

# LOCAL DEMOCRACY AND THE AGENCY-MODEL OF LOCAL GOVERNANCE

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## I INTRODUCTION

Local governance is an integral part of most modern states. Its role is generally to implement central government policy on a local level, to provide and manage local infrastructure such as roads, waste management and water supply, and to conduct government business on a narrower day-to-day basis.<sup>1</sup>

The extent to which local government has discretion when fulfilling these duties, depends its relationship with central government. Countries with a unitary government structure and which follow the Westminster System, such as the United Kingdom and New Zealand, tend to follow the so-called agency-model of local governance: local government is regarded as an agent of central government and thus has little discretion to act beyond the direction given by central government.

This model bears the danger of being detrimental to both local governance and democracy. A tightly controlled local council may overzealously enforce central government's will to avoid its attention. It may thus become overly bureaucratic, to the detriment of its efficiency. A council on a tight leash will also diminish trust in local democracy. If local councillors are not free to represent their electorate, local elections are meaningless, and citizens become disengaged from local politics.

This danger is illustrated in the events surrounding the Canterbury regional council in the late 2000s. After accusations that it managed its water resources inefficiently, Parliament ousted the elected councillors and replaced them with commissioners, even though matters had been improving for years. This paper will assess the effects the agency-model has on local governance and democracy.

## II THE AGENCY-MODEL OF LOCAL GOVERNANCE

Local government is a necessity within the constitutional structure of modern states.<sup>2</sup> Central government is removed in terms of distance and duties from the needs and desires of the local population. It is usually more convenient and efficient to provide local services and decision-making on local level. As such, the *Local Government Act 2002* (NZ) ('LGA') states that the core services to be provided by local government are: network infrastructure, public transport, waste management, avoidance or mitigation of natural hazards, and recreational facilities and community amenities.<sup>3</sup>

The logistical difficulty for central government to govern over local matters was particularly obvious in the 19<sup>th</sup> century and early 20<sup>th</sup> century, when lack of long-distance transportation and communication made central administration of local infrastructure unfeasible. During that time,

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1 Geoffrey Palmer, Andrew S. Butler and Tom Scott, *A constitution for Aotearoa New Zealand* (Victoria University Press, 2016) 188.

2 Ibid.

3 *Local Government Act 2002* (NZ) s 11A.

local government was regarded as a quasi-autonomous political body, making decisions within its sphere of competency independently.<sup>4</sup>

However, the general trend for governments has long been to centralise their powers.<sup>5</sup> The consequence of centralised power is loss of independence for local governments.<sup>6</sup> The more power central government holds, the less likely it is to allow local government discretion when it comes to local decision making. This form of central-local government relationship is often referred to as the *agency-model*.<sup>7</sup> It is characterised by the idea that all power is inherent in a central government and merely delegated to other political bodies at a central government's discretion. Central government can therefore expand or limit the decision-making powers of local government as it chooses and interacts with local government in a form of command-follow relationship, rather than a cooperative one.<sup>8</sup> Consequently, powers that are extended to local government are generally strictly prescribed.<sup>9</sup>

But the agency-model of governance has been criticised for oversimplifying the central-local government relationship.<sup>10</sup> It does not recognise that while local government may ultimately be subordinate to central government, it nonetheless holds significant resources and wields substantial law-making and regulatory powers within its sphere of competency.<sup>11</sup> As local government can freely make decisions within certain areas, it can still be regarded as broadly independent; as long as these areas of discretion coincide with the overall duties of local government, it does not matter that local government discretion is restricted elsewhere. Local government can act autonomously within the areas that matter.

