar jurisdictions.

Introduction

Public discourse on critical policy questions - whether these be economic, social, environmental, educational or medical in nature - is typified by a clash of ethical principles. The question of how universities should be governed, which is the focus of this paper, is no exception. Defenders of the Anglo-American concept of the university place a high value on institutional autonomy (see Barnes, 1999; Cutt and Dobell, 1992; Eustace, 1994; Neave, 1988, 1996; Shils, 1989, 1992, 1994; Tight 1992). In other words, universities should be largely self-managing and should have the right to make all the key decisions affecting the nature of their teaching and research. Such an approach, it is argued, is necessary in order to protect the mission and proper functioning of the university, guarantee academic freedom, facilitate internal democracy, and ensure flexibility, responsiveness and efficiency. From this standpoint, interference, direction and control by external authorities and interests - whether these be governments, church hierarchies or benefactors - should be minimized.

Against this, many others contend that where universities are in receipt of significant public funds it is perfectly proper for governments to play a significant role in determining their policies and priorities. At the very least, universities should be held fully accountable for the efficient and prudent use of the public resources they receive, with appropriate systems for monitoring their performance and adequate powers for governmental intervention in the event of inadequate performance. Necessarily, such provisions will impinge upon, and in some situations, substantially constrain, the degree of institutional autonomy.

In New Zealand there has been periodic debate over the proper balance between university independence and governmental interference for much of the post-war era (see Blakeman, 1999; Boston, 1988, 1995, 1996; Butterworth and Tarling, 1994; Martin, 1995; Patterson, 1996; Peters,

1996a, 1996b). This debate intensified in the late 1980s as a result of the fourth Labour government's reforms to the tertiary sector. These were enunciated in a major policy document entitled 'Learning for Life' and subsequently implemented, with various modifications, by means of the Education Amendment Act No. 3, 1990. While the Labour government believed that it had struck an appropriate and durable balance between the competing demands of institutional autonomy and public accountability, many others were not convinced - including most of the government's key advisers on tertiary education policy, together with a number of prominent academics and business leaders (see Evans and Quigley, 1996; Kerr, 1995, 1996; Ministry of Education 1991; New Zealand Business Roundtable, 1994; Scott and Smelt, 1995; State Services Commission, 1990; Treasury, 1996; Victoria University of Wellington, 1995). Hence, even before Labour's reforms had been fully implemented, the new governance framework for the country's tertiary institutions was under attack.

The main criticisms, which were put with increasing vigour and persistence during the 1990s, centred on the following concerns:

- the retention, under 'Learning for Life', of an inappropriate organizational form and an outdated model of governance based on semi-representative councils, a weak financial monitoring and reporting regime, and inadequate incentives for performance;
- the absence of any requirement for tertiary institutions to pay a capital charge of the kind imposed upon most other public bodies;
- the fact that although the Crown carried a substantial ownership risk in universities, it had relatively little capacity to control this risk;
- the excessive size of university councils and the inclusion of an unjustified number of internal stakeholders (i.e. staff and students); and
- the negative impact on institutional performance arising from the maintenance of various input controls (e.g. in relation to borrowing, the issuing of debentures, the sale of assets, etc.).

Despite repeated efforts by departmental officials, the Business Roundtable and other interests to achieve further reform, the governments of the early-to-mid 1990s made few significant changes to the governance framework put in place by Labour in 1990. However, in early 1997 the National-New Zealand First coalition launched a comprehensive review of tertiary education policy. This gave rise to the publication of a Green Paper in September 1997 (Ministry of Education, 1997) and, subsequently, a White Paper in November 1998 (Ministry of Education, 1998). The latter document outlined a series of policy initiatives which, if implemented, would have had major implications for the funding, governance, autonomy and accountability of New Zealand's tertiary institutions, above all for the seven universities. However, following a change of Minister in early 1999, the National-led government revisited many of the decisions enunciated in the White Paper, and in early August 1999 it was announced that the planned legislative changes would not be introduced - or at least not until the following year at the earliest. Later the same month a new policy initiative - 'Bright Future' - was launched. This purported to represent a 'substantial investment in developing our knowledge economy' (Ministry of Commerce, 1999: 8). However, the actual 'new money' amounts to less than \$12 million per annum over a four-year period. Additionally, the government announced that it would conduct a further series of reviews, with a Higher Learning Sector Taskforce being appointed to 'develop a shared strategic vision for the shape and structure of the tertiary sector' (ibid: 9).

Although many of the proposals in the White Paper have been shelved, they have certainly not been buried. Indeed, it is very probable that some of them will find their way back onto the policy agenda, perhaps within the context of the next round of reviews. With this in mind, the following paper analyses and assesses the degree of autonomy enjoyed by New Zealand universities under both 'Learning for Life' and the policy regime envisaged by the White Paper. In order to undertake

this task, we first explore the meaning and nature of university autonomy and, building on the work of Lane (1981) and various other scholars, outline the different kinds of autonomy that are relevant to the academic context. The paper also seeks to compare and contrast the autonomy of New Zealand universities with their counterparts in other similar jurisdictions.

The nature of university autonomy

Arguably the most rigorous conceptualisation of university autonomy in the existing literature is that provided by the eminent Swedish political scientist, Jan-Erik Lane (1981). In accordance with Lane's framework, there are a number of factors which affect the relative independence of universities. The first is the extent to which they are subject to formal external controls. Two issues are of critical importance in this respect: how the governing body of the institution is appointed and the degree to which key decisions are made internally (i.e. by the institution) or externally. In accordance with Lane's terminology, a university is deemed to be 'autokephalous' where decisions concerning the appointment of its governing board are made internally and 'heterokephalous' where these decisions are made externally (e.g. by the government). Likewise, a university is classified as having 'autonomy' where decisions governing its actions are made by, or within, the university itself, collectively or individually. By contrast, Lane uses the term 'heteronomy' to refer to situations where decisions are made externally. Table 1 summarizes these distinctions.

On the basis of this approach, universities can be placed within four separate categories, depending on the degree of internal control exerted over, first, a range of key policy decisions, and second, the appointment of the governing body. The relevant typology is outlined in Table 2. In keeping with this, universities can be said to enjoy 'independence' when they are characterised by both a high degree of decision-making autonomy and direct control over the membership of their governing body. Conversely, where neither condition applies they are deemed, in Lane's terminology, to be under 'subordination'. Lane employs the term 'semi-dependence' to describe situations where the governing body is internally appointed but the institution has little control over key policy matters. Under these circumstances, however, 'subordination' may be a more accurate description since the members of the governing body will have little real power.

Like many other scholars, such as Berdahl (1990), Dressel (1980) and Tight (1992), Lane distinguishes between substantive autonomy (the power of an institution to determine its own goals and programmes) and procedural autonomy (the power of an institution to determine the means by which its goals and programmes are pursued). However, he argues that the importance of this distinction should not be exaggerated because of the possibility of substantive issues being largely determined externally as a result of governmental controls over procedural issues. As highlighted in Table 3, 'full autonomy' is deemed to apply only to situations where there is a high level of both substantive and procedural autonomy.

Focus	Lane's Typology		Description
Decision-makers	Autokephaly		University appoints own decision makers
	Heterokephaly		University's decision-makers appointed externally
Decision-making	Autonomy	Substantive	University's decision-makers make 'what' decisions
		Procedural	University's decision-makers make 'how' decisions
	Heteronomy	Substantive	'What' decisions made externally
		Procedural	'How' decisions made externally

Table 1 – Decision-makers and Decision-Making

	Autokephaly	Heterokephaly
Autonomy	Independence	Semi-independence
Heteronomy	Semi-dependence	Subordination

Table 2 – Auto(hetero)nomy and Auto(hetero)kephaly

	Substantive Autonomy	Substantive Heteronomy
Procedural autonomy	Full autonomy	Limited heteronomy
Procedural heteronomy	Limited autonomy	Full heteronomy

Table 3 – Procedural and Substantive Auto(hetero)nomy

In practice, of course, one cannot assess the degree of university autonomy solely on the basis of the legal framework under which such institutions operate. Thus, as Lane argues, it is necessary to make a further distinction - between 'legal' autonomy and 'real' autonomy. Legal autonomy comprises the rights and freedoms formally granted by law or other policy instruments, such as charters. Real autonomy, by contrast, is influenced not merely by the formal legal arrangements but also such factors as tradition, reputation and politics. Further, the level of public funding, and the conditions under which it is provided, will also influence the degree of real autonomy (e.g. by constraining a university's ability to exercise its statutory powers, or by creating incentives that influence a university's choices). Equally, of course, universities with large endowments may enjoy greater real autonomy than the legislative framework might otherwise suggest.

