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“Off balance sheet law”: globalisation, accounting and democracy

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Abstract National governments commonly facilitate neo-liberal globalisation by permitting private bodies to apply global commercial rules locally. The recent legislating of international financial reporting standards (IFRSs) in New Zealand is an important example of privatised lawmaking. IFRSs can be described as “off balance sheet law” because they do not appear on the statute books, yet have legal effects. This article draws on a broad conception of discursive democracy to demonstrate the fundamentally anti-democratic nature of privatised lawmaking that the legislating of IFRSs exemplifies. First, an outline is given of the organisations and processes involved in the legislation of IFRSs in New Zealand to demonstrate how privatised lawmaking works. Second, the importance of IFRSs is considered in the light of basic principles of discursive democracy. Finally, alternatives to standardisation are considered.

Keywords accounting, democracy, globalisation

INTRODUCTION

Globalisation may be defined as “the intensification of interconnections between societies, institutions, cultures, and individuals on a worldwide basis” (Patman & Rudd 2005: 2). Certain features of globalisation, such as the Internet and the worldwide promotion of human rights, are generally regarded as uncontroversial and universally beneficial. As Roth (2005: 74) observes the globalisation of human rights “is embraced as an opportunity to play a part in international affairs”. Controversy principally lies with the “hotly disputed costs and benefits of trade liberalization and foreign investment” (Roper 2005). More specifically, Touraine (2001: 14) argues that “the main cause of the threats that hang over us is neither the globalization of the economy nor the emergence of new industrial countries, but capital’s freedom to move around the world”. This neo-liberal form of globalisation requires implementation of particular domestic policies, including financial liberalisation, privatisation and deregulation, openness to foreign direct investment, a competitive exchange rate, fiscal discipline and lower taxes (O’Connell 2006). Capital mobility is also aided by common financial reporting standards

(FRSs) as these permit financial markets to “become more liquid and competitive, resulting in less information risk and a lower cost of capital for firms” (Brown & Tarca 2001: 275).

A theoretical tension exists between national sovereignty and globalisation because the primacy of the state “appears to be increasingly challenged by the fact that globalization has helped to spawn a multi-centric world of transnational and sub-state actors ranging from multinational corporations (MNCs) to terrorist groups” (Patman & Rudd 2005: 3). While the potential for the diminution of state sovereignty under the conditions of globalisation, and hence the ability of nation states to make decisions based on the democratic choices of their citizens, is real, there is little agreement on the actual consequences for state sovereignty of globalisation. Patman & Rudd (2005) identify three main schools of thought on the effects of globalisation and national sovereignty.

First, the hyperglobalists, who appear to assume that the notion of state sovereignty is static and the effects of globalisation are uniform, argue that globalisation has reduced and ultimately eliminated the space for states to govern. This perspective is typified by Ohmae (1995: 141), who dismisses the nation state as “a transitional form of organization for managing economic affairs” and predicts its dissolution.

Opposing the hyperglobalist view, which they consider politically naïve, sceptics argue that the impact of globalisation on state sovereignty and hence governance choices is greatly exaggerated. Rather than being the victim of globalisation, the state is considered its architect. This view has particular resonance in New Zealand, where successive governments have adopted an aggressive approach to globalisation (Patman & Rudd 2005). As Wood (2005: 78) observes, “whether New Zealand governments accept globalization as unavoidable, there can be no argument that since the mid 1980s they have accepted it as desirable”. Globalisation sceptics consider the sovereign state to be the sole institution capable of establishing the pre-conditions for economic activity—political stability, the rule of law, education and training, infrastructure, and so forth. As the body of international law necessary for globalisation has proliferated, nation states have become increasingly important as “agencies that create and abide by the law” (Hirst & Thompson 1996: 194).

Transformationalists argue that the state is not automatically diminished by globalisation, nor unaffected by it; rather, sovereignty is a dynamic concept that is undergoing a new phase of evolution. Wood (2005: 91) observes, for example, that “globalization has given legislatures new significance. Parliamentary websites explain how citizens can make submissions to parliamentary committees. National parliaments are a natural link between the grass roots and the wider world, including international economic institutions”. For Kostakopoulou (2002: 156), discussing state sovereignty in terms of a dualism of loss or retention, “conceals the floating character of sovereignty and constrains the capacity of the state to mutate, adapt and respond”. In the transformationalist view, countries may differ as to how they perceive problems and opportunities produced by globalisation and it cannot be assumed that there will be a convergence toward a common response. Crucially, “globalization of the economy has not dissolved our capacity for political action” (Touraine 2001: 2).

Adopting elements of the sceptic and transformationalist viewpoints, it may be argued that, in seeking to promote globalisation, the state has voluntarily ceded elements of sovereignty to private bodies. Neo-liberal measures necessary for globalisation—deregulation, competition and privatisation—have led to more rules, which have been effected, in part, through an “increased delegation of governmental functions to the private sector” (Taggart 2005: 627).

This voluntary cession of policymaking power jeopardises democratic action. The recent legislating of international financial reporting standards (IFRSs), which seek to harmonise FRSs around the world, exemplifies this development that Sassen (2003: 8) identifies as “the privatization of norm-making capacities and the enactment of these norms in the public domain”.

