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Coalitions and accountability

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**COALITIONS AND ACCOUNTABILITY**  
Multi-party Government in the Age of MMP

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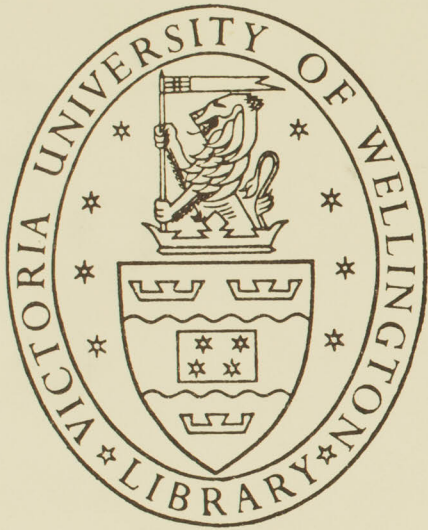
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## ABSTRACT

The Electoral Act 1993 provides for the proportional representation of political parties in the House of Representatives. Single-party majority government which has prevailed over recent decades will, most likely, give way to either minority or coalition government. Coalitions are, at their best, fine examples of co-operation between parties and exemplify the consultation and consensus-building that many see as the appropriate alternative to the 'elective dictatorship' of government by single party majority cabinets. The single-party mandate to enact specific policy planks is replaced in a coalition by the imperative to consult partners, and often non-government parties, on policy. Increased consultation between parties is not only the result of the need for coalition government. It is rather a product of the new era in which parliament generally, and the select committees in particular, have become more significant in the legislative process. While coalition government will be the most demonstrable symbol of the decline of single party dominance, it is the product of an era of increased power sharing. A majority coalition government is no less powerful than a single party government. Indeed, elective dictatorship by coalition is possible.

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## BIBLIOGRAPHY

## I INTRODUCTION

This paper considers the issue of accountability when applied to coalition government. Constitutional accountability as a concept has risen in importance in recent decades and the demand for it is demonstrated in many of the conventions and practices of Government and Parliament. These conventions and practices have developed mainly in an era dominated by two political parties. One of the effects of the Electoral Act 1993 will, almost certainly, be the representation in parliament of a greater number of political parties than has traditionally been the case. Another possible effect is coalition government. This paper discusses aspects of the established understanding of accountability and applies them to coalition government. It also assesses the implications of coalition government on established mechanisms of accountability.

Chapter II defines the words accountability and coalition. In particular, it draws a distinction between political accountability and constitutional accountability. It notes that political accountability centres on the identification of who is to be held accountable, who will hold them accountable, and for what they will be held accountable. Constitutional accountability is not specifically about issues of promise and performance. It centres, rather, on the way in which a government relates to other parties, parliament and the community in reaching decisions and passing legislation through the House. It is a process rather than a contractual product. The chapter notes Lord Hailsham's concept of the "elective dictatorship" and uses this as a model for the lack of constitutional accountability. Accountable government entails various conventions, practices and systems support the active participation of all parties. The result is accountable governing. It is demonstrated through openness, consultation and co-operation. The nature of coalition government establishes a new set of variables within the

constitutional framework surrounding cabinet government. The chapter notes the variety of forms to be found even within coalitions.

Chapter III provides an historical perspective to parties, accountability and coalitions in New Zealand. It notes that major political parties were not part of the colonial General Assembly. As a result, members were not constrained by party discipline and temporary coalitions between factions and individual members developed. Some individuals and factions coalesced in order to hold strong government accountable. It notes the advent of major parties, the occurrence of coalition governments in three eras of this century. Elective dictatorship is described in New Zealand. The chapter concludes by summarising key aspects of the Electoral Act 1993 and explaining why the Act represents a constitutional revolution. Reasons are given for why coalition government is more possible under the electoral framework provided by the new Act.

Chapter IV examines issues of accountability as they apply to a coalition Cabinet. Particular aspects covered include the selection and role of the Prime Minister, election and selection of ministers, and the cabinet's relations with caucus and parliament. The presence within cabinet of representatives of more than one party enables the cabinet to monitor itself to some degree. However, in an age of participatory democracy, there is a pressing need for coalition agreements to be communicated to the electorate. The chapter discusses the significance of the doctrine of collective responsibility for coalition cabinets.