Legal autonomy may be either explicit (e.g. through provisions that grant rights and freedoms) or implicit (e.g. through the absence of controls or restrictions). Legal autonomy can be further subdivided into unconditional autonomy, when changes to legal autonomy require the introduction or amendment of laws or charters, and conditional autonomy, when the state already has the power to intervene. This classification of autonomies is summarised in Table 4.

Lane's Typology			Description
Real			Autonomy accruing from reputation, prestige, tradition
Legal	Explicit	Unconditional	Autonomy granted by legal instrument, and not changeable without change to instrument
		Conditional	Autonomy granted by legal instrument, but state has authority to intervene
	Implicit		Autonomy accrues from absence of controls or regulations

Table 4 – Lane's Classification of Autonomies

It is important to emphasize that auto(hetero)nomy and auto(hetero)kephaly are not binary positions capable of being simply depicted in the manner of Tables 1 to 3 above. Rather, as Lane suggests, they are scalar, so their relationship is better depicted on scatter graphs, if appropriate measurements could be made.

In considering whether a university is best classified under the category of 'autonomy' or 'heteronomy' it is necessary to be clear about which particular decisions concerning its operations are critical and which are not. After all, some rights, powers and freedoms are likely to be more crucial than others for the establishment and maintenance of genuine institutional autonomy. The question of which particular rights are most vital has been the subject of extensive analysis and debate over many years, both in New Zealand and elsewhere. For instance, Tapper and Salter (1995: 59-60) list seven key rights as being necessary for universities to enjoy real autonomy. These are the freedom to:

appoint academic staff without external interference, decide whom to admit as students, identify what they should teach and how it should be taught, control their own standards, establish their own academic priorities and determine internally their patterns of future development.

Bok (1982: 38), quoting American Supreme Court Justice Felix Frankfurter, identifies 'four essential freedoms', namely the right of a university to determine 'who may teach, what may be taught, how it should be taught, and who should be admitted to study'.

A review of the relevant literature reveals no less than 86 separate rights, powers and freedoms (or what can be termed 'elements of autonomy') which various scholars have identified as having a bearing on university autonomy (see Blakeman, 1999). Many of these, of course, overlap. As might be expected, virtually all scholars include in their lists the freedoms to admit students, appoint staff and confer degrees. Of the 86 elements of autonomy identified in the literature, those relating to teaching are most frequently cited (34 or 38%), followed by those relating to staffing matters (23 or 26%), while only 4 (5%) relate to research. If duplications are eliminated and freedoms of a similar nature are grouped together, then an inventory of 23 elements (9 substantive and 14 procedural) can be developed, as depicted in Table 5.

	Group	Element
Substantive	Teaching	choice of what to teach determination of course content
	Research	choice of what to research
	Students	admission of students
	Staffing	appointment of staff
	Planning and priority-setting	determination of institutional mission and purpose determination of institutional goals determination of institutional objectives allocation of funds amongst activities
Procedural	Teaching	determination of course length determination of means of course delivery assessment and examinations conferring of degrees and diplomas
	Research	determination of research methodology dissemination of research
	Students	discipline
	Staffing	promotions award of tenure discipline determination of conditions of employment determination of staffing levels and ratios
	Management	management of own revenue and expenditure determination of organisation structure

Table 5 – An Inventory of Elements of Autonomy

The distinction between substantive autonomy and procedural autonomy, whilst not a precise boundary, is useful in understanding the link between university autonomy and academic freedom and, in particular, in identifying those elements of university autonomy that are most necessary for academic freedom. The right of a university, for example, to decide whether or not to teach archaeology contributes more to the academic freedom of those staff with the relevant expertise to teach in this disciplinary area than would the right to determine all the administrative details of a particular archaeology course. ⁰¹, to put it differently, a ministerial directive that archaeology not be taught would be a more serious threat to academic freedom than would be similar directives covering the fee structure, timing and maximum class size for Archaeology ¹⁰¹. Likewise, an Education Ministry that set professorial salaries would not threaten academic freedom to the extent that it would if it decided the substantive matter of their appointment and dismissal. Not surprisingly, therefore, Berdahl (1990), Dressel (1980), Lane (1981) and Tight (1992) all see interference in substantive autonomy as far more serious than interference in procedural matters. This is not to suggest that all elements of substantive autonomy are necessary for academic freedom, or that procedural autonomy makes no contribution to academic freedom. However, in general terms the elements of substantive autonomy listed in Table 5 are more important to the maintenance of academic freedom than the procedural elements.

In summary, Lane's approach provides a framework for assessing whether a university is making decisions under conditions of autokephaly or heterokephaly and, in respect of each of the decisions or elements in Table 5, whether the decision is made autonomously ⁰¹ heteronomously, and whether the autonomy concerned is substantive or procedural, real or legal, implicit or explicit, unconditional or conditional. Drawing upon this framework it is possible to map in a systematic fashion how the characteristics, or elements, of different accountability relationships (e.g. with the state and other stakeholders) affect the level and nature of each university's autonomy.

University autonomy in New Zealand: An application of Lane's Framework

Turning, then, to the situation in New Zealand: Are the councils of the seven universities best characterised as autokephalous or heterokephalous, how do they compare with their counterparts in other similar jurisdictions and what impact would proposals of the kind contained in the Tertiary White Paper have on this state of affairs? Further, how much decision-making autonomy, both procedural and substantive, do New Zealand universities enjoy, how might this have been affected by the White Paper and how does the current situation compare internationally?

1. Autokephaly or Heterokephaly?

The Education Act 1989 (as amended by the Education Amendment Act No 3 1990) provides a detailed prescription for both the size and composition of university councils (as well as the governing bodies of other tertiary institutions). Under section 171, councils must have between 12 and 20 members. This means that they are larger than the boards of Crown-owned companies (which typically have between five and nine directors), but smaller than the governing bodies of equivalent institutions in many other jurisdictions (see below). Within these parameters, the Act provides for councils to include: four persons appointed by the Minister of Education; the Vice-Chancellor; between one and three members of the academic staff; between one and three members of the general staff; between one and three current or former students of the institution; a nominee of the Employers' Federation; a nominee of the Council of Trade Unions; and, where appropriate, representatives of relevant professional bodies. There is also flexibility within section 171 for other members to be co-opted, appointed or elected in accordance with a council's constitution (e.g. representatives of local government and alumni). Table 6 summarizes these provisions and places the council members within three categories: internal, external and other. The membership of the seven university councils, as at the end of 1997 (based on each university's annual report), is presented in Table 7.

	Constituency	Minimum number of members	Maximum number of members
Internal:	Vice-Chancellor	1	1
	Academic staff	1	3
	General staff	1	3
	Students	1	3
External:	Ministerial appointees	4	4
	Central organisation of employers	1	1
	Central organisation of workers	1	1
	Professional bodies	0	*
Other:	Co-opted members	0	*
	Appointed members	0	*
	Elected members	0	*

* = no maximum set

Table 6 – Parameters for the Composition of University Councils under the Education Act 1989

The prescribed minima and maxima give a range of 4-10 internal members, a core of 6 external members and a flexible number of 'others'. The number of external members resulting from each combination of council size (12-20) and the number of internal members (4-10) is shown in Table 8. Thus, if a council has 16 members and 6 are internal, 10 must be external and other. On this basis, it can be readily determined which group within a council has a majority, as shown in Table 9. Notice that of the 53 possible combinations, there are only 10 where internal appointees enjoy an overall

majority and a further five where they are tied with external and other appointees. Accordingly, it might be argued that Labour's 'Learning for Life' reforms created a strong tendency towards heterokephaly.

However, this begs the question of whether those categorized as 'other' (such as co-opted members and graduates' representatives) should be regarded as 'internal' or 'external' appointments. The answer here depends on whether it is the *location* of the appointment decision or the *source* (or background) of the appointee that is referred to as 'internal' or 'external'. A related issue is whether internal members come from what might be termed the 'inner university' (i.e. staff and current students) or the 'wider university' (which includes graduates). Table 10 illustrates how the various members of a council can be classified depending upon who appointed them (the inner university, the wider university or an external body) and from whence they came (the inner or wider university, or from outside the university).

