

Governance: a question of principled agents

Neil Thorogood

Senior Partner, TLC Results Training

This policy note explores a possible explanation for the progressive weakening of the democratic institutions in Papua New Guinea. The question posed is 'do constitutional checks and balances work if Public Choice theory reflects the predominant paradigm of both the principal and the agent'? To answer this question, parliamentary democracies, the checks and balances in the Westminster model of constitutional democracy, the principal-agent relationships between society, government, and the bureaucracy, public choice theory, and what makes a decision corrupt, are discussed. The principal-agent relationship between the PNG government (the principal) and the Royal Papua New Guinea Constabulary (the agent) is used to highlight the issues raised.

Aristotle argued that the true forms of government are those that 'govern with a view to the common interest' (Aristotle 350 BC: Bk 3, Pt VII). He argued there were three forms of government, rule by one (royalty), rule by a few (aristocracy), and rule by the citizenry at large (constitutional). He recognised that each form of government had a perversion, whereby the governor governed with a view to the interests of the governor or of only a select few. The perversions he identified were: tyranny,

where the monarch ruled in the self interest of the monarch; oligarchy, where the aristocracy ruled in the interest of the wealthy; and democracy, where the citizenry ruled in the interest of the needy, but not for the common good (350 BC: Bk 3, Pt VII).

Since the time of Aristotle, philosophers' have argued over the definition of 'democracy' and it is currently agreed that "democracy" is a contested concept with no universal definition (Lamour 1994; 46). However, Lincoln's¹ description of a democracy as 'government of the people, by the people, for the people' is generally accepted as a basic description of a democratic government. This simple statement encapsulates all the elements of Aristotle's 'constitutional government', including the need for the government to govern for the common good. Although this description is the most often quoted phrase from the Gettysburg's address, its full meaning is only understood when married to the statement that opened the address: 'a nation conceived in Liberty, and dedicated to the proposition that all men are created equal'. Together these statements make the point that functional democratic governments have an underlying socio-political and legal organisation that acknowledges and respects the fact that the

Policy dialogue

state is in a principal-agent relationship with society and the state's authority is derived from people who are free and equal.

How governments organise the institutions needed to exercise this agency is as varied as the governments themselves. However, lists of institutions such as that found in the Copenhagen Criteria² contain the basic institutions required for a functional democratic government.³ A fundamental institution in a democracy is a constitution that is respected.⁴ However, Lane argues that a 'written constitution has to be translated into constitutional practice... (but)...an implemented constitution does not automatically produce attractive outcomes' (1996:211). This statement highlights the fact that in some constitutional democracies the document is either ignored or used at the convenience of the governing authorities as an instrument of tyranny. For example, Sudan, which topped the Failed State Index for 2007, has a constitution as well as the basic democratic institutions. But these institutions do not serve a democratic purpose because, although present, they are not respected, accessible, or used by government or society to protect against arbitrary interference with liberty, property, or dignity.

When looking at the constitution and the list of government departments in Papua New Guinea, all the democratic institutions required for a functional democratic government are present. Yet in 2006 and 2007 the Fund for Peace (FFP), which produces the Failed State Index, assessed Papua New Guinea as a country in danger of becoming a failed state. The FFP found that in both society and the government there is a general lack of confidence in government institutions.

For example, the police, whose constitutional duty is to protect, preserve, and impartially enforce the law,⁵ are, through corruption and human rights abuses,

undermining confidence in democratic institutions.⁶ Papua New Guinea has also progressively dropped in its ranking in the Human Development Index;⁷ and the World Bank's Governance Indicators are significantly worse than in 1998, especially for the rule of law and corruption.⁸ Individually, these indicators measure different dimensions of the performance of the democratic institutions in Papua New Guinea and together they indicate the democratic institutions are at best stressed and at worst failed.

This paper explores a possible explanation for the progressive weakening of democratic institutions in Papua New Guinea. The question posed in this paper is do democratic constitutional checks and balances work if the Public Choice theory reflects the predominant paradigm of both the principal and the agent? In order to answer this question, the checks and balances contained in the Westminster model of constitutional parliamentary democracies, the principal-agent relationship between society, government, and the bureaucracy, public choice theory, and what makes a decision corrupt are discussed.

Liberal democracy

One of the questions posed by John Locke was why do people give up freedom to be controlled by others? The answer he proposed was that, as people living outside a community found life unsafe and uncertain, they willingly joined communities and put themselves under government for the mutual preservation of their lives, liberties and estates (Locke 1690: Ch.IX, para. 123–4). However, to come into a community with others did not guarantee mutual preservation, it only meant that the dynamics of the conflicts that arose were more diverse and complex because the

challenges to freedom came from within the group as well as from outside.

The ancient Greeks balanced the battles for power and authority that arose within and between clans, tribes, and city-states by adopting a form of democratic governance. The authority and legitimacy of their government officers ('deme') flowed from the citizens' approval and acceptance of both the centralised political authority and the laws passed by that authority. Democratic government with laws that applied equally to all citizens replaced the authoritarian rule of aristocrats. The aristocrats had gained their authority through kinship and their status in society, not through popular approval. This change meant the state became the representative of the people and not a tool used by the élite to organise the force required to impose and maintain social order and their control (Forrest 1986).

Like the Greeks, the people of Papua New Guinea, are organised into clans and tribes. With the arrival of the colonial powers, a Westphalian state structure was imposed. At independence the people, through their Constitutional Planning Committee, chose to establish a 'liberal, representative democratic system' to perform the functions of a national government.