Chapter V considers accountability in the context of caucus. Since the Electoral Act has broken new ground by making provision for political parties, the individual caucuses of elected parties could be presumed to be of vital importance to the Mixed Member Proportional electoral system (MMP). The irony is that proportional representation, in enabling several parties to be significantly represented in the House, makes single-party majority caucuses very unlikely. For a coalition government, there is perhaps no government caucus as such. Instead, there may be several caucuses of the government coalition partners. Even opposition caucuses have a role in the modern concept of government. While the era of the powerful, single-party government caucus has, almost certainly, gone, the era of coalition building and coalition government redefines the role of caucus and offers it a

dynamic role in the delivery of accountability. Government caucuses will almost certainly gain in power over their cabinet ministers.

Chapter VI turns to Parliament, the institution which provides the members who form coalition governments. Constitutionally, governments answer to Parliament. Parliament's power to make and unmake governments is highlighted in the MMP era due to the number of political parties in the House and also due to the increased number of members. A greater number of views will be represented in the MMP parliament and these will be reflected in the work of the select committees and in the type of legislation that is passed in the House. Coalitions will form the government as well as arising informally in opposition ranks to challenge the government or to contest particular divisions. Parliament, in the age of MMP, will adapt to the demand for greater consultation and co-operation between parties. New Zealand, however, has a recent history of single party governments which have at times behaved like 'elective dictatorships'. This chapter considers how accountable a coalition government will be to Parliament and what degree of responsibility Parliament takes for coalition government.

Chapter VII summarises the key points made in the paper to support the thesis that coalition government not only occurs in an era of increasing accountability, but is itself a form of government that offers new levels of accountability involving all parties and indeed all members of the House of Representatives.

## II DEFINITIONS

The words coalition and accountability are central to this paper. In order to clarify their precise meanings and how they are used in the paper, this chapter offers definitions and discussion.

### I COALITION

#### A *Definitions*

The New Shorter Oxford English Dictionary defines a coalition as "...[a] temporary combination of parties<sup>1</sup> etc. that retain distinctive principles".<sup>2</sup> Parkin defines political parties themselves as "coalitions"; a party is "simply a collection of politicians who have banded together for the purpose of achieving and maintaining office".<sup>3</sup> This paper focuses on accountability in a context in which two or more parties have banded together to form a government in which cabinet positions are occupied by members of more than one party. It also acknowledges that individual members of Parliament are coalitionable.

#### B *Forms of Coalition*

There are many possible forms of coalition government and each one has its own implications for accountability. Boston points out that one way to categorize governments is according to whether they hold a majority or

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<sup>1</sup> Parties are not essential to coalitions. Independent MPs are also coalitionable.

<sup>2</sup> *The New Shorter Oxford English Dictionary* (5 ed, Oxford University Press, New York, 1993) vol 1, p 427.

<sup>3</sup> Michael Parkin *Microeconomics* (Addison-Wesley Publishing Company, Ontario, 1990) 516.



minority of seats in Parliament.<sup>4</sup> For coalitions, as for all other forms of government, there are in the normal course of events only two options: majority coalition government or minority coalition government.

Boston observes that multi-party governments can be sub-divided in various ways:

- 1 Number of parties in the coalition
- 2 Relative size of the parties
- 3 Ideological cohesion
- 4 Maximum or minimum winning coalition
- 5 An oversized coalition
- 6 Grand coalition of all the major parties
- 7 An all-party coalition
- 8 A minority coalition government can be sub-divided according to various criteria, such as the nature and degree of the support it receives from opposition parties.

### *C Informal Coalitions*

While describing what is meant by a coalition, it is also necessary to confirm what it is not. Coalition is the most overt and significant way in which parties can, within the constitutional framework, operate together to govern the country. There are many other forms of co-operation between parties which do not amount to coalition government. These forms include the appointment of members of second parties to non-executive positions, arrangements and agreements between parties concerning parliamentary voting and support for the government, and the work of multi-party Select Committees. The paper acknowledges that these forms of inter-party co-operation can sometimes be described as informal coalitions which, in some cases, amount to a first step towards formal coalition.