International harmonisation of FRSs has not caused capital to be mobile but nor has it followed as a natural consequence of globalisation. The relationship between IFRSs and capital mobility can be seen as imbricative, overlapping and worthy of interrogation. This article seeks to illuminate the relationship between globalisation and accounting to show how this impacts on democracy. First, an outline is given of the organisations and processes involved in the legislation of IFRSs in New Zealand to demonstrate how privatised lawmaking works. Second, the importance of FRSs in a democratic society is explained. Third, the process of implementing IFRSs is considered in the light of basic principles of discursive democracy. Finally, alternatives to standardisation are considered.

LEGISLATING INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRSs)

IFRSs

Financial statements are an organisation’s formal records of its financial activities over a year (Owen & Law 2005). Accounting information is based on four standard elements—a balance sheet, a profit and loss account (or income statement), a cash flow statement, and accompanying disclosure notes (Crouzet & Véron 2004). IFRSs, which represent an attempt to harmonise the standards and interpretations of financial statements internationally, are commonly described as “the new global financial reporting language” (Embling et al. 2006: 1), the *lingua franca* of mobile capital. As Sir David Tweedle, Chairman of the International Accounting Standards Board (IASB) has observed in this regard: “A common financial language, applied consistently, will enable investors to compare the financial results of companies in different jurisdictions more easily and provide more opportunity for investment and diversification” (cited by Alfredson et al. 2007: 7). But, while the metaphor of language is useful, FRSs are not a language, rather they are a normative system, albeit one with its own technical vocabulary. By way of analogy, IFRSs may be described as “off balance sheet law” as they create legal obligations but do not appear on the statute books. French (1991) identifies off balance sheet financing as the use by an accounting entity of a source of finance that creates a liability but is not reported in the entity’s balance sheet.

Development of IFRSs

The accounting profession first proposed uniform reporting standards during the 1950s in response to the post-war growth in international trade, foreign direct investment and MNCs, and the elimination of trade barriers and the formation of international trading blocks (Camferman & Zeff 2007). In 1973, the accounting profession founded the International Accounting Standards Committee (IASC) as a privately-funded organisation. The IASC gradually defined a set of standards and forged collaborative relations with different participants in the financial sector, notably professional accounting organisations and national financial market regulators.

In 2001, the International Accounting Standards Committee Foundation (IASCF) was set up, along with its subsidiary, the IASB, to replace the IASC (Crouzet & Véron 2004).

A crucial role in achieving harmonisation has been played by organisations interested in the orderly globalisation of capital—the World Bank, the International Monetary Fund (IMF), the International Organization of Securities Commissions (IOSCO), the Organisation of Economic Co-operation and Development (OECD) and G7 finance ministers (Alfredson et al. 2007). New Zealand was represented in the G4+1 group of accounting standard-setters (Australia, Canada, the United Kingdom and the United States, plus the IASC when allowed to attend meetings) (Camfferman & Zeff 2007). This group sought to promote reporting harmonisation amongst its members prior to the creation of the IASB's standards. New Zealand has also long been committed to aligning its accounting standards with those of Australia and the IASC. The 1988 Memorandum of Understanding on Business Law Harmonisation required joint examination of “the scope for harmonisation of business laws and regulatory practices including the removal of any impediment” pursuant to the Australia New Zealand Closer Economic Relations Trade Agreement 1982 (DFAT 1997: 18).

Despite the movement towards harmonisation of financial reporting around the world, the United States' Financial Accounting Standards Board (FASB) has not been prepared to surrender the right to set domestic standards. The relationship between the IASB and the FASB is currently considered to be one of “imitation and rivalry” (Crouzet & Véron 2004: 11). Crouzet & Véron (2004) predict that the FASB will cooperate and converge United States standards but will not formally adopt IFRSs.

IFRSs in New Zealand

Since 1 January 2007, large companies in New Zealand are required to prepare their financial statements in accordance with the domestic equivalents to IFRSs. IFRSs and their New Zealand equivalents are substantially similar, and profit-making entities that comply with the domestic equivalents can claim compliance with IFRSs (van Zijl & Bradbury 2005). Failure to comply with approved IFRSs is a crime and directors of recalcitrant companies may face significant fines (Financial Reporting Act 1993: section 36).

Various organisations have been instrumental in legislating IFRSs in New Zealand. While the actual “legislator” was the Accounting Standards Review Board (ASRB), a crown entity, other bodies have influenced the ASRB's decision. These were: the IASCF and its subsidiary; the IASB; and the Financial Standards Review Board (FSRB), a committee of the New Zealand Institute of Chartered Accountants (NZICA). NZICA is the brand name of the Institute of Chartered Accountants of New Zealand (ICANZ). In broad terms, the FSRB adopted and adapted the standards constructed by the IASB, and recommended these to the ASRB. The ASRB used its power of approval to make IFRSs legally binding in New Zealand.

The IASCF is a not for profit foundation incorporated in the state of Delaware (IASCF, undated a). It is an independent body that receives more than 60 percent of its funding from corporate donors, notably accounting firms (IASCF, undated b). The IASCF has 22 trustees, whose appointment is recommended by an advisory board (IASCF 2005a), which includes representatives of the IOSCO; regional development banks; the IMF; the European Central Bank and the World Bank (IASCF, undated c). A former chairman of the United States Federal Reserve is also a trustee. The IASCF is the parent organisation of the IASB, which identifies itself as an independent, privately-funded accounting standard-setter (IASB, undated).

The governing board of the IASB comprises experienced accountants, financial officers of MNCs and academics from various developed countries. The IASB constructs IFRSs.