Held defines a liberal democracy as 'a system of rule embracing elected "officers" who undertake to "represent" the interests and/or views of citizens within the framework of the "the rule of law"' (1987:4). The 'rule of law' means

- government power is regulated: the rights of the individual are determined by laws, not by arbitrary actions or decisions
- all are equal before the law: everyone, including the government and the public sector, must comply with the law

- procedural and formal justice: punishment is only imposed if a court determines, after a fair trial, that a breach of the law has occurred.⁹

The rule of law refers to the state's institutional process of setting, interpreting and implementing laws and other regulations. It means that decisions taken by government must be founded in law and private firms and individuals are protected from arbitrary decisions. Respect for the rule of law is the foundational democratic institution that ensures the rights, liberties, duties and obligations expressed in a constitution will be protected by the courts should the government or the bureaucracy abuse their powers or act arbitrarily. Respect for the rule of law provides a social order that is free from distortionary incentives such as corruption, nepotism, patronage or capture. The protection and the freedom provides the reliability and predictability that is essential for firms and individuals to make decisions that assist in the well being of the individual and the society as a whole. As forcefully argued by Davis (2006), without respect for the rule of law democratic institutions such as the police and the military are the major threat to the legitimacy of the state.

In Papua New Guinea, respect for the rule of law and constitutional protection against arbitrary decisions and actions by the government are not left to chance. Section 22 of the Constitution places a positive obligation on the National Court to ensure that no constitutional protection, obligation or duty will 'be left without effect because of the lack of supporting machinery or procedural laws'. This section means the provisions of the Constitutions are enforceable, even when the legislature has not provided a statutory or policy framework to give effect to the provisions of the Constitution. The purpose of this

Policy dialogue

section is to ensure that the rule of law is respected and cannot be defeated by the action or inaction of the legislature.

Despite this provision and others intended to establish, protect and maintain the democratic institutions, the struggle for the acceptance of the Constitution as the 'supreme' authority and the legitimate source of power finds resonance in Anere's (2004) commentary on modern Papua New Guinea. Anere found that despite over 30 years of constitutional government the primary sources of authority and legitimacy were religion, personal authority, and customary obligation, not the constitution or the state. The society he describes is one bankrupt of social capital, which has a significant impact on the legitimacy of a democratic government.

Scharf (2003) argues that democratic governments derive their legitimacy from 'trust in institutional arrangements that are thought to ensure that governing processes are generally responsive to the manifest preferences of the governed (input legitimacy, "government by the people") and/or that the policies adopted will generally represent effective solutions to common problems of the governed (output legitimacy, "government for the people")'. Scharf argues that 'input legitimacy' requires both an active and informed citizen participating in the business of government and a government that is responsive to the needs of society. He suggests that the level of output legitimacy is influenced by the effectiveness of 'institutional arrangements designed to prevent wrongdoing on the one hand and effective problem-solving on the other hand' (Scharf 2003). The government and the bureaucracy in Papua New Guinea do not support Scharf's requirements for either input or output legitimacy.

The 2005 Human Rights Watch Report on PNG (Human Rights Watch 2005) describes a general acceptance of arbitrary

abuse of the public by both the public and the senior management of the police force. The 2006 Human Rights Watch report noted that the problems identified in the first report had not been addressed because of inaction on the part of both the police and the citizens. In addition, the 2004 Administrative Review of the police found 'there is a lack of demonstrable government will and commitment to effective law enforcement and the wider related issues of broad community safety and an effective, sustainable, law, order and justice framework' (Phillip et al. 2004:35).

These three reports and Anere (2004) describe a society that is governed by institutions contaminated by corruption, bureaucratic inefficiency, political interference in administration, nepotism, misuse of power and resources, improper and non-observance of the rule of law, and non-accountable and non-transparent administration. The four reports describe a community with no trust in the democratic institutions and a government that is not responsive to the needs of society. The lack of performance, regime and polity legitimacy is evidenced in the Human Rights Watch Report summary of the law and order institutions that exist to protect against abuses.

In 2004, an administrative committee commissioned by the minister for internal security issued a report finding a breakdown of discipline and loss of integrity that has destroyed public confidence in the police force and rendered it 'largely ineffective'. The committee also found lack of demonstrable government will and commitment to effective law enforcement and wider related issues of broad community safety and an effective, sustainable, law, order and justice framework... Government mechanisms external to the police

that might hold accountable officers who beat, torture, and rape, and provide victims with redress are difficult for victims to gain access to and are often ineffective when they do. Judges often ignore abuse even when the wounds are fresh and plainly visible. The public solicitor's office and ombudsman's commission are overwhelmed with other cases and have little capacity to investigate reports of police abuse. Access to civil redress is hampered by burdensome procedural barriers. There are periodic initiatives to create a national human rights commission, but these efforts have stalled in Parliament (Human Rights Watch 2005:9).

The picture painted in the four reports indicate that in Papua New Guinea there are significant deficiencies in the ability of the democratic institutions to ensure the power of the state is used to ensure that the 'will of the people' is the driving force behind the decisions and actions of the government and the 'voice of the people' can be heard.

The findings of these reports also remind the reader that one of the primary characteristics of politics is power. Westminster parliamentary democracies provide an effective political framework for a stable regime to promote and encourage respect for the rule of law and with an efficient state administration in an endeavour to ensure the legitimate use of power. Effective democracies also ensure the government's legitimate use of power by having a strong and active civil society that holds the government to account (Hirst 2000:14). The two key characteristics that distinguish the use of power in democracies from other forms of government are the accountability of the government's responsiveness to the demands and needs of its citizens (Kiiza 2005:2). These two characteristics flow from

the principal-agent relationships that exist between the state, the bureaucracy, and society.

Principal-agent theory

When an actor desires an outcome (the principal) and hires another actor to achieve that outcome (agent), a relationship of principal and agent is created. All governments have an intricate web of principal-agent relationships that are critical to the ability of the government performing its four main functions.¹⁰ One of the most critical principal-agent relationships is that created between the government and the bureaucracy. All representative governments (principal) delegate the implementation of policy to the bureaucratic arm (agent) of government. In an attempt to understand this relationship and associated problems, political scientist have borrowed heavily from the field of economics to develop the principal-agent theory, which is 'an analytic expression of the agency relationship, in which one party, the principal, considers entering into a contractual agreement with another, the agent, in the expectation that the agent will subsequently choose actions that produce outcomes desired by the principal' (Moe 1984:756).

