

Debating the debates

In the aftermath of the High Court's decision on the TV3 leaders' debate, *Te Waha Nui* looks at election debates - here and in Germany. Suenje Paasch-Colberg and Duncan Greive report.

Germans go to the polls just a day after New Zealand but the approach to political debates there contrasts significantly with the New Zealand system.

Germany's four main TV networks - two commercial and two public - will broadcast a leaders' debate two weeks before the election.

In Germany broadcasters and political party officials worked out the formula for the September 4 debate a month in advance.

It seems worthwhile to have a closer look at the debates as New Zealand adapted the German MMP system in 1996.

Steven Price, fellow in law and journalism at Victoria University, says broadcasting election coverage has a special function in countries with MMP.

"Under MMP minor parties have more chance to get into Parliament and because of that TV debates become more significant," he says.

In a landmark case in 2002 the leader of the German Free Democratic Party (FDP), Guido Westerwelle, went through the courts because he wanted to be included in the second TV debate.

The first debate was broadcast by two private stations, the second was screened by the public broadcasters ARD and ZDF, who have a public function and must provide comprehensive information for the general public.

The FDP argued that an equality provision in the German Basic Law guaranteed the right of political parties to be given equal access to the media.

Therefore the broadcasters

had to include Westerwelle, the party argued. However, the Federal Constitutional Court decided in favour of the TV stations.

The court held that it was part of media freedom to design the concept of a political debate, in this case a debate between only the political leaders who had a chance of becoming chancellor, says Petra Butler, senior law lecturer at Victoria University.

For comparison's sake it has to be noted, however, that freedom of the media is expressly protected under the German Basic Law, whereas in

New Zealand it is protected under freedom of expression in the Bill of Rights Act.

Freelance reporter Ronny Thorau, who works for the German news agency dpa, says he likes the fact that the journalists were given this freedom of choice.

"And I think it makes perfect sense in terms of journalism."

According to Butler, the German and the TV3 case are comparable.

TV3 and ARD/ZDF have a similar function in this particular case, even if the first is a private company and the latter is publicly funded, she says.

"TV3 is in fact a private company, but has an incredible power. The way I see it, TV3 reaches so many people that it has a public function in this case."

One major aspect of the German TV debate was different from the TV3 programme aired on August 11.

Called "TV Duel", the format is designed to confront those politicians likely to become chancellor - which in 2002 were Chancellor Gerhard Schroeder and his challenger Edmund Stoiber, candidate of the Christian Democratic parties.

In its judgement, the German

Constitutional Court said on August 30, 2002, that ARD and ZDF had the right to define their debate's concept.

As Westerwelle had "no realistic chance to become chancellor after the election", he had no right to be included in the debate, the court said.

The idea of the TV3 programme was different. "It was about presenting the aims of the biggest political parties," says Butler.

Price says if TV3's idea had been to present the next Prime Minister, the judge would probably have decided differently.

Another point the German court ruling made was the fact that there were a couple of other TV election programmes to screen and that Westerwelle would have the chance to join them. According to Butler, the ARD/ZDF vs Westerwelle case is interesting for New Zealand.

The German Constitutional Court held that political party broadcasts ought to be proportionate to the importance of the party, measured by party size, the result of the last election and the membership base, she says.

"The aim is to reflect the political reality."

In her view the TV3 ruling was probably correct under the approach in Germany, depending what weight one would give the individual criteria.

However, that was also exactly the reason why the TV3 decision was problematic. The judgment lacked a careful analysis of the problem and a legal justification for the approach taken, she says.

"It does not provide any guidance or references for future TV political debates."



TV DUEL: "The only one who has something new to say is not present." With postcards like this the German political party FDP tried to exert pressure when its leader, Guido Westerwelle, was not included in a TV debate between Edmund Stoiber (left) and Chancellor Gerhard Schroeder.

PHOTO: FDP

Electoral Commission should rule, says academic

A leading media academic has called for an expanded Electoral Commission to resolve widespread media dissatisfaction

with the recent High Court ruling on TV3's political debates.

AUT associate professor Wayne Hope has joined other critics of the decision,

saying the courts have vested interests that should preclude their participation.

"It should be neither the courts nor the media who decide," he says.

"An expansion of the Electoral Commission's remit would be the ideal solution to future issues of this type."

He says one interpretation of the ruling would make TV3 include the leaders of every party in New Zealand.

"In an extreme case everybody who was registered as a party would want to be on. And we'd have to go to Eden Park."

Garth Gilmour, a journalist of more than 50 years experience, believes the issue should never have reached the court.

"It should not be a decision for the courts to make."

But if TV3 had come to the correct conclusion in the first place it would never have happened.

"Dunne and Anderton are legitimately elected representatives, and therefore must be included in any broad leaders debate."

Gilmour's comments contrasted to those of Alan Hitchens, long time editor of *New Zealand Truth*, who said in a letter to the *New Zealand Herald* that the autonomy of the press was an inalienable tenet of any democracy.

"New Zealanders should be aware that this decision sets a dangerous and worrying precedent. A state-controlled press could be next."

For Hope, the ramifications are not as problematic, but he maintains that any expansion of the Electoral Commission should occur as a result of public and parliamentary debate on the issue.

"It should not occur arbitrarily. It should be a matter of discussion in its own right."

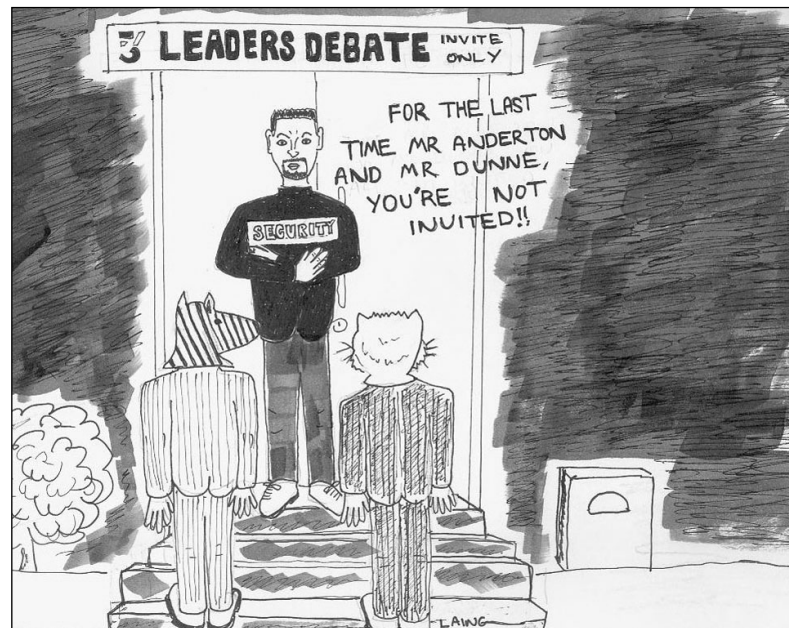


ILLUSTRATION: TIM LAING

Leaders' debates

New Zealand

- debates are organised by TV stations - politicians are selected on basis of poll performance, eg TV3, or as "leaders" debate, eg TVNZ
- arranged at relatively short notice

Germany

- Germany's "TV Duel" features only the chancellor candidates
- there is a range of other TV election debates
- TV Duel formula is sorted out about a month in advance by party officials and broadcasters
- politicians' participation is voluntary