The ASRB was established by the Financial Reporting Act 1993 to review and, if it thinks fit, approve FRSs submitted to it for approval. It is now an independent crown entity in terms of the Crown Entities Act 2004 and so, by definition, is generally independent of government policy; its board members are only accountable to the relevant Minister to perform their board duties. The ASRB comprises seven members: three chartered accountants; a lawyer; a professor of accounting; a company director; and the Chairman [sic] of the Financial Reporting Council of Australia. The Governor-General appoints members of the ASRB on the recommendation of the Minister of Commerce. The ASRB “has no premises or staff, and administrative support services have been provided at discounted rates by all of the ‘Big Four’ accounting firms at one time or another” (MED 2005). The ASRB is a “supporter” of the IASCF (IASCF 2005b) and has asserted its strong commitment “to the international convergence and international harmonisation of financial reporting standards” (ASRB 2004).

NZICA was originally founded in 1894 as the Incorporated Institute of Accountants of New Zealand (Emery et al. 2002) but the current entity was established under the New Zealand Society of Accountants Act 1958 as a body corporate with full legal powers. Although a self-governing body, certain of NZICA’s rules and its code of ethics are subject to parliamentary review. Baskerville & Pont Newby (2002) record that accounting standard-setting in NZ started in 1946 when the New Zealand Society of Accountants (NZSA) issued “Recommendations on Accounting Principles”, although these followed United Kingdom precedents. In 1961, a board of research comprising academics and practitioners was established and, in 1973, a Professional Standards Committee was established to issue Statements of Standard Accounting Practice. In 1974, the NZSA became an associate member of the IASC. This is significant since, while local standards still took precedence, any differences from IASC requirements were specifically acknowledged. In 1980, the NZSA established an Accounting Research and Standards Board, later replaced by a Professional Practices Board and the FSRB, which was established to publish FRSs, and interpretations and technical guidance as necessary.

“The New Zealand standards-setting process crucially relies on the willingness of the accountancy profession to make the major contribution” (MED 2005), and the FRSB is the committee of NZICA that provides the key technical information to the ASRB. Theoretically, any organisation could submit standards to the ASRB for approval but only NZICA does in practice. While the ASRB may reject a recommendation and some liaison between the FRSB and the ASRB may be necessary to achieve agreement, in practice, the FRSB, an internal committee of the accountancy profession, is the effective standard setting body in New Zealand. Van Zijl & Bradbury (2005: 5) observe, “the arrangement essentially reduces to the FSRB being the producer of FRSs but the ASRB, via the approval process, having control over the form and content of the standards”. The ASRB has approved virtually all standards applicable to both the public and private sectors presented to it by the FSRB (Baskerville & Pont Newby 2002). In fact, although the FSRB recommends standards, and thereby effectively sets them, it has adopted the standards of the IASB, albeit with modifications necessary for local circumstances. With three members of the ASRB past or current members of the FSRB, and the ASRB a supporter of the IASCF, it was inevitable that IFRSs would be adopted *mutatis mutandis* in New Zealand. The content of approved FRSs was not published in the *New Zealand Gazette*. The author of the legislative text is NZICA, not the New Zealand government and so, while

this may be of symbolic relevance only, the Crown does not appear to hold the copyright in these laws it has made (see ICANZ 2005).

Sector neutral reporting

Democratically controlled local authorities are also affected by the adoption of IFRSs, as they must comply with generally accepted accounting practice (GAAP). GAAP is similar to approved FRSs but is modified for application to public benefit entities (Bradbury & van Zijl 2005). The Local Government Act 2002 imposes additional accounting requirements on local authorities. “From the outset, accounting and financial management have formed an integral part of the neo-liberal reforms of the public sector” (Pallot 2001: 645). These new public management reforms were underpinned by choice theory, agency theory, transaction-cost and managerialism (Boston et al. 1996). Public choice, agency and transaction cost theories have a common focus on self-interest in decision-making, which has been construed to require policies on institutional structure as well as new governance arrangements more like those of the private sector to establish performance outcomes (Hooper et al. 2005). “The commercialisation strategy required the re-conceptualisation of all government activities as the production of outputs, the adoption of accrual [rather than cash] accounting, the introduction of costs intended to replicate private-sector costs and thus create a competitive environment, and full costing of all outputs” (Newberry 2003: 30). During the 1980s, a separate set of reporting standards was drawn up for the public sector but, in 1990, the decision was made to withdraw the special public sector developments, with the Financial Reporting Act 1993 mandating sector neutral accounting (Bradbury & van Zijl 2005).

IFRSs are designed to be entity neutral inasmuch as they are expected to be used by all profit-oriented entities (Embling et al. 2006). But, while non-profit and government entities “may find them appropriate”, the IASB did not design IFRSs to be sector-neutral (Alfredson et al. 2007). Indeed, jurisdictions are generally limiting the application of IFRSs to listed companies; Australia and New Zealand alone have opted to converge national GAAP with IFRSs (MED 2005). In response to concerns, such as those of the Controller and Auditor-General, that standards could be issued that contained “inappropriate requirements for public sector entities” (Brady 2004: 33), New Zealand public organisations, such as local authorities, must provide more information than profit-oriented enterprises but must nevertheless first comply with requirements constructed for profit-oriented enterprises (Simpkins 2006). The managerialist rationality, which informs sector neutrality, “assumes an unproblematic stance to the particular nature and circumstances” of public organisations, such as museums and their holdings (Hooper et al. 2005: 412). Newberry (2003: 32) describes this as “the sham promoted in both New Zealand and Australia that the accounting profession’s conceptual framework and accounting standards are sector-neutral”.