One of the major problems that arise from the principal-agent relationship between governments and the bureaucracy is the asymmetry in the control of and access to information. Generally, the bureaucracy is rarely dependent on the government for knowledge, whereas the government is generally highly dependent on the bureaucracy for accurate, reliable and timely information. Banks and Weingast (1992) argue that bureaucrats who have an informational advantage over their political principals in both the area of expertise covered by the government department and

Policy dialogue

the operation of the bureaucracy will exploit the informational advantage to their own benefit. In the Pacific the very high turnover of elected representatives, particularly Ministers, and the high agency costs¹¹ result in a significant imbalance of information in favour of the bureaucracy.

In the principal-agent theory the asymmetry of information has been found to create two problems for the principal: hiring the right agent (adverse selection); and knowing the agent will do the task delegated to them (moral hazard). Adverse selection is created because the principal generally does not know the complete details of the 'job description' or the 'unobservability of the information, beliefs, and values on which the decisions of others are based' (Moe 1984:754). Once hired, the agent will often further limit the information available to the principals by controlling the principal's access to information in terms of both quality and quantity. Moral hazard arises because the principal and the agent often have conflicting priorities and self interests and the actual behaviour of the agent is 'unobservable in the ex post contracting situation' (Moe 1984:755). Additionally, there is always the potential for the agent to use the power, authority and resources of the principal to advance the agent's self interest, sometimes in direct competition with the interest of the principal.

The question of how to solve the principal-agent problem raises two further questions. The first is normative: what is the level of constraint (if any) that should be placed on the bureaucracy? The second is empirical: what supervisory/accountability mechanisms should be used by the government and under what conditions should they be used? These questions raise issues such as the level of flexibility, responsiveness, autonomy and discretion the government expects the bureaucracy to have and the level of

resources the government is willing to spend monitoring compliance with the constraints. These normative and empirical questions also raise the issue of the philosophical foundation of the relationship between the government and the bureaucracy.

Friedrich (1940) suggests the principal-agent problem can be addressed by internal checks and balances, as voluntary compliance with the intent of government policies will occur when a 'responsible bureaucracy' has rules and effective morale. His view is dependent on the Weberian professional bureaucrat who 'without hatred or passion, and hence without affection or enthusiasm...without regard to personal considerations' (Weber 1978:1, 225) achieves the highest levels of efficiency. Taylor (2005:41) adds to this argument by suggesting that voluntary compliance with rules will occur when the authority making the rules is pervasive and perceived as legitimate and the rules 'enact those values which are important and central to those being ruled' (Haslam 2001 cited in Taylor 2005:41), even where the rules are against the bureaucrats' self interest.

Friedrich takes a 'Pareto optima'¹² view and assumes the bureaucracy and politicians will act in the best interest of the society they serve. His assumptions about the 'self-actualised' bureaucrat align closely with the actor in the 'stewardship theory' which suggests that when the distinction between 'ownership' of the principal's property and the manager or caretaker of the property becomes blurred the 'stewards' becomes predominately self-centred in their decisions and actions.

Finer (1941) suggests that external checks and balances must be imposed on the bureaucracy to solve the principal-agent problem. He argues there must be an effective hierarchy of delegation and accountability between the government and the bureaucracy with the elected

officials determining the actions of the bureaucracy 'to the most minute degree that is technically feasible' and the bureaucracy must be accountable to the elected officials to the same degree. Finer warned that, without external checks and balances, democratic governance was in danger of 'overfeasance, where a duty is taken beyond what law and custom oblige or empower' (1941:336). He argued that external limits on the bureaucracy are necessary to protect society from 'public-spirited zeal' and the self interest of bureaucratic ambition.

However, the assumption that politicians are interested in the supervision of bureaucracies is challenged by Epstein and O'Halloran (1999b) who argue that politicians are primarily motivated by the need to be re-elected not the need to assure agential compliance. In their argument they recognise that politicians will only effectively oversight a delegated authority if it contributes to their electoral fate. Their discussion only considers the principal and the agent and fails to extend to other influences such as interest groups or individuals or other factors such as rent-seeking behaviour by the politician or the bureaucrat.

Epstein and O'Halloran suggest that malfeasance by the principal or the agent can be addressed by the oversight of an effective independent judiciary that ensures policy guidelines always accompany delegated authority, and policies and legislation are implemented by the agent and by the courts empowering the parties affected by the principal-agent relationship to ensure that malfeasance by either the principal or the agent is noticed. The weakness in the argument is the assumption that the judiciary will be independent, politically neutral, and an active participant when oversighting the government and the bureaucracy.

In *Marbury v Madison* the United States Supreme Court discussed in detail the role of the judiciary in a constitutional democracy

and held that a country's supreme court 'must have the superintendence of the inferior tribunals and officers, whether judicial or ministerial. In this respect there is no difference between a judicial and a ministerial officer.' In this case it held that when a constitution gives an officer a specific discretion, the courts are not able to compel or prohibit the exercise of that discretion. Conversely, if 'a specific duty is assigned by laws and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy'.

Unlike the US constitution, the PNG constitution makes the supervisory role of the PNG supreme court (National Court) explicit. Section 22 of the PNG constitution gives the National Court the responsibility of ensuring the government and the bureaucracy respect the constitution. To add strength to section 22, section 23 gives the court the authority to make remedial orders and impose sanctions if the constitution is not complied with. In a liberal democracy great importance is placed on designing the internal structure of the government so that society is not only guarded against the oppression of its rulers but also so that any one part of society is guarded against injustice by the other parts (Madison 1788).