Council Size	Number of Internal Members						
	4	5	6	7	8	9	10
	Number of External and Other Members						
12	8	7	6	-	-	-	-
13	9	8	7	6	-	-	-
14	10	9	8	7	6	-	-
15	11	10	9	8	7	6	-
16	12	11	10	9	8	7	6
17	13	12	11	10	9	8	7
18	14	13	12	11	10	9	8
19	15	14	13	12	11	10	9
20	16	15	14	13	12	11	10

Table 8 – The Possible Number of External and Other Members of Councils According to the Number of Internal Members

Council Size	Number of Internal Members						
	4	5	6	7	8	9	10
12	E	E	T	-	-	-	-
13	E	E	E	I	-	-	-
14	E	E	E	T	I	-	-
15	E	E	E	E	I	I	-
16	E	E	E	E	E	I	I
17	E	E	E	E	E	I	I
18	E	E	E	E	E	T	I
19	E	E	E	E	E	E	I
20	E	E	E	E	E	E	T

Key: E = majority of members are external or other appointees

I = majority of members are internal appointees

T = external or other appointees balanced with internal appointees

Table 9 – Council Majorities

Autokephaly and heterokephaly, as defined by Lane, derive from the location of the appointment decision rather than source of the appointee. On this basis, most of the universities have used the discretion available to them to overcome the legislative bias towards heterokephaly (see Table 11). Only in the case of the University of Waikato do members appointed outside and

from outside the university have a majority on the Council; yet even in this instance it is the slimmest majority possible: 11-9. At the other end of the spectrum, just over 60 per cent of the council members at Auckland and Massey Universities are appointed by the inner university. In the other four universities, members appointed by the inner university outnumber those appointed outside the university, but must join with those appointed by the wider university to hold an overall majority. In these universities, members appointed by and from graduates hold the balance of power.

But what about the graduates of a university who are elected onto the council by the alumni: are they sufficiently 'of' the university to be considered 'internal' appointments? The answer here depends in part on why autokephaly is valued. Lane claims that it is important because of its contribution to autonomy. Given the justifications which are usually offered in support of autonomy - such as protecting academic freedom and enabling universities to pursue their role of discovering, preserving and disseminating knowledge - he is_ in effect arguing that internal appointments are important because this is more likely to result in decisions being made by people who are expert in, or at least understand, the affairs of universities and who are sympathetic to, or supportive of, its mission and values. External appointees, on the other hand, are suspect because they are less likely to have expertise in academic matters and more likely to place the interests of the external constituency (or stakeholder) that appointed them ahead of those of the university. If this assessment is correct (and it is of course open to challenge), then a good case can be made for designating graduates who are elected onto a university council as internal, rather than external, appointments. After all, graduates, by definition, have some experience of the university; they represent a group who can be expected to be concerned first and foremost with the university's mission, values and reputation, and they are not likely to allow their names to go forward for election to the council unless they have a personal commitment to enhancing the standing and reputation of the university. If it is accepted that graduates' representatives should be counted with appointments of the inner university in distinguishing internal appointments from external appointments, then it can be concluded that the Education Act 1989 gives universities sufficient latitude to establish autokephaly, an opportunity that all universities, save Waikato, have taken. Their autokephaly is reinforced by the fact that the appointment of the most important leadership position, the Vice-Chancellor, is a decision of the council.

The Impact of the White Paper on the Composition of University Councils

As noted, New Zealand governments since the early 1990s have been under constant pressure from both their advisers and various other quarters to alter the way in which universities (and other tertiary institutions) are governed. The Tertiary White Paper released in late 1998 was but the latest manifestation of these continuing efforts to achieve reform. But what of its implications? Would it have strengthened or diminished the current tendency towards autokephaly? The answer here is ambiguous. The main changes to governance proposed in the White Paper (Ministry of Education, 1998: 38-39, 64) were as follows:

- the maximum size of councils would have been reduced to 12 (from 20) with the minimum reduced to 7 (from 12);
- Vice-Chancellors would have continued to be members;
- councils would have been required to include at least one member of the university's academic staff and at least one student, but a majority of council members, including the Chancellor, would have had to be external (i.e. neither staff nor students);
- under normal circumstances there would have been no ministerial appointees. However, the membership of councils would have been subject to negotiations with the Minister of Education as part of the mandatory review of charters and there would have been provision

for the Minister to make direct appointments where the effective operation of the institution was deemed to have been at risk; and

- all council members would have been required by law to act in the best interests of the institution rather than as representatives of particular groups.

Such arrangements, if implemented, would have had the potential to both enhance and constrain the degree of flexibility regarding the composition of university councils. The reduction in their maximum size would have undoubtedly added a new constraint, as would the formal requirement for a majority of members to be from 'outside' the university. Likewise, the suggestion that each council's membership be negotiated with, and hence presumably approved, by the Minister of Education raised the possibility of political interference in the selection process, both in terms of the methods of selection adopted and the specific individuals chosen. While most Ministers are unlikely to use their statutory powers for party-political purposes, the mere existence of such legislative provisions could influence behaviour in various ways and thereby affect outcomes in particular cases.

Against this, the proposals for university governance contained in the White Paper were less prescriptive than the existing legislative requirements, and thus raised the possibility of a greater range of outcomes in terms of the location and source of council members. Thus, at one extreme the proposed legislation would have facilitated a situation in which only three members were internally appointed (i.e. the Vice-Chancellor, an academic and a student) while the remainder (up to nine) were external members (e.g. selected or nominated by local authorities, professional bodies, iwi, etc.). Admittedly, such an outcome was unlikely, largely because most universities would doubtless have preferred a higher proportion of internally-selected members, whether these be staff, students, graduates or co-opted members. At the other extreme, there was nothing in the proposed legislation to prevent (other than a ministerial veto) a situation where all the members of a council were internally appointed, with up to five being from the 'inner' university and the remainder from the 'wider' university. In all probability, however, councils under the White Paper proposals would have fallen somewhere between these two extremes, with a mix of internal and external appointees (and within the internal category, a mix of both inner and wider appointees). Additionally, the removal of the statutory requirement for there to be at least six external appointees (i.e. four ministerial appointees, together with employer and union nominees) would probably have reduced the overall proportion of external members.

	Current 'Average' Composition	Possible Post-White Paper Composition	Change
VC, Staff and Students	7	5	- 2
Graduates	3	3	-
External appointees	6	2	- 4
Co-opted	2	2	-
Total	18	12	- 6
Location of Appointment Decision:			
Inner University	50%	58%	+ 8%
Wider University	17%	25%	+ 8%
External	33%	17%	- 16%
Source of Appointee:			
Inner University	39%	42%	+ 3%
Wider University	17%	25%	+ 8%
External	44%	33%	- 11%

Table 12 – Council Membership: Comparing the Education Act 1989 with the White Paper Proposals

Table 12 illustrates how a university council might have been composed after the implementation of the White Paper and compares this with the typical pattern of membership across the seven university councils in 1997. As highlighted by this example and, ignoring for a moment the possibility of ministerial interference in the selection process, the general thrust of the reforms outlined in the White Paper was to enhance the scope for autokephaly. Accordingly, if Lane's framework for analysing institutional autonomy is correct, there was potential for the proposed reforms to increase (albeit marginally) the degree of university autonomy, at least with respect to the degree of internal control exercised over the composition of university councils. Against this, however, if legislation had been enacted which provided for a ministerial veto over the composition of individual councils and if particular ministers had chosen to use such powers to prevent or direct particular outcomes, then such a conclusion would be called into question.

Also notable is the fact that the White Paper (unlike the Education Act 1989) was silent on how members from the inner university (i.e. the staff and students) should be appointed (i.e. whether they should be elected by their peers as at present or whether they should be selected via other, possibly less democratic, processes). It did state, however, that such members would not be 'formal representatives' of their respective constituencies (Ministry of Education, 1998: 39). Hence, the White Paper could well have given rise to a situation in which university councils were more autokephalous (and thus more autonomous, at least in one respect) but also, in a sense, less democratic and less representative of their various stakeholders (e.g. like the councils of Harvard, Stanford and many other private universities in the United States).

The Composition of Governing Bodies in Other Jurisdictions

Universities in other liberal democracies are governed in a wide variety of ways. Major differences are evident, for instance, in relation to the size and composition of university councils (or their equivalents), the process for selecting Vice-Chancellors (or their equivalents), the respective roles of the councils and Vice-Chancellors, the role of academic senates (or their equivalents), and the status and role of professors in university management.