International Public Sector Accounting Standards (IPSASs) have been specifically constructed for the public sector, but the International Federation of Accountants (IFAC), which is the body responsible for constructing IPSASs, intends to base IPSASs on IFRSs (Walker 1997), with an eye to a future merger (Simpkins 2000). Commenting on the principle of sector neutrality, the chair of IFAC has observed, “I can’t see why the accounts of government, which is no more than a huge business, should differ from the accounts of companies” (NZSA 1993: 37).

IMPORTANCE OF FRSs

The principal aim of this article is to illuminate the processes that legislating IFRSs exemplifies; nevertheless FRSs are themselves socially important. New or amended accounting standards have “the potential for wealth transfers from some people to others” (Brown & Tarca 2001: 271). FRSs “imply choices that influence a broad spectrum of behaviour (for example, the granting of stock options), sometimes with macroeconomic consequences” (Crouzet & Véron 2004: 14). While FRSs have general distributive and economic effects on society, three specific aspects of the accounting profession’s capacity to construct FRSs are of acute relevance currently and will be considered in more detail below.

First, FRSs are the normative outputs of a powerful profession and it is self-evident that society should be alert to the consequences of professional power. Second, FRSs impact on broader society. Whatever their underpinning principles or specific content, they are privately constructed rules with public consequences: they are not akin to the by-laws of a private club or the rules that govern the behaviour of members of a profession. Third, IFRSs are implicated with the particular neo-liberal form of globalisation that social democrats, including Jesson (1999), Kelsey (1999), and Gould (2006), claim has had a deleterious impact on society. As noted, in New Zealand, the doctrines of neo-liberalism are normalised, in particular, by the principle of sector-neutral financial reporting.

Power of the accountancy profession

The accountancy profession as a whole wields significant power in society and has not always used this power for the general good. For example, in the United States, the profession succeeded in the last two decades of the twentieth century to ward off regulation by sponsoring and lobbying lawmakers (Stiglitz 2006). Mirroring “the corporate merger wave of the 1980s” (Zeff 2003: 271), large accountancy firms began to merge and develop into MNCs. Zeff (2003: 280) characterises their transformation from “professional firms that happened to be businesses into businesses that happened to render professional services” so that an “audit mentality at the top management of the firms was replaced by a consulting mentality, including a headlong drive for growth, profitability and global reach—business, not professional values”. The most dramatic consequence of this transformation was the demise of Arthur Andersen as a result of its involvement in the Enron scandal, leaving just a “big four” of accounting firms. While there was no suggestion of impropriety, and the IASB can be considered more independent from corporate interference than the FASB, its United States counterpart (Crouzet & Véron 2004: 15), the socially undesirable closeness of accountancy to business was indicated by the IASB’s soliciting large donations from Enron before its public disgrace (Rosenfeld 2002). Accountancy is not a monolithic profession but, as the only globalised profession, it is dominated by four multi-national firms who share the interests of other transnational businesses. Such reach and concentration of power has social implications. As Coffee (2003: 41) observes: “in a market this concentrated, implicit collusion develops easily” and “it is less likely that one competitor will seek to stand out and distinguish itself through its greater reputation for integrity”.

Social effects

Various groups and organisations, such as professions, universities and companies, are able to make internally binding rules that may have public consequences, but the accounting profession is distinguished by its capacity for making rules that bind organisations through-

out society, including democratically controlled bodies, such as local authorities. Financial reporting standards provide the meta-information for the ways in which information about organisations and their histories must be produced. In turn, because an “organization is not a concrete thing but a set of interrelationships, and if it is to exist, then it must be somehow bounded or defined”, that information influences how organisations are imagined, structured and managed (Hines 1988: 258). Furthermore, in the dematerialised world of finance, by deciding what must be reported, accounting plays an important role in determining what “exists”. As Hines (1988: 258) observes, “accounting practices, as well as communicating reality, also play a part in creating, sustaining and changing social reality”. The construction of FRSs is, then, a cultural activity that has broad social effects (Davey 2001). The more that organisations produce their narratives in standardised ways, the more that those organisations are likely to become homogenised, superficially at least. Of course, the principal purpose of IFRSs is to homogenise, so that investors can make rational investment decisions, whether the organisation under scrutiny is in, say, London or Auckland. But efforts to homogenise for the benefit of wealth-maximising investors is highly problematic for other institutions, such as public benefit entities that have no investors or, say, a Māori incorporation that is informed by a different *Weltanschauung* from that which informs a joint stock company.

Neo-liberal influence

Accounting is not an abstract exercise in measurement and recording, it is also a communication discipline (Pallot 2001). Furthermore, the accounting profession determines with whom and how its members will communicate. Akin to the image of the economically rational, wealth-maximising shareholder of dominant company theory, accounting constructs the user of financial reports as a rational economic decision-maker in the neo-liberal mould. Once the user has been imagined, information must be presented accordingly. Because of the principle of sector neutrality, this imagined user also informs reporting by public benefit entities.

Young (2006: 593–594) observes that: “Accounting standards are not a mirror for some users’ reality (even if this were possible) but instead they contribute to constructing a particular viewpoint about what financial statement users should be like”. But this narrowly imagined user—the wealth-maximising investor—“was not a ‘natural’ and inevitable progression in the development of accounting practice and thought” (Young 2006: 597). Thus French accounting standards “have long reflected public concerns ... at least as much as the interests of private investors” (Crouzet & Véron 2004: 9).