Kiiza (2005:3) posits that the interior structure of a government must function so that 'its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.' Montesquieu, in his doctrine on the 'separation of powers' (Montesquieu 1748), argued that the power and authority of governments must be divided and distributed into three separate and independent arms of government¹³ to preserve and maintain the liberty, equality

Policy dialogue

and dignity of the individual and prevent tyranny by arbitrary rule (Carney 1993:3). This doctrine was adopted in the PNG constitution where it explicitly states there are to be three arms of government and in 'principle' they are to remain separate. Kiiza (2005:2) suggests that in a modern state there are in fact five arms with the fourth being the army and the fifth, the bureaucracy, as neither national defence (the duty of the military) nor public administration (the duty of the bureaucracy) is performed by the three traditional arms of government.

Kiiza's argument has strength in the Pacific. The justification used by Commodore Bainimarama for the December 2006 coup was that the government was intending to introduce controversial bills and policies that would have divided the nation and he was forced, as the leader of the military, to intervene to stop this occurring. Also, in March 1997, General Singirok, the Commander in Chief of the PNG defence forces, took action to stop the government implementing its 'heavy handed' military policy against citizens of Papua New Guinea living in Bougainville. Although his actions were not a coup, the subsequent review of the 'Sandline Affair' did result in a change of government. Both these incidents illustrate that in a modern state in the Pacific other arms of government do exist and provide independent supervision of Montesquieu's traditional three arms.

Kiiza's model raises an interesting challenge for political scientists in the application of the principal-agent theory. The military is the agent of the government and is subject to the supervision and direction of the government. However, the military is also charged with the responsibility of acting in the best interest of society, which is the government's principal. It is the military's responsibility to society that has been used in both countries to justify their action against their principal.

Supervision of the other arms of government and, where necessary, intervention to prevent arbitrary interference with the freedoms and rights protected by the constitution is an important element of the doctrine of the separation of powers. Liberal constitutionalism argues that the actions and decisions of the government and the bureaucracy are limited to their constitutional powers and both the government and the bureaucracy must obey the law (Hirst 2000:26). Constitutionalism also argues that the rule of law is central to the effective operation of the doctrine of the separation of powers and that courts must always have the power and authority to adjudicate and take effective remedial actions.

The principle of the 'rule of law' makes all people and institutions, including the government, equally subject to the processes and procedures outlined in the constitution and the inferior legislation. The doctrine of the separation of powers and the theory of principal-agent both rely on the rule of law to ensure agents can be made to account for their stewardship of the power and authority delegated to them.

Theorists such as Hobbes argue that the government has been delegated 'absolute sovereignty' and the bureaucracy in performing their duties of implementing government policy and legislation are given enormous power through the laws and regulations they implement, the resources they control, the organisations they manage, and the types of services they deliver. Effective mechanisms of accountability that are actively used to supervise the agent are the key to ensuring their power is kept within the limits of the constitution and in the public interest.

In a democracy, accountability is a democratic value as well as a critical tool in the management of the principal-agent relationship. In democratic societies such

as Papua New Guinea there are institutions that have been created to assist the principal overcome the asymmetry of the information balance and to actively supervise the bureaucracy. Formal internal reporting in the bureaucracy is strengthened by external scrutiny by the Auditor General and the Ombudsman. Ministers are accountable to cabinet and through cabinet to the legislature.

One of the most important mechanisms of accountability is parliament and its effectiveness is dependent on a robust and active opposition that projects the image of an alternative government. A strong opposition must aggregate 'the interests of the political community, promote responsible and reasoned debate, demonstrate the relevance of politics, hold the government to account for its commissions or omissions, present a viable alternative to the incumbent government' (Kiiza 2005:7).

Public choice theory

Prior to the development of the public choice theory of politics, theorists, especially liberal democratic theorists, 'developed theories and advocated policies on the implicit assumption that the government implementing the policy was a "benevolent despot"—a single entity that would, without question and in good faith, routinely implement policies that were in the public interest' (Novak 1998). These theorists argued that in a given context the benevolent despot should make the decisions that allocated public goods so that at least one person is better off and no other person is worse off (Pareto efficiency) and continue allocating goods until the point where no other allocation of the public goods would be preferred by any political actor and further allocation would make someone worse off (Pareto optimal).

Later theorists such as Sen (1991)¹⁴ and Rawls (1999) argued that inequitable distributions can in fact be Pareto efficient. For example, the PNG Minister for the Treasury Rabbie Namaliu in 2007 stated that firms were 'obtaining contracts that have not been won on their merits, and then providing much less in goods or services than the value of the contract should buy' (Namaliu 2007). Such activity results in a small number of people being better off—the contractor and any government official who received a benefit for allocating the contract—while no person was worse off than they were before the contract was let, that is, it was Pareto efficient.

Rawls also argues that social and economic inequalities are acceptable to a benevolent despot if the inequalities are arranged so the greatest benefit is given to the least advantaged and public goods are available to all under conditions of equality of opportunity (the Difference Principle). In Papua New Guinea the allocation of public goods does create inequities, makes others worse off, and public goods are not available to all under conditions of equality. In the United Nations' *Report on Governance in PNG* (Anere 2004) there is repeated reference to parliament being viewed by all political actors as an instrument to gain preferential access to public goods. Members of parliament use the allocation of public goods as an instrument to increase patronage by preferential delivery of public goods to the ethnic groups that voted for them rather than providing for the electorate as a whole. Ethnic groups, clans and tribes organise to vote 'their man in' so they can access the largesse that comes with having voted for the Member of Parliament. The conduct of all political actors in Papua New Guinea challenges the 'benevolent despot' assumption and gives credit to the 'self-interested utility maximiser' assumption made by public choice theorists.