## II ACCOUNTABILITY

There are two important types of accountability - political and constitutional - that apply to government. Both types are important to the discussion of

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<sup>4</sup> J Boston "The future of cabinet government in New Zealand: The implications of MMP for the formation, organisation and operations of the cabinet" (Working Paper Series 3/94, Graduate School of Business and Government Management, Victoria University, 1994) 3.

coalition government. This paper concentrates on constitutional accountability.

#### A *Political Accountability*

Political accountability is based on the premise that specific parties make specific promises to the electorate prior to an election. If elected to the House of Representatives, the parties are then expected to behave in accordance with their election promises, either as members of government or of the opposition. The electorate has the opportunity to hold the parties accountable at the following election either by returning them to office or not.

Implicit in the idea of responsibility is the clear knowledge of who is responsible. For responsibility to be real, someone or some body must be nominated for the role of being liable to be called to account. If no specific person or party can be called to account then true political accountability does not exist. It could be said that this occurs in the case of a coalition government that forms following an election and which does not go to the next election on a coalition ticket. It is neither voted into office or out of office, although its constituent MPs or parties may be indirectly held to account by voters.

There are major problems in attempting to hold governments accountable for election manifestos. The manifestos are developed by small numbers of party workers and are not voted on clause by clause at a general election. The party or parties which eventually become government may not have received a percentage of the popular vote that justifies wholesale delivery of the promises contained in the manifesto. Also, governing is an ongoing process that by convention is characterised by participatory democracy. Rigid adherence to election planks runs counter to concepts of public consultation and active, inter-party co-operation. A broader concept of accountability is required in the age of MMP.

#### B *Constitutional Accountability*

The paper examines coalition government in the light of constitutional accountability. When applied to government, constitutional accountability concerns the way a government governs within the constitutional framework. Whereas political accountability focuses on whether a party

keeps its election promises once in office, constitutional accountability is more concerned with the way the government includes other parties and groups in the development of policy and legislation. A government has responsibility for the good administration of the nation and is not simply a vehicle for party politics.<sup>5</sup> One of the ills of traditional party competition has been the way minority interests have been shut out of decision making. MMP involves participatory democracy. Accountability in modern New Zealand government is increasingly evidenced by openness, consultation with others and receptiveness to alternative ideas. In particular, it involves power sharing, co-operation between parties, and respect for minor interests.

1        *Lack of accountability*

MMP, and with it the increased prospect of coalition government, has arisen in New Zealand following a period of heightened frustration with governmental practices and systems that were found to be deficient in terms of constitutional accountability. The lack of accountability is not unique to New Zealand governments. In other countries it has been associated with two-party systems featuring strong single-party government. Hailsham has noted:<sup>6</sup>

[R]epresentative institutions are not necessarily guardians of freedom, but can themselves become engines of tyranny. They can be manipulated by minorities, taken over by extremists, motivated by self-interest or organized millions. We need to be protected from our representatives no less than from our former masters.

Significantly, Hailsham comments on the British system of government which is provided with a second chamber. The unicameral nature of the New Zealand House of Representatives renders it more vulnerable to manipulation by a dictatorial executive as well as the rapid passage of ill-considered legislation.

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5        The Oaths and Declarations Act 1957, s19.

6        Lord Hailsham *The Dilemma of Democracy* (Collins, London, 1978) 13.

2 *Elective dictatorship*

Hailsham described the traditional system as an "elective dictatorship" in which governments used their sometimes narrow majorities to impose on the majority changes for which the majority never consciously voted.<sup>7</sup> Usually two major opposing parties alternated in power dependent on elections, and once in control of the government apparatus reversed the policies of the previous government. From an Australian perspective, Wright justifies the sharing of power with democratic principles:<sup>8</sup>

Many writers refer to the desirability of 'strong government', and this is usually interpreted to mean a government capable of outvoting any opposition. In a democracy, the only acceptable strong government must be a government strongly supported by those governed.