Linked to the issue of the imagined user is the problem of comprehensibility of financial reports. Embling et al. (2006: 25) observe that the information produced about commercial enterprises in compliance with IFRSs “tends to be of a technical nature and can be difficult to understand” and conclude that users “might find it difficult to understand the disclosures to the account which can become too complex for shareholders”. The constituencies for financial information relating to local authorities are far broader and heterogeneous than those of private enterprises (Barrett & Scott in press). Yet, if IFRSs-compliant information is not easily understood by shareholders who, in general, may be presumed to be financially literate, it must be a significantly greater obstacle for ordinary citizens to understand the financial narratives of local authorities, which must include information additional to the IFRSs private sector requirements. Too much complex information is likely to obfuscate, making comprehension and rational decision-making more difficult for local politicians and ratepayers.

As Pallot (2001: 658) argues, public sector accounting systems must “contain information which politicians, service recipients, and other actors can and want to talk about and use” if they are to strengthen processes of democratic governance.

DEMOCRACY

Globalisation and democracy

It has been argued here that the construction of FRSs is an important cultural activity that has broad social effects. Furthermore, the principle of sector neutrality has led to democratically controlled local authorities becoming subject to IFRSs. It is now considered why this is undesirable for democracy.

Coterminous with globalisation, a crisis of confidence in democracy has developed in the mature Western democracies (OECD 2001). It would be overly simplistic to identify globalisation as the cause of this disillusionment nevertheless, state-citizen relations are necessarily strained when government discounts consensus and privatises lawmaking. In New Zealand, the “unbridled power” (Palmer 1987) wielded by the dominant parliamentary party as a consequence of the combination of a unitary state, a unicameral Parliament and a first past the post electoral system, permitted successive governments to embrace neo-liberalism and globalisation unhindered but “that embrace did not appeal to many of their citizens” (Wood 2005: 78). Indeed, Wood (2005) argues that governments’ responses to globalisation significantly affected the New Zealand public’s support for measures to improve participation in democracy through the introduction of a mixed member proportional representation electoral system (MMP) (Electoral Act 1993) and non-binding referenda (Citizens Initiated Referenda Act 1993). By promoting citizen participation, these reforms brought the New Zealand system closer to a discursive form of democracy.

Discursive democracy

Discursive democracy “is ultimately about involving the stake-holders, i.e., those concerned by a particular social rule, in a deliberative process of mutual persuasion about the normative validity of a particular rule” (Risse 2004: 310). The basic legitimacy of a discursive political community is founded on its members’ general rights to equal liberties, along with membership rights and guaranteed legal remedies (Habermas 1986). Norms governing members of a particular political community must be justified by a discourse that includes all those affected so that a legitimate political community fundamentally constitutes itself “on the basis of a discursively achieved argument” (Habermas 1996: 125). Ideally, empathetic, competent speakers will resolve social issues through rational argumentation, which informs the construction of community norms (Habermas 1984; 1987; 1990).

Adopting an untheorised version of discursive democracy, the OECD (2001) recommends three principal ways for governments to engage in discourse with their citizens on policymaking. At a basic level, government disseminates information on policymaking on its own initiative or in response to citizens’ requests. Consultation, whereby a government asks for and receives citizens’ feedback on policymaking, is a more advanced level of citizen engagement. The final level is achieved when citizens actively participate in decision-making and policymaking. This represents “an advanced two-way relation between government and

citizens based on the principle of partnership” (OECD 2001: 18). Countering citizen scepticism toward democracy, these measures are expected to lead to better public policy, greater trust in government and stronger democracy. Even if laws are not legitimated by an absolute norm, at least the public might “own” the laws by which they are governed (Burton 2006: 171). Participation rights are crucial to a healthy democracy. Even if individual citizens do not actually participate in democratic processes, they still value the right to be able to participate, and the consequent feelings of control, self-determination and influence on the political sphere (Frey & Stutzer 2001).

New Zealand is formally a discursive democracy. Citizens have the right to elect representatives in the House of Representatives, local authorities and various other bodies, such as district health boards. Notwithstanding the introduction of MMP, New Zealand’s Westminster-style political system is based on representation, not agency or trusteeship (Dicey 1915). But there is no contradiction between political representation and discursive democracy. As the OECD (2001: 19) notes, a government’s “efforts to inform, consult and engage citizens in policy-making cannot replace representative democracy and is not intend to do so”. Both the courts and Parliament uphold the rule of law. The lawmaking process generally involves some public deliberation. While government has no legal duty to consult the major interests that will or may be affected by primary legislation, if it does engage in consultation, the *Cabinet Office Manual* encourages *genuine* consultation. There is a far greater expectation of consultation with regard to delegated legislation; nevertheless, the legal duty to consult is dependent on the relevant enabling legislation (Joseph 2001). At a local level, residents have significant opportunities to shape their communities through the consultation mechanisms of the Local Government Act 2002. However, discursive democracy requires the state to uphold citizens’ rights through parliamentary or judicial oversight and for citizen participation to be genuine in both form and substance.

Formal oversight

A determination by the ASRB of a financial standard is deemed to be a regulation (a form of subordinate legislation made by a delegate of Parliament). Consequently, the House of Representatives has the power, under the Regulations (Disallowance) Act 1989, to repeal such a determination by way of a resolution. However, no regulation has been disallowed under this Act since it came into force (Joseph 2001). Since a regulation constitutes an enactment, it is exempt from judicial review under the Bill of Rights (Rishworth et al. 2003), even if any rights were relevant. FRSs may, however, be reviewed by the courts on the general grounds of *ultra vires* (beyond the powers of the delegate) and, specifically, for repugnancy, uncertainty or unreasonableness (Joseph 2001). However, it is implausible to suggest this might happen. Rules of this nature are “not viewed presently within the framework of delegated legislation or even administrative law in the traditional sense” (Taggart 2005: 627). Neither the legislature nor judiciary seems to recognise them as laws. Like off balance sheet financing, they have real effects but do not appear to exist.