Policy dialogue

Public choice theorists suggest that government officials, when asked to choose between alternatives that serve their self-interest (private choice) and those that serve the interest of the common good (public choice), will be primarily motivated by self interest. They argue that government officials who act as a Hobbesian absolute sovereign are self-interested utility maximisers, motivated by desires as various as salary, status, promotion, fringe benefits, power, patronage, and making managing easier. They argue that a symbiotic relationship grows between the officials and other organised political actors who have their 'ear' and are trying to maximise their own self interest (Shaw 2007).

Reilly (2000) and Fraenkel (2004) describe politicians and bureaucrats in the Pacific as self-centred, being drawn to parliament and the bureaucracy because of the opportunities to accumulate wealth and access largesse. Both papers illustrate that in the Pacific public choice theory¹⁵ is a more appropriate assumption to make as politicians and bureaucrats are themselves 'well informed interest groups able to manipulate' (Miklaszewska 2005:98) each other and the society for their own benefit.

Pitts opens her paper with the statement: '[c]rime and corruption in Papua New Guinea are rampant and linked through networks of ethnicity and other allegiances' (2001:127). She then describes a country where the majority of political actors are involved as self-interested utility maximisers. Anere (2004) found that most government departments suffer from gross misuse, fraud, and theft and suspicious payments of public funds are also occurring as a result of isolated political decisions and common lack of accountability. Former Chief Ombudsman, Simon Pentanu, stated that: '[t]o the observer, bribery, nepotism and corruption appear to have spread through the entire tree of government and

bureaucracy, from the roots, through the trunk and branches, even to new shoots' (*Post Courier*, 15 October 1999:2). These statements seem to support the argument that the self interest assumption of public choice theory is the dominant paradigm in Papua New Guinea.

The Human Rights Watch reports in 2005 and 2006, and the Phillip et al. (2004) review, all identify a complete collapse of discipline and any system of accountability within the Royal Papua New Guinea Constabulary (RPNGC). These reports lament the fact that police extort rents from the community with impunity and that there is no political will to change the situation. All three reports found that even when there was a complaint made against police there was ineffective investigation and a majority were not substantiated. In those rare cases where police were found guilty of rent seeking behaviour it was even rarer for the recommended penalties to be imposed. The lack of accountability, the absolute control police have over the collection and release of information, and the collapse of the discipline system means there are effectively no negative consequences for a member of the RPNGC involved in rent seeking.

The dominance of self interest over the common good in the RPNGC is evidenced by the 2006–07 disputes over the RPNGC Commissioner's position. The power struggles that erupted within the RPNGC were described by Prime Minister Somare, as 'personal vendettas and witch hunts' (Jones 2007). Senior police jockeyed for the position by laying false charges against each other and continued with this behaviour even though it led to a complete breakdown of command and control within the RPNGC, which affected its ability or willingness to provide services to the community. The magnitude of this dispute, motivated by the self interest of the RPNGC elite, led to fears that the 2007 general election may

be adversely affected because the RPNGC would not be able to provide adequate security (Jones 2007).

In the RPNGC the lack of accountability, lack of discipline, and the power struggles combine a high degree of personal autonomy and power and reduce the demand for the RPNGC as an organisation and for individual officers to be responsive towards the needs of the public or the government. These factors also add to the moral hazard in all the principal-agent relationships between the government, the bureaucracy and society, which in turn increases the public choice problem.

Ethical corruption

Corruption is defined by Jain (2001) as 'an act in which the power of public office is used for personal gain in a manner that contravenes the rules of the game' (cited in Aidt 2003:F633). However, when the layers of complexity of the relationship between the government, the bureaucracy, and society are peeled back, this definition does not provide a satisfactory definition. For example, are the rules of the game the formal ones contained in the constitution, legislation and policy documents, or are they the informal ones set by supervisors, imposed through political interference, or made necessary by a failure of the system of governance?

The issue of an act or decision being seen as wrong or blameworthy becomes problematic in Papua New Guinea as many of the acts of members of the government and the bureaucracy, although illegal, are not sanctioned and at times appear to be at best approved of and at worst tacitly accepted. For example, in Appendix 1 of the Human Rights Watch Report (2005) a detailed account of the 'raid' on the eight mile guest house is given. The report recounts the

illegal assaults on members of the public by the police, the stoning of the people arrested by members of the public, and the actions of the Metropolitan Superintendent and the media at the Boroko Police Station. Despite the illegality of the acts described in the 2005 report, Human Rights Watch appears to be the only section of the community that saw this incident as blameworthy or wrong. In the 2006 report it noted the police have not been sanctioned and there appears to be no will in the management of the police to pursue an investigation of the incident (Human Rights Watch 2006:35–9).

A person who enters public office as either an elected official or one who has applied for employment and been appointed has also to enter into a principal-agent relationship with society. This relationship makes compliance with the constitution, laws, policies and conventions of a liberal constitutional democracy like that in Papua New Guinea, a categorical imperative for public sector officers, both elected and unelected. However, Meggitt and Gordon (1985 cited in Anere 2004:5) found the government is universally not seen as a mechanism for development where a fiduciary relationship exists; it is seen as 'an instrument to establish and extend patronage ties'. This finding confirmed the earlier research by Bettison (1965 cited in Anere 2004:4) and which was in turn confirmed by Anere's findings.

In Papua New Guinea the doing of your duty because it is your duty to do so is a 'foreign flower' that has yet to take root within the public sector psyche. Point 2.4 of the Phillip Review (2004) describes the police force as being 'lawless' and 'unaccountable' and the report describes a police force to which the concept of doing your duty is something that is of little or no importance. However, ignoring the doing of a task because it is one's duty to do so is not a problem limited to the bureaucracy.

Policy dialogue

Anere details how the government 'bought' the parliamentary acceptance of the 1999 Budget (2004:41–42).

Aidt (2003) considers the issue of corruption from the perspective of principal-agent theory. He suggests that three conditions must be present for corruption to occur: economic rents, weak institutions and discretion. The reports of Anere (2004), Human Rights Watch (2005 and 2006) and Phillip et al. (2004) identified that in Papua New Guinea rent seeking is commonplace and the institutions are very weak. These two factors create an environment where discretion is permitted to be exercised unmonitored.