In New Zealand, local government powers used to be strictly prescribed by the *Local Government Act 1974* (NZ). That Act provided that any public services provided by local government were done so 'on behalf of central government.'<sup>12</sup> New Zealand has thus traditionally closely followed the agency-model.<sup>13</sup> However, the LGA 2002 did away with the set of prescriptions regarding local government powers, and replaced it by a so-called *power of general competence*. It extends 'full capacity' to local government to conduct its business as long as it acts within the general principles of the LGA.<sup>14</sup> This is particularly meaningful in light of local authorities' broad bylaw-making powers. New Zealand local authorities may make bylaws relating to protecting the public from nuisance, and promoting and protecting public health, particularly in the context of waste and water management.<sup>15</sup> The power of general competence combined with extensive bylaw-making powers appear to grant local government a

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- 4 Tony King and Trust Hamlyn, *Does the United Kingdom still have a constitution?* (Sweet & Maxwell, 2001) 27.
- 5 David Held, *Models of democracy* (Stanford University Press, 3rd ed, 2006), 83, 84.
- 6 M Loughlin, "The demise of local government" in Vernon Bogdanor, *The British constitution in the twentieth century* (Oxford University Press, 2003).
- 7 Stephen Bailey and Mark Elliott, 'Taking Local Government Seriously: Democracy, Autonomy and the Constitution' (2009) 68(2) *Cambridge Law Journal* 436, 440.
- 8 *Ibid.*, 441.
- 9 Carol Harlow and Richard Rawlings, *Law and administration* (Cambridge University Press, 3rd ed, 2009), 84.
- 10 Palmer, Butler and Scott, above n 1, 188
- 11 Bailey and Elliott, above n 6, 440; some scholars refer to this situation as a "power-dependence" model, see for example David Wilson & Chris Game *Local Government in the United Kingdom* (Basingstoke, 4th ed, 2006) 186-187.
- 12 *Local Government Act 1974* (NZ) s 37K.
- 13 Palmer, Butler and Scott, above n 1, 189; this is likely due to the similarity of New Zealand's constitutional structure to that of the United Kingdom, which has also traditionally followed the agency-model, see Harlow and Rawlings, above n 9, 84.
- 14 *Local Government Act 2012* (NZ) ss 14, 21(2).
- 15 *Local Government Act 2012* (NZ) Part 8.

high level of discretion and could be regarded as a significant step towards true local autonomy.<sup>16</sup> In reality, the autonomy of local authorities in New Zealand remains severely limited due to two factors: the first is its ability to raise funds, and the second is the power of central government to interfere with local government business.

Until 2012, central government could intervene in local government affairs in New Zealand if: a local council lacked a quorum and was thus unable to act, if the council requested central government help, or if the council refused to perform its statutory duties and thus endangered good local government or public health and safety.<sup>17</sup> Commissioners had been appointed by central government on few occasions, usually on the request by the local authority.<sup>18</sup> Since December 2012, the LGA was amended to allow central government even broader powers of intervention as it can now intervene as soon as the Minister believes that a problem exists. ‘Problem’ is defined in the LGA as: any circumstances that detract from a council’s ability to give effect to the purpose of local government, a persistent failure to perform its functions, and a failure to demonstrate prudent management of its finances, among other things.<sup>19</sup> The reference to finances is particularly relevant, as local government has very limited ability to raise funds, and often operates within limited financial means.<sup>20</sup> The powers of intervention in case of a perceived problem range from simple information gathering, to directing the council to act in specific ways. Ultimately, central government can relieve elected councillors from their duties and replace them with appointed commissioners.<sup>21</sup>

In terms of finances, the main income of local authorities come from local rates, a form of land tax.<sup>22</sup> Local authorities can impose fees on the services it supplies; however, these may only compensate for the costs incurred by providing the service.<sup>23</sup> Apart from investment revenue, local government has no other means to raise funds. If local authorities want to implement large and innovative projects or policies, they are often reliant on central government grants and subsidies.<sup>24</sup> This creates a dependence on central government when planning for the development of new local assets; if central government contributes to the cost of the development, it has a justification to control the development.<sup>25</sup> Overall, central government controls both local government’s responsibilities regarding its local population as well as its ability to raise funds to finance these responsibilities. This means that local authorities often have to operate within a very strict budget.<sup>26</sup> Consequently, as s 256 LGA includes mismanagement of finances as a reason for central government to intervene, it is unlikely that a local authority will embark independently on a larger or innovative project. It has therefore been suggested that, in New Zealand, local government is nothing more than central government’s agent, or a ‘subordinate service delivery arm.’<sup>27</sup>

16 Geoffrey Palmer as cited in: Prue Taylor, ‘Who Has the Power? Challenging Traditional State Authority to Regulate GMOs in New Zealand’ (2006) 8(3) *Environmental Law Review* 175, 180.