Due process

Instead of parliamentary or judicial oversight of the privatised accounting standards setting, legitimisation of FRSs is thought to be derived from “due process”. According to van Zijl & Bradbury (2005: 5), delegated legislation of this nature is satisfactory only if the relevant

“body engages in appropriate (procedural) due process”. The principal method of ensuring due process is the publication of exposure drafts of proposed FRSs (Rahman 1991), which permits “interested parties to indicate their acceptance of the proposals” (Baskerville & Pont Newby 2002: 5). (Although section 26 of the Financial Reporting Act requires the ASRB to engage in consultation, the validity of approval of a standard is not affected by non-compliance.) Before the adoption of IFRSs, each draft financial reporting standard produced by NZICA was published on the institute’s website along with a discussion paper for comment (Bradbury & van Zijl 2005). Following a review of the comments the exposure draft elicited, the proposed standards were submitted to the ASRB for approval. At this stage, time was allowed for public comment, with the drafts being published on the Ministry of Economic Development’s website.

Despite its ostensible reasonableness, due process is flawed in practice. Pressure groups are able to exert a major impact on standard-setting: “the regulator responds positively to the group with the most political clout” (Brown & Tarca 2001: 269). In particular, the large accounting firms tend to have a disproportionate influence on the process. Thus, Rahman et al. (1994: 114), applying public choice theory, conclude that “from both the demand and supply perspectives, the Big-8 accounting firms [as there were then] followed by preparers seem to have greater participation capacity in the standard-setting process; and the suppliers, the standard setters, harmonize their rules with the changing demand patterns”. Various investigations have shown instances where due process has not been sufficient (for example, Ryan et al. 1999; Baskerville & Pont Newby 2002; Miller 2002). Crucially, van Zijl & Bradbury (2005: 18) conclude that “the actual method of converting international standards to New Zealand standards did not go through sufficient due process”. It is self-evident that the legitimacy of due process is compromised by non-participation (Tandy & Wilburn 1992). Given the controversial nature of sector neutrality, it is pertinent to note in this regard that Baskerville & Pont Newby (2002: 21) found that public sector constituents “have shown both a lack of participation in due process, and possibly a lack of sophistication in debating the issues within their sector to a point where they can lobby effectively on significant proposals”.

In New Zealand, “dominance by the FSRB has resulted in a heightened significance for the efficacy of due process” (Baskerville & Pont Newby 2002: 4) and yet due process is evidently ineffective. Furthermore, van Zijl & Bradbury (2005: 12) observe that “adoption of IFRSs effectively removes from the ASRB the discretion to reject or substantively amend any particular IFRSs for application in New Zealand irrespective of its own assessment of the net benefits of a standard or a constituent’s objections to any part of a standard”. In sum, there is no practical state oversight of the private legislation process; the due process adopted by the standard-setter may be ineffective; and the standard-setter itself has voluntarily restricted its power to regulate.

Participation

The narrow focus of due process exemplifies a reliance on and privileging of expertise that excuses it from democratic participation. Certain important public institutions, notably the courts and universities, are not subject to democratic oversight, but institutional autonomy of this nature enhances democracy by promoting accountability, the rule of law and freedom of thought. The independence of these institutions is a constitutional choice that is likely to be affirmed in the long-term by ideologically diverse governments. Even institutional autonomy

motivated by ideology may benefit democracy. For example, the Reserve Bank was put beyond democratic control to thwart the prospect of a reversion to Keynesian economic policy (McKinnon 2003). Nevertheless, an independent central bank, by pursuing economic stability without fear of political intervention, may promote democracy. Indeed, the strongly social democratic constitution of South Africa also guarantees the independence of that country's central bank (Constitution of the Republic of South Africa Act 1996: section 224(2)). While these institutions are repositories of expert knowledge, their independence is not founded on a principle that experts should make decisions for non-experts in the way of Platonic guardians; rather they are not subject to democratic oversight because their independence supports democracy.

It is pertinent to consider whether a community of independent experts should set accounting standards. There is no “natural” answer to this query in the way that an independent judiciary is “natural”. The United Kingdom's Accounting Standards Board (ASB) is a privately-funded body and subsidiary of the Financial Reporting Council—a private organisation of professional accountants and representatives of the business community and government. The ASB is recognised as the official standard-setter by the United Kingdom's Department of Trade and Industry and operates independently, being able to issue standards on its own authority without securing government approval of individual standards. Conversely, in France, accounting rules have traditionally been viewed as a subject of public interest and, therefore, the preserve of the state (Crouzet & Véron 2004).

Laïdi (2007: 12) argues that, under the conditions of globalisation, “the state now needs to have recourse to non-state expertise to legitimate its own action ... states are, almost, by virtue of their construction as formally independent but substantially interdependent states, required to base themselves on the communities of experts”. But ceding decision-making power to communities of experts is problematic because it implies scepticism about the ability of ordinary citizens to make the decisions that bind them and exacerbates and formalises the practical inequality that expertise engenders. In a technologically complex society, specialists necessarily play a significant role in the policymaking process, but such reliance “on the skills of others has the effect of reducing the common area of shared experience and knowledge, and increases social distance” (Johnson 1979: 219).