To summarise, Hailsham and Wright share a view that strong, single-party government that inflicts its agenda on parliament and the people is not good government. It is not constitutionally accountable government. Accountable government consults, and involves other people and parties in the process of formulating policy, drafting legislation, and passing it into law. The resultant legislation can be said to have the support of, rather than simply the opposition of, other parties in the House. By joining with the government party in this process, every party within parliament in a real sense participates in government. Coalition government is the formal sharing of power, while co-operation and consensus between parties amount to an informal sharing of power.

Disraeli is reported as saying, "Parliamentary government is party government. You cannot have one without the other."<sup>9</sup> Certainly, the constitutional significance afforded political parties under the Electoral Act 1993 demonstrates the reality of this statement in a New Zealand context. Hailsham says the problem of government by a majority party is that "you cannot appeal effectively from the legislative proposals of a government to

<sup>7</sup> Above n 6, 21.

<sup>8</sup> JFH Wright *Mirror of the Nation's Mind: Australia's Electoral Experiments* (Hale and Iremonger, Sydney, 1980) 19.

<sup>9</sup> Above n 6, 100.

the majority in the House of Commons"; in this way, the people's will is not adequately protected against arbitrary government.<sup>10</sup>

### 3 *Limited government*

The alternative to such tyranny is, according to Hailsham, limited government which is characterised by diversity, justice, protection of minority and individual interests, and the rule of law. In place of concentrating power, it diffuses power. In such a system, majority government may not pass what laws it wills, and individuals and minorities have rights against elected authorities.

The traditional party system worked satisfactorily when parties did not attempt to press a narrow electoral advantage too far and respected this convention. Hailsham proposed that the institutions of government be structurally altered so that:<sup>11</sup>

...the will of the majority will always prevail against that of the party composing the executive for the time being, and that, whoever may form the government of the day will be compelled to follow procedures and policies compatible with the nature of Parliamentary democracy and the rule of freedom under law.

The New Zealand parliament has enacted various legislation in recent decades providing instruments to assist in making government more accountable. Examples include the Ombudsmen Act 1975, the Official Information Act 1982, the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993, and in 1985 the comprehensive development of the role and powers of the select committees. While helping to 'limit' government and make it more accountable, neither individually nor collectively did these measures succeed in curtailing the duopoly of the major parties or periodic demonstrations of elective dictatorship. The electoral framework enshrined in the Electoral Act 1956 enabled the elective dictatorship to become as much a reality in New Zealand as it had in Britain.

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10 Above n 6, 101.

11 Above n 6, 22.

### III BACKGROUND TO THE ELECTORAL ACT 1993

The Electoral Act 1993 represents a constitutional revolution. In order to illuminate aspects of its significance for coalition governments, this chapter gives a brief historical sketch of earlier eras in New Zealand political history when parties were not as central to the working of government. It then considers parties and their purpose. It examines the role and performance of parties in the First Past the Post era. The concept of the elective dictatorship is examined, along with the concept of accountability and limited government. In conclusion, the chapter considers the Electoral Act 1993 and its broad constitutional implications.

#### I COLONIAL GOVERNMENT

The history of constitutional law in New Zealand can be viewed in terms of evolving statutory mechanisms assisting enhanced representation of popular opinion on the one hand and accountability of representatives on the other.

##### A *Early Constitutional Arrangements*

Following the signing of the Treaty of Waitangi in 1840, the New Zealand Colony was administered by a Governor sent with instructions from England.<sup>12</sup> Early settlers resented this form of off-shore government and desired their own representative parliament.<sup>13</sup> The New Zealand Constitution Act 1852 (UK) provided for provincial assemblies, a House of Representatives and a Legislative Council whose members were appointed for life. Governor Grey initially delayed implementing the Act on the grounds

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<sup>12</sup> TR Smith *Parliamentary Government in New Zealand* (RE Owen, Government Printer, Wellington, 1965) 6.