Klitgaard (1999:96) states that 'corruption is a crime of calculation, not passion' and for that reason wherever discretion exists within a system so does the potential for corruption. Klitgaard (1999:23–4) suggests that corruption will grow where there is a monopoly of power, a high level of discretion, and a low level of accountability. Holloway, in the UNDP Source Book on Accountability, Transparency and Integrity, adds transparency and integrity to Klitgaard's formula,¹⁶ which from the perspective of a principal-agent relationship makes it a more robust formula. This addition means issues such as moral hazard and adverse selection are accommodated because it includes systems that address the asymmetry of information (transparency) as well as the personal motivations of the agent (integrity).

Conclusion

The checks and balances in the Westminster model of parliamentary democracy in Papua New Guinea are designed to protect lives, liberties and estates from arbitrary decision making. These checks and balances have the secondary purpose of building a normative

environment where the ruled voluntarily accept the government of their rulers.

The institutions that are built within the democracy reflect the way people relate to each other and the institutions that govern their lives. In liberal democracies the primary institution is the constitution which, together with respect for the rule of law, provides the framework for the relationships. However, in Papua New Guinea neither the constitution nor the rule of law are respected by the government and the bureaucracy, undermining their claim to legitimacy.

The lack of respect for the institutions and the structure of the democracy described in the constitution also make it difficult for the principal-agent relationship between the three main actors (society, government, bureaucracy) to be effective. Each of the three actors uses the system of government as an instrument to establish and extend patronage ties or to access public goods for personal gain. This is the dominant 'rule of the game' and for that reason it is not surprising that none of the actors actively engage with the mechanism of accountability. It is also not surprising that inquiries into the conduct of the government and the bureaucracy fail to find signs of government will to rectify the deficiencies in the mechanisms of accountability, even when they have a moral and legal obligation to do so.

In Papua New Guinea the lack of will to make democratic institutions effective has resulted in the spread of corruption through the entire tree of government and human rights abuses being the norm rather than the exception. The elected and unelected personnel use these institutions as mechanisms to harm society by denying them the opportunity to enjoy the benefits of a government that is not distorted by corruption, nepotism, patronage or other rent-seeking activities. The long-term distortion of their use has led to

Policy dialogue

society rejecting the government and the bureaucracy as legitimate institutions, particularly in the highlands where even the police are reluctant to go (Hayley 2007:1).

The lack of accountability and transparency and the monopolistic power of a Hobbesian absolute sovereign also means government officials have almost no boundaries to the areas in which they can undertake rent seeking activities. Examples such as the Three Mile Guest House raid demonstrate the government and the bureaucracy can and will abuse their power and authority. It also demonstrates that although the democratic institutions exist to protect society from these types of illegitimate abuse of power, they are ineffective because they are either not accessible to people who need their protection, there is no motivating moral obligation to make them work, and any legal sanctions that could be used against the wrong doers are not used.

Elections are supposed to be an opportunity for society to hold the government to account and to elect officers who undertake to represent the views of the citizens within the framework of the rule of law. The Phillip Review (2004) and the Human Rights Watch Reports of 2005 and 2006, rather than describing the rule of law as a framework, describe it in terms of a pile of rubble. To this is added Anere's (2004) description of elections as a means of gaining preferential access to public goods. The picture painted by these four reports is of a political landscape where all actors believe it is in their own self interest to ensure that respect for the rule of law never grows to resemble the framework it is supposed to be.

Many government officials blame 'the system', which tends to divert attention from the fact that someone has made a decision; systems do not make decisions, they merely identify who should make the decision

and provide the organisational structure in which the decision is to be implemented. In Papua New Guinea a system of government was custom designed by the people of Papua New Guinea for the people of Papua New Guinea. The Phillip Review and the Anere and Human Rights Watch reports do not describe a system that does not work. They describe an environment where people choose not to use the system when it does not maximise their self interest.

At the end of the day, effective government relies on people working within a system that is designed to deliver services for the benefit of the people. A system is neither good nor bad; it is merely a framework designed to assist in the organisation of corporate or government activities to achieve an end. It is the intention of the people and the choices they make that are good or bad. If the people decide to use the resources they have control over for the common good, the system will work for the benefit of all. If the people make the choice to use the system as a rent seeking tool for personal gain, the result will not be the maximum good for the maximum number of people.

If a man speaks or acts with an evil thought, pain follows him. If a man speaks or acts with a pure thought, happiness follows him, like a shadow that never leaves him (Buddha).

Notes

- ¹ This quote is at the end of the last line of the address given by Abraham Lincoln in his address dedicating the Soldiers National Cemetery, Gettysburg, on 19 November, 1863, which is commonly called the Gettysburg Address.
- ² European Council, Copenhagen, June 1993.
- ³ Functional democracies ensure (i) a constitution exists and is respected, (ii) free and fair elections of representative

Policy dialogue

government and results accepted by all parties as the expression of the will of the people, (iii) majority rule (includes an obligation to consider the rights and needs of minorities), (iv) right to vote and participate in political life, (v) social and economic equality, (vi) the rule of law (includes equality before the law) exists and is applied, (vii) respect, protection and fulfilment of human rights, (viii) separation of powers, and (ix) effective mechanisms of accountability exist and minimise the potential for abuse of power.