Certainly few outside professional and academic accounting are able to debate the technicalities of constructing FRSs but, generally, if they are provided with appropriate information by experts, lay people should be able to decide, for example, whether public benefit entities should be treated in the same way for financial reporting purposes as profit making organisations. Van Zijl & Bradbury (2005: 5) argue that “standard setting is highly technical in nature and therefore cannot, in any realistic sense, be conducted in the conventional arena of any government”. But, given the important social consequences of FRSs, “production of accounting standards is too momentous an enterprise to be entrusted to accounting specialists alone” (Crouzet & Véron 2004: 16). An appropriate democratic response to expertise is not a fatalistic abdication to technocracy rather it is to require those specialists to better communicate their knowledge so that non-specialists can participate in relevant discourses.

ALTERNATIVES

The contemporary context appears to be one “where the dominant discourse proclaims that there is no alternative to the current neo-liberal form of globalization and that we should accept its dictats” (Mouffe 2005: 70). Government in New Zealand considers globalisation to be inherently good (see, for example, Goff 2007), and may have economic grounds for that view (Richardson 2005). In Gould’s (2006: 38) view, people have been persuaded that “neo-liberal economics is not only inevitable but is also natural, desirable, generally beneficial and to be admired”. Yet any such acceptance is not the result of open, rational discourse. Consequently, when the effects of globalisation become understood by those affected and brought into the public forum, results can be dramatic. For example, Kelsey (1999: 353) recounts how negotiations for the proposed OECD Multilateral Agreement on Investment “met concerted opposition from such diverse quarters as Maori, Grey Power, radio talkback callers, the Alliance, city councils and Local Government New Zealand”. In consequence, “government was forced to release an unprecedented amount of information and eventually to endorse a moratorium before negotiations on the agreement broke down completely”. But this is a dubious victory for democracy. Formal channels failed. Indeed, the victory is attributable in large measure to a reactionary, emotional outpouring. This implies defeat for a rationalist model of democracy, with its “need to mobilize passion through democratic channels” and an “emphasis on dialogue and rational deliberation” (Mouffe 2005: 70). When the formal processes of democracy have failed, future resistance becomes dependant on harnessing haphazard emotional reactions to specific events or developments. Conversely, government loses the opportunity to persuade citizens of the benefits of global economic integration and how it can be made to work better for more people than it has (Wolf 2004). When emotional arguments fail, resentment results, not an acceptance of outcomes. In contrast, when unpopular outcomes are derived through rational argumentation, they should be accepted by participants because they have had the opportunity to exercise reason in a rational process (Frey & Stutzer 2001). Ultimately, rational democracy becomes vulnerable in a context where the dominant discourse allows for no alternative to the current form of globalisation (Mouffe 2005: 70), and government assumes a role of facilitating the ostensibly inevitable.

There is no compelling reason why IFRSs should be mandatory in New Zealand. Companies should be free whether or not to adopt them. Indeed, there is “a trend for multinational corporations from many jurisdictions to voluntarily adopt IFRS” (Dunstan 2002). To protect investors, a private body, such as the New Zealand Stock Exchange, could, in response to market demand, make compliance with IFRSs a condition of listing. IFRSs have only had legal backing in New Zealand since 1993 (Bradbury & van Zijl 2005) and so there is no long tradition that makes criminalisation of non-compliance seem natural. Government has, in effect, outsourced its power to criminalise in order to promote a particular form of globalisation. Yet, if IFRSs meet the needs of globalised capital, it should not be necessary to make them binding law. The need for legal compulsion to comply implies a lack of confidence in the ability of market mechanisms to deliver desired outcomes for investors. Indeed, as Brown & Tarca (2001: 269) note: “The involvement of government in setting accounting standards results from a form of market failure”. Certainly, IFRSs should not be mandatory for the public sector, particularly democratic controlled institutions.

“The United States and the United Kingdom dominate in producing “new legalities—i.e. items derived from Anglo-American commercial law and accounting standards—and are hence

imposing these on other states through the interdependencies at the heart of the current phase of globalization” (Sassen 2003: 14). Non-Anglophone countries with civilian legal systems and distinctive cultures, such as France, face barriers to participation. Conversely, they are better placed to resist globalisation in its current form. (Although this capacity is less likely to be exercised by the Sarkozy administration.) In contrast, Australia and New Zealand appear to have followed the Anglo-American hegemony as if its objectives were axioms. But the processes and forms of contemporary globalisation “are neither inevitable nor by any means fully secure” (Held & McGrew 2002: 130). Plausible alternatives to the neo-liberal version of globalisation do exist. For example, Held & McGrew (2002: 131) propose a “cosmopolitan social democracy” that “seeks to nurture some of the most important values of social democracy—the rule of law, political equality, democratic politics, social justice, social solidarity, and economic effectiveness—while applying them to the new global constellation of economics and politics”. Furthermore, a plausible degree of local decision-making can be retained or even reclaimed.

A notable feature of New Zealand government post-1999 has been its attempt to reverse neo-liberal doctrines in certain areas (for example, health, local government and tertiary education) combined with its apparent acceptance of others, such as sector neutrality in financial reporting. Indeed, the Labour-led government has actively supported the adoption of IFRSs and, more significantly, their application to public benefit entities (see, for example, Dalziel 2007). This paradox can, in part, be explained by the persistency of the “tripod of Treasury’s political goals” that McKinnon (2003: 427) identifies as the Reserve Bank of New Zealand Act 1989 (monetary policy put beyond government control); the Fiscal Responsibility Act 1994 (mandating of balanced budgeting); and microeconomic reform (promotion of free trade). This tripod was crucial for the actualisation of the neo-liberal project in New Zealand and continues to inform governance.