17 *Local Government Act 2012* (NZ) ss 255, 256 (1 October 2012).

18 See, eg, *Mangawhai Ratepayers and Residents Association Inc v Kaipara District Council* [2015] NZCA 612.

19 *Local Government Act 2012* (NZ) s 256.

20 Harlow and Rawlings, above n 9, 85; Graham Bush, ‘A Battle Won – or just Begun?’ (2003) *New Zealand Local Government* 32, 32; Palmer, Butler and Scott, above n 1, 189.

21 *Local Government Act 2012* (NZ) Part 10.

22 See *Local Government (Rating) Act 2002* (NZ).

23 *Local Government Act 2012* (NZ) s 150.

24 ‘Local government finance and expenditure’ (2015) *Local Government New Zealand* <www.lgnz.co.nz> (10 November 2017).

25 Bailey and Elliott, above n 7, at 442

26 Palmer, Butler and Scott, above n 1, at 189.

27 Taylor, above n 16, 179.

Although the LGA allows local councils vast discretion by way of their power of general competence, local government in New Zealand nevertheless acts more as an agent than an autonomous entity. This spectre of central government intervention can inhibit independent decision-making at a local government level. This is particularly true in light of the fact that the New Zealand Parliament has legislated twice for the replacement of an entire elected local authority within 10 years.<sup>28</sup> True independence requires a guaranteed freedom of outside coercion, be it through direct intervention or financial direction.

The reason that Parliament as one democratically elected governmental body can have complete control over local government, which is also democratically elected, is New Zealand's strict adherence to the principle of parliamentary sovereignty. Unlike legislatures in many other constitutional systems, New Zealand's parliament has no legislative superior and is thus not bound by any statute that organises and delineates the powers of New Zealand's constitutional organs.<sup>29</sup> It could be argued that Parliament should only legislate within the scope of the rule of law, and that democracy and the rule of law are intrinsically linked.<sup>30</sup> However, as Parliament itself is democratically elected, it arguably acts within the rule of law when passing any legislation concerning local government as long as it follows democratic processes, the proper legislative process.

Therefore, the agency-model is still a useful descriptor when assessing the status of local government in relation to central government. It may be a simplified view on central-local government relationship, but it accurately expresses the power imbalance between the two government levels. The limited ability to raise funds, the ease by which central government can intervene in an invasive manner, and the ultimate power Parliament holds over local government mean that any independently acting council is in a precarious position.

### III THE VALUE OF LOCAL DEMOCRACY AND THE IMPORTANCE OF AUTONOMY

Yet, just because Parliament *can* go as far as suspending local democracy and granting central government wide powers to interfere locally, does not mean that it *should* legislate to do so. Central government's ability to replace elected councillors on a mere suggestion of a problem has an obvious impact on local democracy. It does not just rob the local population of their voice in local decision-making, it also diminishes local government's authority and undermines people's trust in local democracy generally. This is arguably true not just for the directly affected local people, but also for the people of other regions, because the example of central government interference illustrates the possibility that it could happen in their region, too. As such, central government interventions adversely affect the democratic health of the entire country.

### IV LOCAL DEMOCRACY

Democracy requires citizens to self-govern, to take part in the decision-making process that determines society's rules and policies, and to implement them.<sup>31</sup> In a representative democracy, the people's ability to self-govern is delegated to representative leaders, as the involvement of every citizen in large-scale societies is unfeasible. These representatives are elected by way

28 See *Local Government (Rodney District Council) Amendment Act 2000* (NZ); and *Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010* (NZ).