- ⁴ 'Constitution' is used in this paper to include documents that have the effect of a constitution, for example, the Magna Carta.
- ⁵ Section 197 of the PNG Constitution states the primary functions of the Police Force are in accordance with the Constitutional Laws and Acts of the Parliament to preserve peace and good order in the country; and maintain and, as necessary, enforce the law in an impartial and objective manner.
- ⁶ See http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=31&Itemid=300
- ⁷ In 1997 Papua New Guinea was ranked 128, whereas it was ranked 138 in the 2006 Human Development Index.
- ⁸ See http://info.worldbank.org/governance/wgi2007/sc_chart.asp.
- ⁹ This definition coalesces the definitions of Dicey (1885) and Li (2000).
- ¹⁰ Hirst (2000:26) argues that the four main functions of a national government are (i) defining the powers and responsibilities they and other institutions and actors within their territory can legitimately possess, (ii) regulation of extra governmental social activities and providers of services to citizens, (iii) orchestration of social consensus, and (iv) defence of the national territory.
- ¹¹ Agency costs include the costs of screening and selecting appropriate agents, evaluating tasks to identify and set performance standards, and monitoring the agents' actions to ensure they are complying with the principals' instructions and acting in the best interest of the principal, not in their own self interest.

- ¹² Vilfredo Pareto in his book *The Mind and Society*, (1935) defined a 'Pareto optima' as a state of affairs where no one in a community can have their situation improved without someone else suffering a loss.
- ¹³ Legislature, executive and judiciary.
- ¹⁴ Sen suggests 'a state can be Pareto optimal with some people in extreme misery and others rolling in luxury' (1991:32).
- ¹⁵ Duncan Black is acknowledged as the developer of public choice theory, but James Buchanan and Gordon Tullock's book, *Calculus of Consent: Logical Foundations of Constitutional Democracy* (1962), is generally accepted as the seminal work on this theory.
- ¹⁶ Corruption = (Monopoly + Discretion) - (Accountability + Transparency + Integrity).

References

- Aidt, T.S., 2003. 'Economic analysis of corruption: a survey', *The Economic Journal*, 113:F632-F652.
- Akerlof, G.A., 1970. 'The market for "lemons": quality uncertainty and the market mechanism', *Quarterly Journal of Economics*, 84(3):488-500.
- Anere, R., 2004. *Ethnic Structure, Inequality and Governance of the Public Sector in Papua New Guinea*, UNRSID, Geneva.
- Aristotle, 350 BC. *Politics*, translated by Benjamin Jowett. Available online at http://www.constitution.org/ari/polit_00.htm.
- Banks, J. and Weingast, B., 1992. 'The political control of bureaucracies under asymmetric information', *American Journal of Political Science*, 36(2):509-24.
- Barber, B.R., 2004. *Strong Democracy: participatory politics for a new age (Twentieth Anniversary Edition)*, University of California Press, Berkeley.

Policy dialogue

- Barker, E., 1947 [1968]. *Social Contract: essays by Locke, Hume and Rousseau*, Oxford, New York.
- Brandt, R.B., 1992. *Morality, Utilitarianism and Rights*, Cambridge University Press, NY.
- Carney, G., 1993. *Separation of Powers in the Westminster System*, Queensland Government, Brisbane. Available online at <http://www.parliament.qld.gov.au/aspg/papers/930913.pdf> (accessed October 2007).
- Commonwealth Human Rights Initiative (CHRI), International Advisory Commission, 2005. *Police Accountability, Too Important To Neglect, Too Important To Delay*, Matrix, New Delhi.
- Czarnota, A., 2003. *Post-communist Rule of Law in Post-democratic European Union: a sceptical lawyer's reflections on Eastern Enlargement and the draft of the Constitutional Treaty*, University of New South Wales, Sydney. Available online at http://www.iue.it/LAW/Events/WSWorkshopNov2003/Czarnota_paper.pdf (accessed November 2007).
- Davis, D., 2006. 'Undermining the rule of law: democratization and the dark side of police reform in Mexico', *Latin American Politics and Society*, 48(1):55–86.
- Dicey, A.V., 1885 [1967]. *Introduction to the Study of Law of the Constitution*, 10th edition, Macmillan, London.
- Donaldson, L. and Davis, J., 1991. 'Agency theory or stewardship theory: CEO governance and shareholder returns', *Australian Journal of Management*, 16(1):49–64.
- Epstein, D. and O'Halloran, S., 1999a. *Delegating Powers*, Cambridge University Press, Cambridge.
- , 1999b. 'The non-delegation doctrine and the separation of powers: a political science approach', *Cardozo Law Review*, 20:947–87.
- Dubnick, M., 2003. *Accountability through thick and thin: preliminary explorations*, Working Paper QU/GOV/4/2003, Institute of Governance Public Policy and Social Research, Queens University, Belfast.
- Finer, H., 1941. 'Administrative responsibility in democratic government', *Public Administration Review*, 1(4):335–50.
- Forrest, G., 1986. 'Greece: the history of the Archaic Period', in J. Boardman, J. Griffen and O. Murray, *The Oxford History of the Classical World*, Oxford, New York.
- Fraenkel, J., 2004. 'The coming anarchy in Oceania? A critique of the "Africanisation" of the South Pacific Thesis', *Commonwealth and Comparative Politics*, 42(1):1–34.
- Friedrich, C.J., 1940. *Public Policy*, Harvard University Press, Cambridge.
- Haley, N. and May, R.J., 2007. 'Introduction: roots of conflict in the Southern Highlands', in N. Haley and R.J. May, *Conflict and resource development in the Southern Highlands of Papua New Guinea*, State, Society and Governance in Melanesia Studies in State and Society in the Pacific, No. 3, The Australian National University, Canberra. Available online at <http://epress.anu.edu.au/ssgm/conflict/pdf/ch01.pdf> (accessed October 2007).
- Held, D., 1987. *Models of Democracy*, T.J. Press, Cornwall.
- Hirst, P., 2000. 'Democracy and governance', in J. Peirre (ed), *Debating Governance Authority, Steering and Democracy*, Oxford University Press, Oxford.
- Hobbes, T., 1965. *Leviathan*, Clarendon Press, Oxford.
- Horton, R., 2000. *Independent Judiciary and Public Corruption Law Enforcement in the*