The devolution of some national decision-making could represent an important enhancement of democracy and local decision-making. Thus the Local Government Act 2002 establishes the purpose of local government as enabling “democratic local decision-making and action by, and on behalf of, communities” and promoting “the social, economic, environmental, and cultural well-being of communities, in the present and for the future”. Similarly, the New Zealand Public Health and Disability Act 2000 aims to “remove the competitive model and address the distancing of communities from decision-making”. But these social democratic developments are fettered by the neo-liberal legacy. Local bodies remain subject to the financial reporting and controls introduced by the 1989 reforms. Informed by the doctrines of new public management, these reforms were “reinforced through radical changes in the accounting and reporting regime which ... had been on a cash accounting basis with an accountability for funds rather than resource management” (Pallot 2001: 648). These “distorted accounting rules, which project a superficial appearance of private-sector practices have been embedded in New Zealand through the accountancy profession’s similarly distorted, but purported “sector-neutral”, conceptual framework and accounting standard-setting activities” (Newberry 2003: 33). Neo-liberal reforms of the public sector stressed accountability but only in a partial way. And so, while “transparency in policy making and accountability for the use of taxpayers funds are fundamental principles of democratic government” (Pallot 2001: 657), it also seems “logical to require democratic decision-making for accounting standard-setting, in the

same manner as for other major economic policy issues” (Crouzet & Véron 2004: 14). Barton (2003) argues that the reality of public-sector operations should be recognised:

... by developing management reforms and accounting information systems which are tailored to the specific needs of the public sector. This mainly requires the removal of the ideologically based reforms and the fashioning of accounting standards to satisfy the requirements of providing relevant, reliable and understandable information which facilitates efficient and effective management of operations, and accountability for them to parliament and the public. Barton (2003: 40)

Developments that manage to run against the flow of neo-liberal globalisation can be seen as “ways of decolonizing the mind” (Ngugi wa Thiongo cited by Said 1994: 305) and represent an expression of identity appropriate for New Zealand’s public institutions. The formal recognition of a distinct Māori *Weltanshauung* represents a bulwark against neo-liberal colonisation, principally but not exclusively, for indigenous peoples. Smith (1999: 109) identifies “key cultural concepts such as *tino rangitiratangi* (sovereignty), *whanau*, *hapu*, *iwi* (extended family, sub-tribal groupings and tribe) *te reo* (Maori language) and *tikanga Maori* (Maori cultural customs)” as key elements of the cultural revitalisation that, along with political protest, has led to a formal recognition of this distinct Māori *Weltanshauung*. This, in turn, has led to laws being enacted and institutions founded that are substantially different from an Anglo-American template (see, for example, Te Ture Whenua Maori Act 1993/Maori Land Act 1993.) Another significant development is the establishment of a domestic supreme court to recognise New Zealand as “an independent nation with its own history and traditions” so that important legal issues can “be resolved with an understanding of New Zealand conditions, history, and traditions” (Supreme Court Act 2003: section 3). If the law “is primarily a great reservoir of emotionally important social symbols” (Thurman Arnold cited by Schiff 1976: 298), the patriation of the highest appellate court to New Zealand represents an especially potent symbol for decision-making within the nation.

CONCLUSION

Globalisation is not an inherent threat to national sovereignty and democratic decision-making. Cooperative technology, notably the Internet, permits parliaments to become portals of democracy and the globalisation of human rights helps to make human equality, the basis of democracy, a universal value. However, the neo-liberal version of globalisation that privileges the interests of capital is a significant threat to democratic decision-making and measures that promote or are implicated with capital mobility deserve especial public interrogation. Analysis shows that the adoption of IRFSs as law in New Zealand represents some of the most disturbing aspects of neo-liberal globalisation. The norms of a private international body have been made legally binding on domestic organisations, including democratically controlled bodies, without real oversight by government, due process or public participation. In this way, globalisation and accounting have a deleterious impact on democracy. And yet there is the space for local-decision making. But this needs public bodies to be disassociated from the private sector and it also requires experts to accept that their proper role in democratic decision-making is to facilitate citizen participation, not usurp it.

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APPENDIX 1 Glossary of terms

ASB	Accounting Standards Board (United Kingdom)
ASRB	Accounting Standards Review Board (New Zealand)
DFAT	Department of Foreign Affairs and Trade (Australia)
FASB	Financial Accounting Standards Board (United States)
FSRB	Financial Standards Review Board (New Zealand)
FRSs	financial reporting standards
GAAP	generally accepted accounting practice
IASB	International Accounting Standards Board
IASC	International Accounting Standards Committee
IASCF	International Accounting Standards Committee Foundation
ICANZ	Institute of Chartered Accountants of New Zealand
IFAC	International Federation of Accountants
IFRSs	international financial reporting standards
IMF	International Monetary Fund
IPSASs	International Public Sector Accounting Standards
IOSCO	International Organization of Securities Commissions
MED	Ministry of Economic Development (New Zealand)
MNCs	multinational corporations
MMP	mixed member proportional representation electoral system
NZICA	New Zealand Institute of Chartered Accountants
NZSA	New Zealand Society of Accountants
OECD	Organisation of Economic Co-operation and Development