As far as the governing bodies of overseas universities are concerned, in some jurisdictions they are largely autokephalous (i.e. they have a predominance of internal appointees) whereas in others they are characterised by a high degree of heterokephaly (see Fielden, 1996). To complicate matters, there are often significant differences within individual countries. These include differences within the public university system (e.g. between older and newer universities, or between the arrangements in different states or provinces), as well as differences amongst private universities (where such institutions exist). Moreover, whereas in many cases (e.g. Australia) it is the norm for the Vice-Chancellors (Rectors, Presidents or Principals) to be appointed by the governing body, in other instances (e.g. Italy) these appointments are the responsibility of the academic staff (either directly or indirectly through a body such as the Senate).

To illustrate, in Britain and Ireland, the oldest universities, such as Cambridge, Oxford and Trinity College Dublin, have been almost entirely self-governing for many centuries, with their governing bodies composed entirely of academic staff from within the institution (see Eustace, 1992; Dearing, 1997; Dearlove, 1998). By contrast, most of the universities established since the early nineteenth century have a mixture of internal and external appointees, as in New Zealand. Table 13 outlines the composition of the councils of four leading civic universities in Britain - Sheffield, Leeds, Manchester and Birmingham. Note that in each case the councils are relatively large, Manchester being the smallest with 'only' 35 members. Further, a significant proportion of the members are appointed by the 'Court' of the university. This is a large body, with typically 200-400 members, the majority of whom are external to the university. The Court has only limited functions, but these include the power to amend the University's Charter and Statutes and, in some cases, the right to appoint the Vice-Chancellor. All four of the universities cited in Table 13 have consistent but narrow majorities of external members on their councils, but two have a majority appointed by, or from within, the university and two have a majority appointed by authorities outside the university. Generally, the newer universities created from the former polytechnics have much smaller boards of 12-24 members, with a majority appointed by the boards from outside the university. According to Dearlove (1998), these boards were initially chosen by the Conservative government during the 1980s, and have subsequently become largely self-perpetuating, conservatively-biased, externally dominated governing bodies.

	Sheffield	Leeds	Manchester	Birmingham
Council Officers	4	6	1	4
VC, PVCs etc	5	5	4	4
Deans	8			7
Academic Staff	10	9	12	9
General Staff	2	4		
Students	5	5		4
Court	15	17	18	14
Municipalities	9	4		2
Crown		1		1
Graduates	3	2		3
Co-opted	6			7
Total	67	53	35	55
Location of Appointment Decision:				
Internal	58%	47%	46%	62%
External	42%	53%	54%	38%
Source of Appointee:				
Internal	49%	47%	46%	49%
External	51%	53%	54%	51%

Table 13 – The Councils of Four British Universities

	Monash	Adelaide	UNSW	ANU	Melbourne	Macquarie	WA
Vice-Chancellor	1	1	1	1	1	1	1
Academic staff	3	6	5	5	4	4	4
General Staff	1	2	1	1		1	
Students	2	3	2	2	2	1	3
Government	7		4	8	7	6	7
Co-opted	6	6	1	1	6	1	4
Graduates			4	2		4	6
Total	20	18	18	20	20	18	25
Location of Appointment Decision:							
Internal	65%	100%	78%	60%	65%	67%	72%
External	35%	0%	22%	40%	35%	33%	28%
Source of Appointee:							
Internal	35%	67%	72%	55%	35%	61%	56%
External	65%	33%	28%	45%	65%	39%	44%

Table 14 – Councils of Seven Australian Universities

The pattern in Australia is a little less complex. The public universities are all established and governed by their own State Act of Parliament, each of which prescribes, with considerable variation, the composition of the council. Table 14 outlines the different mixes of staff, students, graduates and external appointees in seven leading Australian universities. Although different

patterns are evident with respect to the relative predominance of internal or external members, in each case the majority of members is consistently appointed from within the university.

In the United States, responsibility for university governance in both the public and private systems typically lies in the hands of lay boards. However, it has been the norm for substantial executive authority to rest with the President in each university. There has also been a strong tradition for management authority to be delegated to the Faculty or department level. The boards of private colleges are largely self-appointing and self-perpetuating, while the state university systems are under the control of semi-independent boards, usually appointed by state governors, often including state officials and legislative leaders as *ex officio* members and sometimes with very limited student and alumni representation.

Table 15 outlines the composition of the boards of a small selection of leading private universities, while the governance arrangements of some public university systems are described in Table 16. By comparison with the governing bodies in Australia, Britain, Ireland and New Zealand (to name but a few cases), staff and student representation on American university boards is only occasional, and the inclusion of the President is uncommon (especially in the public sector). In the case of state universities, appointees of and office-holders within the state governments comprise the entirety, or at least an overwhelming majority, of the membership. Very often, too, appointments are strongly politically influenced, with state governors selecting people who have supported their election or re-election campaigns (see Holthouse, 1992; Schwartz, 1991). Nor is it unknown for boards to intervene in the operations of individual universities under their jurisdiction for political purposes. For instance, a report by the California Higher Education Policy Centre (Trombley, 1995) lists a number of high-profile politically motivated interventions by the Regents of the University of California. These include:

- the firing in 1950, in the context of the anti-Communist hysteria then gripping the country, of 31 academic staff who had refused to sign a loyalty oath;
- the dismissal in 1966 of the University's President, Clark Kerr, at the first Regents meeting after the election of Governor Ronald Reagan, who had promised to 'clean up the mess at Berkeley' (*ibid*, 7). Kerr reports two Regents asking that he resign rather than face dismissal, arguing that ' [outgoing Governor] Pat Brown got his president and now it's Reagan's turn' (*ibid*);
- challenging or delaying the promotion of or award of tenure to academics thought to be liberal, especially during the 1960's and 1970's; and
- a 1995 decision to end affirmative action policies at the university, under pressure from Governor Wilson, who had made the issue an important part of his campaign for the Republican presidential nomination.

	Stanford ¹	Princeton ²	Duke ³	MIT ⁴	Harvard ⁵
President	1	1		1	
State Government		1		3	
Graduates	8	13	12	6	30
Co-opted	26	25		65	
Church			24		
Total	35	40	36	75	30

Table 15 – Boards of Five Leading American Private Universities

	University of California System ⁶	State University of New York ⁷	California State University ⁸	University of Texas System ⁹	Pennsylvania State System of Higher Education ¹⁰	State University System of Florida ¹¹
President	1					
State Governor	18		16	9	20	12
State Legislature		16				
State Office-holders	4		4			1
Student	1		1			1
Alumni	2		1			
Academic Staff			1			
Total	26	16	23	9	20	14

Table 16 – Boards of American Public Universities in Six States

It is notable that, by comparison with the governing bodies in most comparable jurisdictions, university councils in New Zealand are already relatively small. Thus, if they are reduced in size even further, as the White Paper proposed, they will be amongst the smallest such bodies within the OECD. Having said this, there appears to be something of a trend towards smaller councils. For instance, the recent major reviews of tertiary education in Australia (West, 1998) and Britain (Dearing, 1997) both recommended a reduction in the size of university councils. The Dearing Report, for instance, suggested that universities should have councils of 12-25 members. While endorsing the idea of staff and student representation, it argued that the majority of the members should be lay people from outside the university, selected on the basis of merit rather than any office held and obligated to place the interests of the institution ahead of those of any particular group or constituency of interest. Likewise, the West Report recommended that councils should have around 15 members, with the state government appointing several members, and external members accounting for approximately two-thirds of the total membership.

2. Autonomy or Heteronomy?

As argued earlier, the composition of universities' governing bodies, and in particular the degree to which their membership is determined internally or externally, is only one of many factors influencing their overall independence. Equally, if not more important, is the question of who makes the key policy decisions (of both a substantive and procedural nature) concerning such matters as teaching, research, staffing and priorities. Are these the responsibility of the university, or does decision-making power lie elsewhere? In Lane's terminology, are New Zealand universities characterised by autonomy or heteronomy?

New Zealand's universities have enjoyed a relatively high degree of both substantive and procedural autonomy during much of the post-war era, and this situation was confirmed and

strengthened as a result of Labour's 'Learning for Life' reforms. Indeed, the Education Act 1989 explicitly endorses the principle of institutional autonomy and provides strong support for academic freedom. The relevant sections of the Act include the following provisions:

160. Object - The object of the provisions of this Act relating to institutions is to give them as much independence and freedom to make academic, operational, and management decisions as is consistent with the nature of the services they provide, the efficient use of national resources, the national interest, and the demands of accountability.