<sup>13</sup> Above n 12, 7.

that it would enable an effective dictatorship of minority white settlers over the majority Maori population.<sup>14</sup>

## *B Colonial Government*

### *1 Lack of party discipline*

Bohan has described 19th century New Zealand parliamentary life, noting its absence of strong party organisation and "its emphasis on personalities and shifting cabals".<sup>15</sup> The atmosphere suited a political leader who could manage "turbulent and unreliably independent parliamentarians".<sup>16</sup> Members were not afraid to make individual stands on issues. The four Maori members did not always vote as a bloc<sup>17</sup> and even cabinet ministers would oppose each other on the floor of the House.<sup>18</sup>

### *2 Leadership*

Support for particular leaders could centre on personalities, philosophies or provincial origins. Both for reasons of government and opposition, leaders needed to together individuals and groupings of members into coherent, but informal, coalitions. For example, on Tuesday 20 May, 1856, as a member of the Opposition, Stafford was able to gather enough support from "disparate elements" in the General Assembly to win five divisions in one day against the Fox ministry. The following day, he successfully led a confidence vote against the government. After portfolios were redistributed, a weakness in the free voting structure surfaced. In the absence of the hierarchy associated with clear party structures, it was not apparent who would be premier in the new ministry.<sup>19</sup>

<sup>14</sup> Above n 12, 8. The proposed system would "give to a small fraction of her subjects of one race the power of governing the large majority of her subjects of a different race".

<sup>15</sup> E Bohan *Edward Stafford: New Zealand's First Statesman* (Hazard Press, Christchurch, 1994) 9.

<sup>16</sup> Above n 15, 9.

<sup>17</sup> Above n 15, 286.

<sup>18</sup> In 1867, during a debate over cuts to inter-colonial and inter-provincial services, cabinet ministers Hall and Richmond opposed Premier Stafford and minister Fitzherbert. See above n 15, 249.

<sup>19</sup> Above n 15, 95.

### 3 *Unifying factors*

Stafford wished for members to "forget their distinct origins and their long hatred, and to prepare them to coalesce into a strong and united nation".<sup>20</sup> In 1866, the third Stafford Ministry contained ministers who had been previous political opponents of Stafford as well as two ministers from the second Stafford ministry.<sup>21</sup> It could be called a coalition of factions rather than a coalition of parties. The lack of strong party divisions enabled Stafford to appoint the most suitable people, in one case a vociferous opponent, to important positions.<sup>22</sup> Stafford delivered a new Ministerial statement "in as fresh a tone as if no policy had ever been sanctioned by him before - as if he were a new Premier of a new party which had just won their way to office".<sup>23</sup> It was a cabinet whose members were drawn from the General Assembly in its broadest sense rather than from one narrow political faction within it.

### 4 *Accountability*

Issues of accountability affecting the 19th century parliament included the inaudibility of Vogel's Financial Statement in 1869;<sup>24</sup> rushed legislation that allowed insufficient time for debate;<sup>25</sup> and the lack of information made available to the Assembly about major policy initiatives.<sup>26</sup> Consultation between the government and the opposition occurred over matters of common policy.<sup>27</sup> The 19th century parliament apparently expected its governments to be accountable to it, to keep it informed and allow it to debate policy. Political realities sometimes undermined these expectations. Particularly if the opposition was weak or disorganised - a state of affairs more likely where individual members are not united in common parties - a government could ignore some constitutional conventions. To ensure

<sup>20</sup> Above n 15, 99.

<sup>21</sup> Above n 15, 230.

<sup>22</sup> In 1866, Premier Stafford appointed a long-standing rival, James FitzGerald, New Zealand's first Comptroller General. See above n 15, 235.

<sup>23</sup> *Lyttelton Times*, Lyttelton, New Zealand, 27 August 1866. Quoted in E Bohan *Edward Stafford: New Zealand's First Statesman* (Hazard Press, Christchurch, 1994) 232.

<sup>24</sup> Above n 15, 290.

<sup>25</sup> Above n 15, 293.

<sup>26</sup> Above n 15, 293.

<sup>27</sup> Above n 15, 301.



compliance with convention, it eventually proved necessary to gather together the disparate elements of the opposition.<sup>28</sup> Another such example is the Dommett ministry of 1861. It contained four main factions which attracted fluctuating support from uncommitted members.<sup>29</sup> From a modern perspective, these 'gatherings' of individuals can be seen as the first moves towards the formation of parties rather than coalitions of parties.