29 Mark Elliott, 'Interpretative Bills of Rights and the Mystery of the Unwritten Constitution' (2011) *New Zealand Law Review* 591; see also Tom Bingham *The Rule of Law* (Penguin Books, 2011), 161.

30 Bingham, above n 29, 66-67;

31 Jack Lively, *Democracy* (Blackwell, 1975), 30.

of democratic processes, to ensure that they truly represent their electorate and to hold them accountable for their decisions.<sup>32</sup>

Local democracy furthers accountability by facilitating pluralism and diversity among representatives. John Stuart Mill was concerned that despite these democratic processes, government tended to attract a certain group of people.<sup>33</sup> This could result in a lack of diversity in government and a lack of choice between representatives. As only some people are interested in governing, the rest of the population would become less and less informed, and would eventually be unable to critically evaluate the actions of government. The result would be a progressively centralised government, in which minority groups had little chance to be heard.

Madison, who shared Mill's concerns, believed that the solution was to create diversity by decentralising government.<sup>34</sup> If governance is split and devolved to states or regions, more people are involved in the decision-making process, making it less likely that any particular interest group can gain disproportionate power. For this reason, local democracy is a vital part of overall democratic health. It distributes decision-making power across a wider range of representatives by creating more diversity.

Local democracy can also be beneficial to citizen engagement. As local governments make decisions that impact on the region more directly than many central government decisions, the local population is more likely to be aware of these decisions and of the representatives who make them. This means that a vote in local elections has a more tangible effect than a vote in general elections, as voters potentially have a better idea of how the council's decisions affect them. If a voter can feel the impact of the vote more directly, they are likely to be more interested in local politics. This way, local democracy support people's political self-development.<sup>35</sup>

## V LOCAL AUTONOMY

Local democracy will only be beneficial if local government can act independently. A council represents the will of the local population, but only if it has the power to make decisions at its own discretion. Otherwise, votes cast in local elections have little meaning, as the elected representatives are not free to act on behalf of their electors. In other words, the extent to which local government can act autonomously is a measure of democratic health.

Individual autonomy enables people to be self-determining: to be able to act free from any outside coercive force.<sup>36</sup> Autonomy is a necessary part of self-governance; someone who makes decisions based on coercion is not in control of their own governance. Because the political autonomy of individuals has been delegated to representatives in modern democracies, their ability to self-govern has been reduced to casting a vote. In order to preserve their autonomy, the democratic institutions created through the electoral process must themselves be autonomous.<sup>37</sup>

While this is clearly the case for Parliament, it must also be the case for local government. It could even be argued that it is as important that local government is autonomous, if not even more so. Democratic institutions preserve individual political autonomy only to an extent. The further the representatives are removed from their electors, the less political autonomy is maintained. When central government makes decisions that affect only a specific region, the decision is not made solely by representatives of that region. Such decisions may therefore

32 Held, above n 5, 75.

33 Ibid 83, 84.

34 James Madison, 'Federalist Paper No. 10' in Alexander Hamilton et al (eds), *The Federalist papers* (Palgrave Macmillan, 2009) 49-54.

35 Held, above n 5, 79; John Adler, 'Efficiency, autonomy and local government' (2001) 4(3) *Journal of Local Government Law* 61, 64.

36 Held, above n 5, 263.

37 Adler, above n 35, 63.

potentially be imposed on that region against the will of the local population. For that reason, an autonomous, and democratically elected local council ensures political self-determination of individuals better than central government when it comes to local decision-making.<sup>38</sup>

## VI DEMOCRACY AND AUTONOMY UNDER THE AGENCY-MODEL

A central government that perceives local government in terms of the agency-model is likely to be very directive, and local government powers will be strictly prescribed. This results in a lack of local autonomy and means that the local people enjoy less direct representation.