161. Academic freedom - (1) It is declared to be the intention of Parliament in enacting the provisions of this Act relating to institutions that academic freedom and the autonomy of institutions are to be preserved and enhanced.

(2) For the purposes of this section, 'academic freedom', in relation to an institution, means -

(a) The freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions;

(b) The freedom of academic staff and students to engage in research;

(c) The freedom of the institution and its staff to regulate the subject matter of courses taught at the institution;

(d) The freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning;

(e) The freedom of the institution through its chief executive to appoint its own staff.

(3) In exercising their academic freedom and autonomy, institutions shall act in a manner which is consistent with-

(a) The need for the maintenance by institutions of the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and

(b) The need for accountability by institutions and the proper use by institutions of resources allocated to them.

(4) In the performance of their functions the Councils and chief executives of institutions, Ministers, and authorities and agencies of the Crown shall act in all respects so as to give effect to the intention of Parliament as expressed in this section.

But while the Act recognises and guarantees important freedoms relating to thought and expression, research, curriculum, teaching and appointments, it also imposes certain limitations. For instance, the freedoms of academics and universities are constrained by the need to ensure the efficient use of national resources, the protection of the national interest, and the maintenance of public accountability and ethical standards.

Using the 'elements of autonomy' identified in Table 5, Tables 17 and 18 outline the legal provisions concerning universities' substantive and procedural autonomy following the implementation of the 'Learning for Life' reforms. As these Tables highlight, the Education Act 1989 provides New Zealand universities with a significant measure of independence in relation to most, if not all, of the major elements of autonomy. The main limitations on substantive autonomy - and they are potentially significant - are the powers of the Minister of Education to determine the content of Charters, to veto the provision of particular courses, to determine the level of each institution's annual funding, to link any funding to approval of an institution's objectives, and to recommend the disestablishment of a university (see Martin, 1995). Further, the Act requires the concurrence of the Secretary of Education before universities can borrow, issue debentures, dispose of assets, or grant leases of land or buildings. It also mandates the universities to seek the agreement of the State Services Commissioner before determining the Vice-Chancellor's term and conditions of employment and obliges consultations with the Commissioner when collective employment contracts are being negotiated.

The key elements of procedural autonomy are even more extensively and specifically provided for. Save for the determination of the length of a course, which is effectively the Ministry's decision through their power to determine a course's length for funding purposes,¹² and the determination of an institution's organisational structure, which can be read into a chief executive's general powers to manage and as the employer, all the main elements of procedural autonomy are represented by specific empowering provisions.

Element of Autonomy		Legal Provisions
Group	Element	
Teaching	Choice of what to teach	<ul style="list-style-type: none"> • general statement in s161(1)(d) • specific powers to provide courses [s193(2)(a)], make statutes concerning courses [s194(1)(f)], determine courses to be provided [s223(1)] • NZVCC exercises power of NZQA [s260] to approve courses [s258] and providers of approved courses [s259] • EFTS system prescription makes approval by NZVCC mandatory, even though ss258-9 make such approvals voluntary • capping under EFTS system of numbers at each institution in some specific courses and in broad subject areas • the Minister may bar an entire course [s223(2)]
	Determination of course content	<ul style="list-style-type: none"> • general statement in s161(1)(c) • no specific empowerment or limitation
Research	Choice of what to research	<ul style="list-style-type: none"> • general statement in s161(1)(b) • no specific empowerment or limitation
Students	Admission of students	<ul style="list-style-type: none"> • power to make statutes [s193(2)(e)] • entry qualification and age for each course determined by institutions under [s224(2)] • power of Council or delegate to decide on admission [s193(2)(a)] • eligible students entitled to admission [s224(4)] • Council may restrict numbers [s224(5)] • limits on admission of foreign students [s224(7)-(12)]
Staffing	Appointment of staff	<ul style="list-style-type: none"> • general statement in s161(1)(e) • Council appoints VC [s180(a)] • VC appoints other staff
Planning and priority-setting	Determination of institutional mission and purpose	<ul style="list-style-type: none"> • Council negotiates Charter with Secretary [s180(b)], Secretary must strive to reach agreement with Council [s186(1)], failing agreement the Minister consults and determines the matter [s186(2)] • Minister may initiate amendment [s187] • Minister approves Charters and amendments [s188]
	Determination of goals	<ul style="list-style-type: none"> • goals part of Charter – see mission/purpose above
	Determination of objectives	<ul style="list-style-type: none"> • stated in Statement of Objectives, approved by Council [s180(c)] • Statement of Objectives prepared under s41 of the Public Finance Act 1989 with objectives and performance indicators [s203] • EFTS funding subject to Minister being satisfied that the objectives are suitable for implementation of the Charter [s199(3)]
	Allocation of funds amongst activities	<ul style="list-style-type: none"> • not restricted, institutions free to allocate funds and cross-subsidise as they see fit

Table 17 - The Legal Substantive Autonomy of New Zealand Universities after 'Learning for Life'

Element of Autonomy		Legal Provisions
Group	Element	
Teaching	Determination of course length	<ul style="list-style-type: none"> EFTS value determined by Ministry
	Determination of means of course delivery	<ul style="list-style-type: none"> general statement in s161(1)(d) no specific empowerment or limitation
	Assessment and examinations	<ul style="list-style-type: none"> general statement in s161(1)(d) no specific empowerment or limitation
	Conferring of degrees and diplomas	<ul style="list-style-type: none"> power to make statutes [s194(1)(g)]
Research	Determination of research methodology	<ul style="list-style-type: none"> general statement in s161(1)(d) no specific empowerment or limitation
	Dissemination of research	<ul style="list-style-type: none"> general statement in s161(1)(d) no specific empowerment or limitation
Students	Discipline	<ul style="list-style-type: none"> power to make statutes [s194(1)(a), (b)]
Staffing	Promotions	<ul style="list-style-type: none"> within power of VC as employer
	Award of tenure	<ul style="list-style-type: none"> within power of VC as employer
	Discipline	<ul style="list-style-type: none"> power to make statutes [s194(1)(a), (b)]
	Determination of conditions of employment	<ul style="list-style-type: none"> within power of VC as employer
	Determination of staffing levels and ratios	<ul style="list-style-type: none"> within power of VC, but constrained by funding
Management	Management of own revenue and expenditure	<ul style="list-style-type: none"> monitoring and policy determination is responsibility of Council [180(d)(e)] management of academic and administrative affairs the responsibility of VC [s196] income and capital applied to whatever Council thinks will accomplish mission and goals set out in Charter [s199(6)(a)] limits on borrowing, disposing of or leasing assets without consent of Secretary [s192]
	Determination of organisation structure	<ul style="list-style-type: none"> not restricted

Table 18 - The Legal Procedural Autonomy of New Zealand Universities after 'Learning for Life'

The Potential Impact of the White Paper and the Tertiary Funding Decisions in the 1998 Budget

But what of the implications for autonomy, whether substantive or procedural, arising from the policy changes outlined in the White Paper? The answer here is by no means straightforward (see Table 19). To start with, the 1998 Budget (delivered six months before the White Paper was released), announced important modifications to the funding system for tertiary institutions. For a considerable period of time, each university was funded on the basis of an approved estimate of the number of equivalent full-time students (EFTS) to be enrolled, with funding levels differentiated by course category. The total number of EFTS to be funded at each university, as well as the number in each course category, was determined annually by the government. Under the new arrangements, each institution's funding will depend solely on the number of EFTS it enrolls. The Minister of Education will thus no longer be able to limit an institution's funding, whether in aggregate or in each course category.¹³ At the same time, the Minister will still be able to determine the funding category for each course, the level of funding for each category of EFTS, the fundable length of each course and whether or not a course has the accreditation necessary for funding eligibility. These powers are not insignificant.

Overall, the changes in funding policies represent the removal of one of the few remaining constraints on autonomy that existed under 'Learning for Life'. As well as enabling institutions to develop to an extent, and in directions, that they may previously have been restrained from doing, it also removes the spectre, whether or not it was ever real, of a Minister of Education 'punishing' particular institutions for unwelcome outspokenness by paring back their allocation of EFTS. Under further changes announced in the White Paper the only such weapon available to the government is to refuse funding to an institution altogether if it fails to comply with 'requirements' established as a condition of funding by a Notice in the Gazette. While punishment by paring could have been done in a non-transparent manner without ministers having to account for their actions, the latter is a more drastic step, which could only be done openly and for good reason.