Policy dialogue

- United States*, paper presented at The Seminar on International Experiences on Good Governance and Fighting Corruption, Bangkok, 17 February.
- Human Rights Watch (HRW), 2006. 'Still making their own rules', *Human Rights Watch*, 18(13C): October.
- , 2005. 'Making their own rules', *Human Rights Watch*, 17(8C): September.
- Jain, A.K., 2001. 'Corruption: a review', *Journal of Economic Surveys*, 15(1):71–121.
- Jones, L., 2007. 'Officers bash top police prosecutor', *News.com.au*, 29 March. Available online at <http://www.news.com.au/story/0,23599,21469253-1702,00.html>.
- Kiiza, J., 2005. 'The role of opposition parties in a democracy', paper presented at the Regional Conference on Political Parties and Democratisation in East Africa, Arusha, 25–27 August.
- Klitgaard, R.E., McLean-Abaroa, R. and Parris, H.L., 1999. *Corrupt Cities: a practical guide to cure and prevention*, World Bank, Geneva.
- Lane, J., 1996, *Constitutions and Political Theories*, Manchester University Press, Manchester.
- Larmour, P., 1994. 'A "Foreign Flower"? Democracy in the South Pacific', *Pacific Studies*, 17(1):45–77.
- Li, B., 2000. 'What is rule of law', *Perspectives*, 1(5). Available online at http://www.oycf.org/Perspectives/5_043000/what_is_rule_of_law.htm (accessed October 2007).
- Locke, J., 1690. The Second Treatise of Civil Government, CHAP. IX. Of the Ends of Political Society and Government. Available online at <http://www.constitution.org/jl/2ndtr09.htm>.
- Madison, J., 1788. 'The Federalist No. 51: the structure of the government must furnish the proper checks and balances between the different departments', *Independent Journal*, 6 February.
- Miklaszewska, J., 2005. 'Public choice theory and the post-totalitarian state', in L. Koczanowicz and B.J. Singer (eds), *Democracy and the Post-Totalitarian Experience*, Rodopi, Amsterdam.
- Mill, J.S., 1861. *Utilitarianism*. Available online at <http://utilitarianism.com/jsmill.htm> (accessed October 2007).
- Moe, T.M., 1984. 'The new economics of organization', *American Journal of Political Science*, 78:739–77.
- Mollah, A.H., 2007. *Good Governance in Bangladesh: Role of Parliament*, Department of Public Administration, University of Rajshahi, Bangladesh. Available online at unpan1.un.org/intradoc/groups/public/documents/UNPAN/UNPAN014209.pdf (accessed 29 September 2007).
- Montesquieu, C., 1748. *The Spirit of Laws*, translated by T. Nugent and J.V. Prichard. Available online at <http://www.constitution.org/cm/sol.htm> (accessed October 2007).
- Namaliu, R., 2007. PNG Minister for Treasury speech on *Anti-corruption Campaign*, 1 February. Available online at <http://www.treasury.gov.pg/files/speech/Anti-corruption.010207.pdf>.
- Novak, J., 1998. *Public choice theory: an introduction*, Policy, Centre for Independent Studies, Sydney. Available online at <http://www.cis.org.au/Policy/autumn98/aut9810.htm> (accessed October 2007).
- Philip, P., Clarkson, J., Kalaut, S. and Tokura, F., 2004. *Report of the Royal Papua New Guinea Constabulary*

Policy dialogue

- Administrative Review Committee to the Minister for Internal Security Hon. Bire Kimisopa*, Government of Papua New Guinea and Institute of National Affairs, Port Moresby.
- Pitts, M., 2001. 'Crime and corruption—does Papua New Guinea have the capacity to control it?', *Pacific Economic Bulletin*, 16(2):127–34.
- Rawls, J., 1999. *A Theory of Justice*, Oxford University Press, Oxford.
- Reilly, B., 2000. 'The Africanisation of the South Pacific', *Australian Journal of International Affairs*, 54(3):261–68.
- Ross, K.L., 2002. *Rent-Seeking, Public Choice, and the Prisoner's Dilemma*, Friesian School. Available online at <http://www.friesian.com/rent.htm#note-2> (accessed 29 July 2007).
- Scharpf, F.W., 2003. *Problem-solving effectiveness and democratic accountability in the EU*, Working Paper 03/1, Max Planck Institute for the Study of Societies, Cologne. Available online at <http://www.mpi-fg-koeln.mpg.de/pu/workpap/wp03-1/wp03-1.html> (accessed November 2007).
- Schwartz, H., 1994. 'Public choice theory and public choices: bureaucrats and state reorganization in Australia, Denmark, New Zealand, and Sweden in the 1980s', *Administration and Society*, 26(1):48–77.
- Sen, A.K., 1991. *On Ethics and Economics*, Wiley, New York.
- Shaw, J.S., 2007. Public choice theory, *The Concise Encyclopaedia of Economics On-line*. Available online at <http://www.econlib.org/library/Enc/PublicChoiceTheory.html> (accessed 29 September 2007).
- Taylor, N., 2005. 'Explaining taxpayer non-compliance through reference to taxpayer identities: a social identity perspective', in C. Bajada and F. Schneider (eds), *Size, Causes and Consequences of the Underground Economy: an international perspective*, Ashgate, Aldershot:39–54.
- Uhr, J., 2005. 'Ministerial responsibility in Australia: 2005', paper presented at the 2005 Constitutional Law Conference, University of New South Wales, Sydney, 18 February.
- Waterman, R.W. and Kenneth, J.M., 1998. 'Principal-agent models: an expansion?', *Journal of Public Administration Research and Theory*, 8(2):173–202.
- Weber, M., 1978. *Economy and Society: an outline of interpretive sociology [1914–1929]*, Edited by G. Roth and C. Wittich, University of California Press, Berkeley.