The agency-model may also have other harmful impacts on local government. It may, for example, cause a negative feedback loop that is detrimental to local government efficiency.<sup>39</sup> The primary reasons for central government intervention are first, that local government is not acting in the interest of central government in terms of policy development and/or implementation, and second, that local government is not acting efficiently enough.<sup>40</sup> To avoid intervention based on the former reason, local government is likely to try and do its best to stay within its narrowly prescribed competencies. That may lead it to become overly bureaucratic and risk-averse, as any show of independence may draw central government's attention.<sup>41</sup>

Moreover, central intervention based on these reasons undermines local government's authority. The lack of ability to act independently impacts on citizen engagement, as citizens come to regard local government as impotent and therefore unimportant.<sup>42</sup> That can lead to the situation where in the eyes of the electorate, any short-coming with local government is blamed on central government, as with direct control of local government comes a shift of responsibility to central government. This, in turn, may cause central government to decide to further tighten the reigns on local government, so as to fix the short-comings which caused the electorate's complaints. But stripping local government of further independence only cements the public's perception that responsibility for local government lies with central government – and the vicious circle is complete.<sup>43</sup> Overall, the less strictly the agency-model is applied to local government, the more democratic the system is and the more efficient local government can act.

## VII ENVIRONMENT CANTERBURY – A CASE STUDY

The events surrounding the passage of the *Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010* (NZ) ('ECan Act') illustrate the deficiencies of the agency-model. In New Zealand, local government is divided into territorial and regional authorities, each of which has its own set of competencies.<sup>44</sup> Environment Canterbury is the regional authority for the Canterbury region. Among other things, it is responsible for the management of the region's water resources. Canterbury produces a significant part of New Zealand's renewable energy by way of hydroelectricity. It is also an important agricultural region that relies heavily on Canterbury's vast fresh water reserves. These reserves account for

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38 Command Paper (UK) "Communities in control: real people, real power" (9 July 2008) Cm 7427, 13.

39 Bailey and Elliott, above n 7, 450.

40 Ibid 454.

41 Palmer, Butler and Scott, above n 1, 189.

42 Bruce Hayward et al, *The 2006 Local Elections and Electoral Pilot schemes* British Market Research Bureau <[www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)> (10 November 2017), 17.

43 Bailey and Elliott, above n 7, 451.

44 *Local Government Act 2002* (NZ) s 21.

more than two thirds of New Zealand's fresh water.<sup>45</sup> Consequently, water management is of high importance to the region.

A survey of all local authorities in 2008 revealed that Environment Canterbury was severely underperforming in terms of processing resource consent applications, particularly when those related to water.<sup>46</sup> It processed only 29 per cent of resource consent applications within the statutory time limits set by the *Resource Management Act 1991* (NZ) ('RMA'), which was by far the worst record of all local authorities in New Zealand.<sup>47</sup> Environment Canterbury also had not developed and implemented a regional water plan. While the RMA does not require a regional authority to devise such a plan, the importance of Canterbury's water resources both to the region and to New Zealand as a whole, made such a plan highly desirable. Moreover, the lack of such a plan was believed to be a contributing factor to the slow response time to resource consent applications.<sup>48</sup>

After local mayors voiced their concerns regarding Environment Canterbury to the Ministry of the Environment, the Minister ordered a review into the performance of the council. The resulting report (Creech Report) found that Environment Canterbury's inefficiency was the result of institutional breakdown, mainly caused by a council which it described as dysfunctional.<sup>49</sup> The council was split evenly along ideological lines, between environmental and economic interests. As neither side was seen to be interested to compromise, there was concern that the Council was unable to make difficult decisions. The Creech Report therefore recommended that the only way to improve Environment Canterbury's inefficiency swiftly, would be to relieve the Council of its water management responsibilities and transfer them to a central government department.<sup>50</sup>