Although this change in policy represents both a gain in autonomy and the removal of a threat to autonomy, it is a gain that comes at the price of greater exposure to market forces, and thus greater uncertainty and added financial risks. The system of ministerial allocations inhibited supply from moving in response to demand, and forced consumption patterns in some cases to vary from demand. Removing this constraint will facilitate more rapid changes in supply in response to fluctuating demand for particular courses. But while this will enhance institutional responsiveness to students' course preferences, it will also make planning and priority-setting more difficult. Equally important, it may reduce the willingness of universities (and other tertiary providers) to undertake long-term investments in staff and capital, especially in disciplines where the costs are substantial but the student demand uncertain.

Autonomy Type and Element Group		Autonomy Prior to the White Paper	Autonomy After the White Paper
Substantive	What to teach	Most decisions about the provision of courses made by the university. Course approval by the CUAP of NZVCC. Minister may bar a course (but has never done so). EFTS funding system limits total enrolments by subject area	No changes

	What to research	Decisions made by universities and/or researchers. Contestability of much research funding a constraint on some research activity, especially expensive projects	Greater contestability for research funding (via external bodies) may limit university autonomy over what research to fund
	Who to admit	Institutions determine admission standard for each course and make admission decisions. EFTS funding allocations imposes limits	Limitation removed
	Who teaches	Universities decide who to hire. Funding levels indirectly constrain staffing levels	No changes
	Setting priorities and allocating funds	Some restraints on universities' powers via EFTS funding system	Most restraints removed
	Determining mission, purpose, goals and objectives, allocating funds and setting priorities	Minister has strongest say in Charter – mission, purpose, long-term goals. Universities have more say in shorter-term objectives and performance measures set out in Statements of Objectives, but Minister has the power to refuse funding altogether if SoO is unsatisfactory in relation to the Charter	Minister's role in both short and long-term planning significantly strengthened
Procedural	Means of teaching and assessment	Ministry determines length of each course; otherwise left to universities	No change
	Processes of research	Left to universities and academics	No change
	Discipline of students	Power of universities	No change
	Terms and conditions of employment	Negotiated with staff by VC. Funding constraints indirectly limit salary levels, staff:student ratios, workloads	No change
	Management of own revenue and expenditure	Some constraints on borrowing and dealing with assets, otherwise left to universities.	Constraints removed for low-risk universities, but Ministry involved in management processes through review of Strategic Plans
	Determination of organisation structure	Determined by VC	No change

Table 19 – The Autonomy of New Zealand Universities Before and After the Changes Proposed in the White Paper

Five other policy changes announced in the White Paper would also have affected autonomy. The first related to course approval requirements. Whereas the NZVCC's Committee on University Academic Programmes (CUAP) currently holds a statutory authority to validate university degrees, under the White Paper proposals its right to maintain that authority would have depended upon whether it is 'able to provide credible and rigorous quality validation processes' (Ministry of Education, 1998: 22). In this respect, it would have been subject to the jurisdiction of a new regulatory body, the Quality Assurance Authority of New Zealand (QAANZ). The White Paper also provided universities with the option to 'establish their quality credentials by participating in

international benchmarking' (ibid: 23), subject to QAANZ judging that the process would strengthen quality assurance and was sufficiently robust to justify approval. While these proposals challenged the status and independence of CUAP (i.e. if it is unable to demonstrate the credibility of its processes), they would also have given universities a new range of choices in establishing quality validation processes.

Second, the White Paper proposed removing from 'low risk' institutions the few input controls remaining after 'Learning for Life'. These are the requirements to obtain the Secretary of Education's consent to borrow or dispose of assets and to consult the State Services Commissioner with respect to the determination of wages and conditions of employment. Where institutions are deemed 'high risk', controls over borrowing and dealing with assets would have remained in place. The criteria for determining an institution's level of risk, and therefore the level of autonomy to be accorded it, are not clear, but financial performance and viability appear to be significant factors. It was also proposed to transfer to institutions ownership of Crown-owned land and buildings used by them.

Third, a significant change in the Minister of Education's role in objective-setting was proposed. Under 'Learning for Life' the Minister has powers to influence and determine the shape and flavour of a university's Charter, but not its short-term or medium-term objective-setting through its Statement of Objectives. (The government could, however, influence the capacity of universities to pursue their objectives via its control over the level and form of tuition subsidies and also has had the right to refuse to fund an institution altogether if its objectives are deemed unsatisfactory in relation to its Charter.) Similarly, the setting of performance measures to be used in the Statement of Service Performance is left to the university. The White Paper proposed a much more active role for the Minister in determining both objectives and performance measures. A Statement of Intent, replacing Statements of Objectives would have:

set out the strategic direction of each TEI, the strategies it is pursuing, expected performance targets (in ownership, service delivery and others such as management) and broader ownership matters, including each TEI's contribution to the Government's tertiary goals (Ministry of Education, 1997: 58-9).

Whereas Statements of Objectives have been prepared by institutions and simply submitted to the Minister, Statements of Intent would have to have been *negotiated* with the Minister. This would have meant that at every level, from the highest statement of a university's values and missions to short-term operational planning and the definition of how performance is to be measured, universities' current power to determine would have become a right merely to propose and to negotiate with the Minister. Hence, the final power of decision would have lain with the government. Unsurprisingly, the Vice-Chancellors regarded this as undesirable and argued that:

in terms of their long-established practice and the expectation of a high level of institutional autonomy, strategic business plans would be open for discussion to enable Government and its advisors to gain a better understanding of the strategic planning of universities. Government should not have a veto on the business plans of financially viable and well-run tertiary institutions. If that is not understood, agreed, and practised the tertiary sector will return to centralised bureaucratic control that characterised the polytechnics and colleges before 1990 and the universities before 1962 (NZVCC, 1997: 21).

Fourth, under the White Paper a new series of interventions would have been available to the Minister. These ranged from requiring more frequent and detailed provision of information, to placing restrictions on the powers of the council, to appointing additional members to the council and ultimately replacing the council with a commissioner. The decision to intervene and the form of intervention chosen was to have depended upon the riskiness of an institution (i.e. its financial performance and viability).

Fifth, the White Paper proposed that an increasing proportion of research funds should be made contestable. Thus, rather than most research funding being tied to the fluctuating level and pattern of student demand (as has traditionally been the case in New Zealand), universities would

have been forced to compete against one another (and other research providers) for funding from centrally-managed research pools. Under those arrangements, therefore, universities may have lost some of their control over how a potentially significant proportion of their income is allocated and, moreover, may have had less internal control over what research is pursued by their academic staff.

Of these proposed reforms, the changes to quality validation procedures stood to increase both autonomy and academic freedom by allowing universities a choice of processes, including the option of benchmarking internationally, a process consistent with the international tradition and context of universities and the academic ideas of self-validation and peer review. Otherwise, the reforms would have made autonomy conditional on performance - a situation referred to by Neave (1988) as 'modern conditional autonomy'. In particular, they would have enabled the Minister of Education to be more actively involved in establishing what performance is expected and how it is to be defined, and an institution's degree of freedom would have depended heavily on its performance, especially its financial performance. This means that a well-run, profitable and solvent university could have expected a continued high degree of procedural autonomy but a lower level of substantive autonomy than currently. A financially troubled university, on the other hand, would not merely have had less substantive autonomy but also significantly lower procedural autonomy - at least until its performance had improved.

Legal Versus Real Autonomy

The discussion thus far has focussed on autonomy as stated in law and policy. Lane reminds us, however, that legal autonomy is only a part of real autonomy. It is thus insufficient to view autonomy solely in terms of legislative provisions and policy statements. An understanding of several additional factors is necessary to form a complete picture of actual autonomy.

First, there are the factors that Lane identifies, such as reputation, tradition, precedent and prestige, which may generate autonomy in excess of that expressly provided for. Although such mechanisms are more likely to operate invisibly than transparently, there are some indications that they function in New Zealand. One of these is the influence which the universities were able to exert over the drafting of the Education Amendment Act No. 3 1990 (see Butterworth and Tarling, 1994; Patterson, 1996). Another is the Vice-Chancellors' success in frustrating the implementation of a series of initiatives in the early 1990s (including the proposed capital charge and changes to governance), despite strong support for them from senior ministers and officials.