## II THE ADVENT OF PARTIES

### A *Parties Become Established*

Major political parties gradually developed in the early decades of the 20th century. This paper will not trace their history apart from making some general points about the reason for parties and why they have sometimes coalesced.

### B *Reasons For Parties*

The political function of parties seems straightforward: to propose and implement policies.<sup>30</sup> Parties cannot have a major influence over legislation and national policy while in opposition. Parties want and need power in order to be effective. It seems a self-evident fact that political parties want to be in government in order to implement their programmes.

### C *Party Politics*

Modern political parties seek control over the legislative chamber. "In constitutional terms the main function of a political party is to capture and control the behaviour of the Parliament. In that sense a political party is certainly subversive of the institution of Parliament."<sup>31</sup> Party politics are so central to New Zealand's parliamentary life that governments are normally described according to the party its ministers belong to, for example, "We

<sup>28</sup> In 1871, Stafford rallied the opposition members in order to confront what Bohan describes as "Vogel's arrogant trampling on parliament's right to discuss and direct policy". See above n 15, 313.

<sup>29</sup> Above n 15, 177.

<sup>30</sup> J Blondel *Political Parties: A Genuine Case for Discontent?* (Wildwood House, London, 1978) 19.

<sup>31</sup> G Palmer *New Zealand's Constitution in Crisis: Reforming Our Political System* (McIndoe, Dunedin, 1992) 130.

have a National government" or "Labour has come to power". Palmer has noted the influence of parties and raised points with a bearing on accountability:<sup>32</sup>

The conduct of political parties, both in their organisations generally and in their arrangements in caucus, are subject to very little law indeed and hardly any constitutional conventions either. These are the institutions which deal with political competition in the community, but they are subject to almost no safeguards or restraints. To underline the point consider what the parties and caucus have the ability to do:

choose the Prime Minister and Deputy Minister  
in the case of Labour, choose the Cabinet  
choose the leader of the Opposition

Despite having such important constitutional roles, political parties are controlled by elites:<sup>33</sup>

Effective control of political parties is in the hands of a few people, and these few are not generally accountable to the membership of the party at large, let alone the general public. The membership could be in control if it exerted itself and came to meetings.

Mulgan has noted that "[p]olitical parties and the competition between them are an aid, not a hindrance, to democracy..."<sup>34</sup>

#### *Previous Periods of Coalition Government*

Coalition government, if it eventuates under MMP, will be a new experience for modern New Zealanders. It is not, however, a new phenomenon for New Zealand. Wood has observed there have already been several periods of coalition government:<sup>35</sup>

<sup>32</sup> Above n 31, 132.

<sup>33</sup> Above n 31, 133.

<sup>34</sup> R Mulgan *Democracy and Power in New Zealand* (2ed, Oxford University Press, Auckland, 1989) 58. Quoted in above n 31, 129.

<sup>35</sup> A Wood "The Origins of the First National Government: A Study in New Zealand Wartime Politics, 1914-15" (MA Research Paper, University of Canterbury, 1963) 219.

Since the advent of modern party politics, there have been three coalitions in New Zealand, in 1915-19, 1931-35 and in 1942. Each has been born in crisis and racked by internal disagreements. Both war coalitions have been abandoned by the Opposition at the earliest opportunity - though in the case of the first this did not come until 1919 - while the depression coalition was defeated and discredited in 1935.

Considered in this light, New Zealand has experienced coalition government in rare and only negative circumstances. A recent exception has been the short-term coalition between the governing National Party and the tiny Right of Centre Party. In this instance, the minority party leader was a member of the executive outside of cabinet. While unusual in New Zealand, coalition government is relatively common internationally. In most European countries, for instance, coalition governments have been the norm rather than the exception.<sup>36</sup>

Although the advent of strong parties creates the possibility of manipulation of parliament by non-elected bodies, parties have made governing and legislating more secure for majority governments. In fact, without parties it would be difficult to describe any government as having a majority.<sup>37</sup>

Chapman makes the very good point that the gift of party to governments was stability of support by MPs. "Party's gift to the electorate was meaningful choice between alternative governments whose proposals were known."