The reason for the Council's slow response time to resource consent applications was likely primarily due to the number of resource consent applications it had to process. Consent applications had almost doubled in the previous years, due to a booming dairy industry and an unprecedented growth in urban development.<sup>51</sup> Environment Canterbury was not sufficiently resourced to deal with this sudden rise in consent applications, which led to delays processing the applications. However, by the time the ECan Act was introduced in Parliament, Environment Canterbury had increased its consent processing staff and increased its rate of applications processed within the time limits to over 70 per cent.<sup>52</sup>

Regarding the water plan, the Creech Report noted that a plan had been in the early stages of development for some years, but that it was still a long way from being completed.<sup>53</sup> The lack of progress was put down to the fact that the Council had bad relationships with the stakeholders and other public bodies of the Canterbury region, and that its internal ideological differences made it difficult to compromise on contentious matters.

However, while relationships between the Council and stakeholders were not always easy, according to independent research, both residents and industry representatives had a generally

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45 Wyatt Creech et al, *Investigation of the performance of Environment Canterbury under the Resource Management Act & Local Government Act* (CR84, 2010) I-II, 5; Dairy NZ, *New Zealand Dairy Statistics 2014-15* <[www.dairynz.co.nz](http://www.dairynz.co.nz)> 13.

46 Ministry for the Environment, *Resource Management Act: Two-yearly Survey of Local Authorities 2007/2008* (ME 937, 2007), Appendix 4.

47 Ibid Appendix 4.

48 Creech et al, above n 45, 5.

49 Ibid 8, 9.

50 Ibid III.

51 Ibid 27.

52 Ibid 30; Environment Canterbury, *Annual Report 2009/2010* (R10/112, 2010), 70.

53 Creech et al, above n 45, 6.

positive attitude towards Environment Canterbury.<sup>54</sup> Moreover, by 2010, Environment Canterbury had, in cooperation with the Canterbury Mayoral forum and the territorial councils, developed a water strategy. Unlike a formal water plan, this strategy stood outside the RMA process and relied on a collaborative approach to water management, rather than the adversarial approach of the RMA. Research by Holley and Gunningham showed that this kind of collaborative approach had been highly successful.<sup>55</sup> All parties involved believed that this strategy could be developed into a more formal water plan in the future.<sup>56</sup> The Council passed the resolution to adopt the water strategy by a vote of 10:2, showing that it could move past its internal ideological differences.<sup>57</sup>

It appears thus that Environment Canterbury had been operating somewhat ineffectively and inefficiently. But by the time the Creech Report was published, matters had substantially improved, and further improvement was likely. In any case, by 2010 Environment Canterbury was not the worst performing regional council anymore, which made the necessity of central government intervention doubtful.

Nevertheless, in March 2010 the New Zealand Parliament passed the ECan Act with the purpose of dealing with the perceived problems surrounding Environment Canterbury. The Act had a range of significant constitutional effects, but the most democratically harmful was the replacement of all Environment Canterbury councillors with government-appointed commissioners.<sup>58</sup> The government's reason for taking such drastic measures were similar to the ones put forward by the Creech Report.<sup>59</sup> However, the government based their reasoning mainly on the data from the time when Environment Canterbury's performance was worst, and ignored the improvements that had happened since. This was pointed out repeatedly by the opposition during the debates.<sup>60</sup>

This event illustrates the harmful effects the agency model has on local governance and democracy. Rather than having to cooperate with local government to achieve the best possible outcome for the population, central government can simply impose its will, with little regard to the mid- to long-term effects of such an intervention. Even though Environment Canterbury was processing 92 per cent of applications in time by 2011,<sup>61</sup> it is arguable that only in November 2016 was local democracy partially restored, when seven of thirteen councillors were elected during local government elections.<sup>62</sup>

The adverse effects of the ECan Act are likely to be wide-ranging. The ousting of councillors will undermine voters' confidence that their local votes matter. Also, Local councils may be more timid and less innovative, because Environment Canterbury's innovative approach to water management was over-ridden by central government.