Second, there are the qualifying provisions in Sections 160 and 161 relating to the efficient use of national resources, the national interest, and the need for accountability and public scrutiny. Although reflected in part in some statutory provisions relating to accountability and accounting, these qualifiers will also impact through the formal and informal actions of the Minister, the Ministry and other control agencies in their roles as regulators, influencers and monitors of universities. Opportunities for this to happen are, however, limited. While the Minister currently has extensive powers over Charters, these do not extend to the setting of objectives and performance measures, and the Minister's power to intervene indirectly by manipulating funding levels for each institution has now, in effect, been removed. The remaining powers - to refuse funding altogether or to ban a complete course - are all-or-nothing remedies that Ministers cannot reasonably apply other than in an extreme situation and in accordance with statutory criteria. The relatively powerless position in which this has left the Minister of Education is reflected in the strong focus on ownership and risk management running through the Green and White Papers. There is a sense of frustration and dispossession apparent when it is argued that 'the Crown does not have sufficient mechanisms to influence governance decision-making, though this is a key right normally associated with ownership' (Ministry of Education, 1997: 50).

Third, there is the issue of funding levels. A university may have the legal autonomy to do something, but that autonomy is diminished where funding constraints present a barrier to actually

doing it or limit the extent to which it can be done. This may affect, for example, a university's ability to offer courses in certain areas, or the number of students it admits to certain courses and the level and nature of its research activities. The level of funding is a combination of two factors - funding per EFTS and the number of EFTS funded. The previously close control over the latter has now been removed. The government continues to determine the amount per EFTS that it will fund, leaving institutions to determine their total funding per EFTS by exercising their power to set fees. This does not generate the level of autonomy that it may appear to, because many factors inhibit institutions from simply setting whatever fee might derive the optimum overall level of revenue for a particular course.

- Students and the Minister alike exert vigorous pressure on institutions to keep fees down.
- Institutions recognise the barrier to participation that fees represent, particularly to socio-economically disadvantaged groups, and accept that they cannot consider only their own revenue needs in setting fees.
- Competitive pressures pose a further constraint to pricing. Although universities are free to determine the number of students they will enrol and the courses they will offer to them, the combination of reducing government funding and constraints on setting student fees will result in a continually reducing level of revenue per EFTS. This will inevitably limit a university's freedom of action.

There is also a question of funding structures and the incentives provided by different funding mechanisms. In conditions of constrained resourcing, a university's legal autonomy to determine the patterns of its own activity is vulnerable to funding mechanisms that privilege some courses and disadvantage others. The 1998 funding policy changes - which involve a move from Minister-determined to market-determined funding - take universities from the frying pan into the fire in this regard. The system that functioned from 1991-98 had a built-in bias in favour of whatever subject areas the government of the day considered important. Institutions were at a disadvantage if they attempted to pursue new developments in other areas. The system applying from 1999, by contrast, creates a bias in favour of whatever is popular in the short term, and threatens the long-term viability of any subject area that suffers a substantial decline in demand. Either way, external forces drive the institution, and no New Zealand university is sufficiently wealthy to have any realistic option (at least over the longer-term) other than to follow the revenue stream wherever it leads.

Informal mechanisms may therefore vary universities' autonomy from that formally documented in several ways. In their favour, their reputation, prestige and connections appear to enable them to resist or slow down policy changes against their interests. To their detriment, the level of insulation from ministerial intervention established by 'Learning for Life' is one factor that has fuelled a determination on the part of recent governments and their officials to establish a more interventionist structure. This, together with the reality of market-driven funding and high but constrained fees, means that, whatever the legislative provisions concerning freedoms to determine what is taught and ways of teaching, universities face real limits with respect to who they admit, what they teach and how it is taught. The fact that New Zealand universities do not have substantial endowments, unlike many of their counterparts elsewhere, imposes a further practical limitation upon their real autonomy.

The Autonomy of New Zealand Universities in Comparative Perspective

Comparisons with universities in other jurisdictions are complicated by the widely differing funding, regulatory and accountability regimes for tertiary education which operate across the OECD. Nonetheless, on the basis of the comparative data currently available it can be argued that, by international standards (particularly in legal terms), New Zealand universities appear to enjoy a reasonably high degree of substantive and procedural autonomy. This situation, as previously

discussed, would change as a result of proposals such as those in the White Paper, especially for high-risk institutions.

Jadot (1980) has compared the relative autonomy of 53 universities in 12 European countries by examining the decision-making process in relation to 20 separate matters and assessing, for each university, whether the key decisions are made autonomously or externally. Although this study is now dated, the broad conclusions are consistent with more recent surveys of the systems of higher education in particular OECD countries (see Dearing, 1997; Dearlove, 1998; Durand-Prinborgne, 1992; Eustace, 1992; Kehm and Teichler, 1992: 242-3; Martinelli, 1992; Stadtman, 1992; West, 1998). Blakeman (1999) has applied Jadot's methodology to New Zealand. The results are recorded in Table 20.

Country		Index 1	Index 2
		%	%
Sweden		59	61
Norway		45	49
Denmark		43	49
Ireland		87	87
United Kingdom		100	100
Netherlands		43	51
Germany		29	41
Austria		32	35
Belgium		93	93
Switzerland:	Cantonal universities	29	41
	Federal universities	20	73
France		40	45
Italy:	State universities	46	63
	Free universities	73	84
New Zealand		100	100

Index 1 measures the percentage of decisions taken without external approval.

Index 2 includes those decisions that require only a formal external approval that is always given.

Table 20 – Percentage of University Policy Decisions Made Autonomously

Note that the Belgian and 'free' Italian categories comprise five universities, three of which are Catholic; this may explain their relatively high level of autonomy from the state. With the exception of these universities and those of the United Kingdom and Ireland, European universities have a much lower level of autonomy than those in New Zealand. Evidence from the United States indicates that 'the colleges and universities of North America (like those of the United Kingdom) continue to enjoy a degree of autonomy unmatched in continental Europe' (Bloomfield, 1980: 41).

But let us take this analysis a stage further. In Table 3 we compared universities firstly, according to whether they fell within the category of substantive autonomy or substantive heteronomy, and secondly, according to whether they fell within the category of procedural autonomy or procedural heteronomy. In accordance with this schema, universities can be placed within four categories: 'full autonomy', 'limited autonomy', 'limited heteronomy', and 'full heteronomy'. In Table 21 we have attempted to identify where New Zealand universities should be located within these four categories, firstly under the policy framework in 1998, and secondly under the proposals in the White Paper (both in respect to low-risk and high-risk institutions). We have undertaken the same analysis for universities in six other countries, both in terms of the situation prevailing in the mid-to-late 1990s and also as it is likely to pertain if the recommendations of recent reviews (i.e. Dearing and West) are implemented. Next, we have indicated whether the universities in the countries under consideration are best classified as autokephalous or heterokephalous. Then, drawing on the typology in Table 2, we have combined the results of the previous analyses and categorised the

relevant universities according to whether they are 'independent', 'sem-independent', 'semi-independent' or 'subordinate'. Finally, in Table 22 we have distinguished between those universities which have full autonomy (or heteronomy) and those which have limited autonomy (or heteronomy).