### III ELECTIVE DICTATORSHIPS

#### A *FPP Duopoly*

Hailsham observes that in the elective dictatorship, two major parties tend to alternate in government.<sup>38</sup> Each governs, despite perhaps a slender majority, in such a way as to reverse the policy directions of its predecessor.

<sup>36</sup> Above n 4, 3.

<sup>37</sup> R Chapman "Political Culture: the Purpose of Party and the Current Challenge" in H Gold (ed) *New Zealand Politics in Perspective* (2ed, Longman Paul, Auckland, 1989) 14. Cited in above n 31, 130.

<sup>38</sup> Above n 6, 21.

First Past the Post (FPP) elections are conducted in separate regional electorates. In each electorate, the votes for each candidate are counted and a single winner declared. Since 1935, this method of electing members to Parliament has resulted in a virtual duopoly by the National and Labour parties. Smaller parties occasionally polled well in particular electorates and on rare occasions won a seat in Parliament. However, even when a small party built up a solid following across the whole country, it would not result in representation in the House unless the numbers could be so concentrated into a single electorate to result in an election night victory for the local candidate. As this was a rare event, the two main parties could confidently dissuade voters from supporting 'third' and 'fourth' parties by observing that such votes would be 'wasted'. Despite this sense of 'waste', despite the rarity of a third party winning an electorate seat, and despite the unlikelihood of a third party gaining sufficient individual seats to form a majority government, a noticeable number of voters nevertheless gave their support to smaller parties.

### *B Elective Dictatorship*

FPP cabinets have been criticised for being an elective dictatorship supported by only a minority of voters.<sup>39</sup> Palmer has commented:<sup>40</sup>

Both main political parties in New Zealand can gain only minority support at election time. Yet under the "winner take all" system one or other of them forms the government, and with a parliamentary majority which may be small they have the total running of the government. All other interests are shut out of it.

### *C Dishonouring Pre-election Promises*

New Zealand is emerging from a decade of radical social and economic revolution in which successive governments have enacted legislation bearing scant relationship to election promises. "A trend is developing in New Zealand politics. There is an increasing divergence between the agreed

<sup>39</sup> M Varnham "Vote PR for More Women on the Hill" in A McRobie (ed) *Taking it to the People?: The New Zealand Electoral Referendum Debate* (Hazard Press, Christchurch, 1993) 149.

<sup>40</sup> Above n 31, 195.

policy of the political parties at election time and their performance in office."<sup>41</sup>

"It is noteworthy that the Manifesto for the 1987 election had not been published until after the elections were over."<sup>42</sup> Political parties have abandoned manifestos once in office, and some MPs for reasons of conscience have even abandoned their parties to form new ones. Palmer has commented:<sup>43</sup>

The traditional understanding in New Zealand has been that parties give a solemn undertaking to follow their manifestos. This undertaking amounted virtually to a constitutional convention; the electors expected governments to follow their party manifestos...That used to be the system, but is now disintegrating...Manifestos under proportional representation would in some instances become a starting point for negotiation not a prescription for action. That is what they should be anyway. The idea that a party can govern in modern conditions on the basis of a manifesto drawn up in the way New Zealand manifestos are drawn up is manifestly absurd. It is even more absurd to anyone who has a close knowledge of how party policy is actually made.

If this is the case, the role of members of Parliament, and indeed the role of political parties, moves significantly from the 'delegate' model where the party is an agent of the people's will, and more towards the 'representative' model where the party, while still conforming to known principles, has freedom to negotiate and adapt to changing conditions while in office.

#### IV ELECTORAL ACT 1993

##### A *Provision for Parties*

One of the most significant innovations of the Electoral Act 1993 is the statutory recognition it gives to political parties. The Act focuses the main aspects of the electoral process on political parties and their proportional representation in the House of Representatives. In this way, the Act

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41 Above n 31, 143.  
42 Above n 31, 144, 145.  
43 Above n 31, 196-197.

significantly develops the position of parties within the constitutional system. However, proportional representation is not a new concept to New Zealand political life. In 1912, the Reform Government considered introducing a system of proportional representation to ensure fair representation but the proposal was defeated in caucus by country members who feared for their own quota.<sup>44</sup>

Part IV provides for the Registration of political parties. Section 150 provides that ballot papers shall have two parts, enabling the elector to vote for both a constituency candidate as well as a party. Where the constituency candidate belongs to a party, that party's name appears below the candidate's name. Under the original Electoral Act 1956, candidates' names stood alone on the ballot paper without any mention of their parties. Subsection 192 (1) provides the key mechanism of the MMP system, assigning seats to parties according to an arithmetic ranking formula described in section 191.