54 Cameron Holley and Neil Gunningham, 'Natural resources, new governance and legal regulation: when does collaboration work?' (2011) 24(3) *New Zealand Universities Law Review* 309, 321; Environment Canterbury, *Annual Report 2006/2007* (R08/57, 2008); Canterbury, *Annual Report 2009/2010*, above n 52.

55 Holley and Gunningham, above n 54, 321.

56 Creech et al, above n 45, 19.

57 Ibid 50.

58 *Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010* (NZ) s 9.

59 (30 March 2010) 661 New Zealand Parliamentary Debates 9927 (Nick Smith).

60 See eg (24 March 2010) 661 New Zealand Parliamentary Debates 9767 (Kennedy Graham); (30 March 2010) 661 New Zealand Parliamentary Debates 9930.

61 Ministry for the Environment, *Resource Management Act: Two-yearly Survey of Local Authorities 2010/2011* (ME 1069, 2011) Appendix 5.

62 *Environment Canterbury (Transitional Governance Arrangements) Act 2016* (NZ); the remaining six councillors are still appointed by central government.



Instead of intervening in the adversarial manner that the New Zealand Parliament chose, as a central government it could have supported Environment Canterbury. The ideological split in the Council was a sign of democracy in action, not a problem to be fixed. With more resources to deal with the influx of resource consent applications, Environment Canterbury could have processed (and did process) more applications in time.<sup>63</sup> And the collaborative approach of the water strategy could have been supported and potentially used as a template for resource management reform. However, that is not how a principal interacts with their agent. If the agent does not act strictly within the expectations of the principal, the principal will impose their will on the agent, as happened in this situation.

## VIII CONCLUSION

The agency model of local governance is a sign of a political system in which power is highly centralised and focused within a central government body. This body wields full control and is unlikely to tolerate actions by other political bodies that may undermine its control. In such a system, local government cannot act independently. It must follow the will of central government, as it is seen as little more than an extension of central government.

This model comes at the detriment of local democracy. Even if local elections exist, their relevance is minute. An elected councillor who has to act within strict prescriptions may as well be an appointed bureaucrat. Consequently, citizens disengage from local politics, which in turn concentrates power even more in central government.

A model of local governance that facilitates and furthers local democracy is the so-called partnership model.<sup>64</sup> Under this model, central government creates broad policy with the input of local authorities. The authorities then have wide discretion when implementing these policies. This ensures that central government can create policy beneficial to the whole country, but that such policy will not be unduly detrimental to the regions.

For the partnership model to work, local government needs a strong constitutional basis. If its existence and competencies are not protected, central government can impose its will on local government at any point. To this end, the association of local councils in New Zealand has suggested that local government should be more specifically constitutionally recognised; or, at least, that the LGA be entrenched.<sup>65</sup> Palmer and Butlers even go so far as to challenge the concept of parliamentary sovereignty altogether with their proposed Constitution for Aotearoa New Zealand which among other things, would guarantee the existence of local government, its autonomy within its legally defined areas of competence, and its democratically elected representatives.<sup>66</sup> In lieu of broad constitutional changes, Bailey and Elliot suggest that a formal memorandum of understanding between central and local government as to their relationship and competencies could mitigate some of the adverse effects of the agency-model.<sup>67</sup>

The events surrounding Environment Canterbury and the subsequent increase of powers of intervention in the LGA, showcase the dangers inherent in the agency-model. If left unchecked, central government tends to increase rather than decrease its power, to the detriment of local government and democracy.

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63 In fact, during the times that Environment Canterbury processed few applications, its staff had asked to be exempted from some of the RMA's restrictions so that they could act more efficiently. The ECan Act extended exactly those powers to the appointed commissioners. Central government could have extended these powers to Environment Canterbury earlier, allowing it to act more efficiently without central intervention; see Creech et al, above n 45, 9, 10.

64 Harlow and Rawlings, above n 9, 84.

65 Taylor, above n 16, 181; see also Palmer, Butler and Scott, above n 1, 73.

66 Palmer and Butlers, above n 1, 73 (Art 110).

67 Bailey and Elliott, above n 7, 470, 471.