University System		Auto(hetero)-nomy	Auto(hetero)-kephaly	Combination
NZ:	1998	Full autonomy	Autokephaly	Independent
	Under White Paper (low risk)	Limited heteronomy	Autokephaly	Semi-dependent
	Under White Paper (high risk)	Full heteronomy	Heterokephaly	Subordinate
USA:	Public	Full autonomy	Heterokephaly	Semi-independent
	Private	Full autonomy	Autokephaly	Independent
UK:	Oxbridge	Full autonomy	Autokephaly	Independent
	Other old universities	Full autonomy	Mixed	Independent and Semi-independent
	New universities	Full autonomy	Heterokephaly	Semi-independent
	Under Dearing	Full autonomy	Heterokephaly	Semi-independent
Australia	1998	Full autonomy	Autokephaly	Independent
	Under West	Full autonomy	Heterokephaly	Semi-independent
France	Grands écoles	Limited heteronomy	Heterokephaly	Subordinate
	Universités	Limited heteronomy	Autokephaly	Semi-dependent
Germany		Limited autonomy	Autokephaly	Independent
Italy	Public	Full heteronomy	Autokephaly	Semi-dependent
Catholic:	vis-a-vis state	Full autonomy	Autokephaly	Independent
	vis-a-vis church	Limited heteronomy	Heterokephaly	Subordinate

Table 21 – Combinations of Auto(hetero)nomy and Auto(hetero)kephaly in Universities

	Heteronomy		Autonomy	
	Full	Limited	Limited	Full
Autokephaly	Italy	French universités New Zealand – post WP (low risk)	Germany	NZ – current Australia – current Oxbridge UK – current (older) US – private Catholic (vis-a-vis state)
Heterokephaly	NZ – post WP (high risk)	Grands écoles Catholic (vis-a-vis church)		UK – current (newer) UK – Dearing US – public Australia – West

Table 22 – Combinations of Auto(hetero)nomy and Auto(hetero)kephaly in Universities

We recognize, of course, that such classifications are partial and incomplete. Moreover, it is obviously not possible to capture all the complexities and subtleties of the situation in typologies of this nature. Nevertheless, if our analysis is broadly accurately, then, New Zealand's universities currently enjoy a combination of autonomy and autokephaly shared only with Oxbridge and some of the other older British universities, the Australian universities, the private universities of the United States and Catholic universities (at least with respect to the state). As argued earlier, changes of the kind proposed in the White Paper would affect the degree of substantive autonomy enjoyed by universities in complex and potentially contradictory ways. On balance, however, there would be

the potential for an overall loss of substantive autonomy, especially if ministers chose to exert significant influence over the content of each universities' Statement of Intent and if most of the funds for research were placed in the control of external bodies. For universities deemed to be a high risk in financial terms, there could also be a reduction in procedural autonomy and, potentially, autokephaly could be replaced with heterokephaly. As a result, high-risk institutions could, in effect, become 'subordinate'.

Although substantive heteronomy, procedural heteronomy and heterokephaly are not unusual on their own, a public university system which combines all three components is very rare, certainly within liberal democracies. Instead, as Lane has argued, most democratic governments seek to influence their universities *either* via heteronomy *or* heterokephaly. Indeed, it appears that no university system in the OECD shares the combination of *both* heteronomy and heterokephaly contemplated for high-risk universities in New Zealand. Not even the French *grands écoles*, which are seen by the state as highly specialised professional training schools, and Catholic universities, subordinate to the Church, are so closely overseen. The relatively more privileged position to be enjoyed by better performing New Zealand universities is, internationally, comparable only with the Napoleonic-based French *universités*, which are perhaps most famous for chronic underfunding and gross overcrowding. The reasons why the National-led government chose such an unusual model was not made apparent in the White Paper. It is possible that the result was unintended or unconscious. Regardless of the reason, it is certainly a model of dubious merit.

Conclusion

How universities ought to be governed and how the conflicting demands of autonomy and public accountability are best reconciled remain central issues in the on-going debates over the management and regulation of the tertiary sector, not just in New Zealand but also in many other democratic countries. The preceding analysis has endeavoured to contribute to this debate firstly, by providing a comprehensive framework, based on the insights of Lane (1981), for understanding and interpreting the concept of autonomy, and secondly, by applying the framework to the New Zealand context. An attempt has also been made to compare and contrast the existing policy settings with those proposed in the National-led government's Tertiary White Paper. In a single paper, of course, it is not possible to cover all the relevant issues. Thus, we have said very little about how the various proposals for changing the funding of research might affect university autonomy; nor have we assessed the implications of the proposals to alter the level of tuition subsidies available to tertiary institutions depending on the value of their capital assets.

Having said this, our analysis suggests that New Zealand universities have enjoyed a reasonable measure of autonomy under the Education Act 1989 and that, in terms of their independence from the state, they compare favourably with their counterparts in most other jurisdictions. Indeed, this autonomy was extended in 1999 as a result of the measures announced in the 1998 Budget. As outlined earlier, these measures reduce (but do not entirely remove) the government's capacity to micro-manage individual institutions via controls over the level and form of tuition subsidies. But if universities are now subject to less state interference, they are more at the mercy of market forces, especially the proclivities of student demand. To some extent, therefore, the recent funding policy changes have simply replaced one form of external constraint with another. Moreover, given that New Zealand universities lack substantial endowments, their real autonomy is rather less than the regulatory and funding framework might otherwise suggest.

But the regulatory environment, of course, is likely to change. If proposals similar to those contained in the abandoned Tertiary White Paper are implemented, then university autonomy (in both substantive and procedural terms) is bound to be affected, both positively and negatively. The precise impact will ultimately depend on the content of the legislation which is enacted, the way in which the powers available to the responsible Minister are altered, and the extent to which these

powers are subsequently used. Thus, as argued earlier, it is possible that proposals like those in the White Paper would extend the degree of internal control exercised over the composition of university councils, thereby entrenching the existing autokephalous tendencies. However, this is likely to be at the expense of representativeness, and a higher proportion of the compulsorily smaller councils will probably be selected rather than elected. More important, if there is provision in the legislation for a ministerial veto over the composition of individual councils and if particular ministers choose to use such powers to prevent or direct particular outcomes, then autokephaly will be replaced by heterokephaly.

On another front, the White Paper proposals would have reduced institutional autonomy by extending the government's capacity to micro-manage universities via the annual Statements of Intent and may also have constrained academic freedom in relation to the nature of the research undertaken by staff. Equally significant, the proposed regulatory regime involved a move to a form of 'conditional autonomy', that is a situation where the degree of autonomy depends upon the level of performance, especially financial performance. Well-run and prudently managed universities could have been expected to enjoy a higher level of autonomy from the state, in both substantive and procedural terms, than those deemed to be 'high risk'.

It is not being suggested here that all the changes outlined in the White Paper were flawed. Indeed, in our view some of the proposals have significant merit. We applaud, for instance, the idea of removing input controls, and we accept that governments to date have not had a sufficient range of instruments to deal with institutions that encounter serious financial difficulties. It can also be argued that the current legislative provisions in relation to the size and composition of councils are unduly prescriptive. Against this, we do not believe that there is a strong case for restricting the size of governing bodies to 12, and we are not persuaded by the current bias against democratic forms of governance. Nor do we accept that universities should be required to produce Statements of Intent, and nor do we believe that the provision of such documents will necessarily enhance the accountability of universities. Additionally, if the funding of research conducted by academics is made more contestable, in our view this should be undertaken in a manner compatible with the preservation of institutional autonomy and academic freedom. In this regard, a system modelled upon the British research assessment exercise is almost certainly preferable to one based upon the funding of specific projects (or portfolios).

Regardless of the precise nature of any legislative reforms affecting the tertiary sector, one of the critical challenges facing New Zealand universities is how to preserve a reasonable measure of autonomy in a strongly market-driven system. Building up substantial endowments appears to be one of the few options on offer. Whether the necessary private funds will be forthcoming, however, is somewhat doubtful. New Zealand, after all, does not have a vigorous tradition of philanthropic giving, and the current taxation regime is hardly conducive to its emergence. For the time being, therefore, universities will have to contend as best they can in a rather unfavourable cultural and political context. But this, of course, is hardly new.

Notes

1. <http://www.stanford.edu/dept/registrar/bulletin/UniversityGovernanceAndOrganization/Organisation/BoardOfTrustees>
2. <http://mondrian.princeton.edu:80/CampusWWW/Companion/trustees.html>
3. <http://www.duke.edu/web/ous/bylaws.html>
4. <http://web.mit.edu/libraries/www/archives/histories/corpchair.html>
5. <http://www.hcs.harvard.edu/-gsc/guide/administration.shtml>
6. <http://www.ucop.edu/regents/regents.html>

7. <http://www.nysed.gov/regents/introreg.html>
8. <http://www.co.calstate.edu/PublicAffairs/overview/BOT.html>
9. <http://www.utsystem.edu/BOR/>
10. <http://www.sshechan.edu/ssbognmu.html>
11. <http://www.borfl.org/gen/about.html>
12. Although in 1996 and 1997 two institutions (AIT and the University of Otago) offered the BHSc (Physiotherapy) as a four year course, despite the Ministry only approving funding for three years, by charging a higher fee to fourth year students. The Ministry agreed to fund four years from 1998.
13. Although limits are likely to remain in a small number of high cost professional categories - medicine, dentistry and veterinary - which account for less than half a percent of total EFTS.

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