Not all parties are eligible for the proportional allocation of seats. In particular, it provides that parties must:

1. Be registered with the Electoral Commission <sup>45</sup>
2. Have 500 current financial members<sup>46</sup>
3. Receive at least five per cent of the party votes at the election or win a constituency seat.<sup>47</sup>

#### *B Proportional Representation*

A key implication of proportional representation is the threat it poses to the traditional dominance of the two major parties. In the past, by voting either for Labour or National, voters not only elected members to the House of Representatives but also, in effect, elected the Government. Where three or more parties are likely to be significantly represented in the House, as under the MMP system, voters still elect members and parties to the House but there is less of a sense of electing a specific government. Unless one party wins an absolute majority of seats, the composition of the government will be determined by negotiation between party leaders and possibly parliament

44 Above n 35, 77.

45 The Electoral Act 1993, s 62.

46 Above n 45, s 63(2)(c)(v).

47 Above n 45, s 191.

and the Governor-General. Thus, no party can confidently make pre-election promises based on the supposition that it, or indeed any party, will govern in its own right following the return of the writs.

*C Lack of Mandate*

A coalition government is a "temporary combination of parties".<sup>48</sup> Unlike incoming FPP governments which have claimed to have a clear mandate from the electorate, a coalition government contains partners who have received different (even conflicting) mandates. These separate mandates are still important.<sup>49</sup> The point to be made here, however, is that the electorate has the opportunity to endorse coalition policies if the coalition announces itself and its agreed policies before a general election. In Germany, coalitions are announced before the election so that voters know what they are voting for.<sup>50</sup>

If the policy negotiation only occurs after the writs have been returned, then the coalition partners themselves alone provide the mandate for the policies. The electors are in a sense left out of the equation while their elected representatives mutually determine what weight should be given to disparate party election manifestos and individual pledges. Even when parties decide these issues before an election, electors are unlikely to be consulted.

Electoral reform may have been driven by the sense of powerlessness which electors felt towards their elected governments. Governments, and more particularly cabinets, have at times legitimately made use of their virtually unlimited powers - through executive fiat or domination of parliament - to impose new policy directions on an unsuspecting public. On occasion, announcements have not been legitimate.<sup>51</sup> Mulgan suggests that politicians themselves have become casualties of their own behaviour.<sup>52</sup>

<sup>48</sup> Above n 2, 427.

<sup>49</sup> See above n 34, 58. "To break a commitment is to break faith with those voters who chose to vote for the party for that reason."

<sup>50</sup> J Wallace "MMP - the Royal Commission's Preferred Option" in A McRobie (ed) *Taking it to the People?: The New Zealand Electoral Referendum Debate* (Hazard Press, Christchurch, 1993) 176.

<sup>51</sup> *Fitzgerald v. Muldoon* [1976] 2 NZLR 615 (Supreme Court).

<sup>52</sup> R Mulgan "Should Business People Fear Electoral Reform?" in A McRobie (ed) *Taking it to the People?: The New Zealand Electoral Referendum Debate* (Hazard Press, Christchurch, 1993) 146.

The radical reforms of the last eight years were made by politicians who had little or no mandate for them and rammed them through the system with all the resources of the elective dictatorship. But one undoubted cost of the Rogernomics revolution was the discrediting of politicians as dishonest and the electoral process a sham. Whatever politicians may say on the hustings and whatever choices voters may express, real power appears to be in the hands of an unaccountable elite.

#### *D Avenues to Power*

The Electoral Act 1993 establishes an electoral system that provides two clear avenues whereby smaller parties can more surely secure seats in Parliament:

- 1 In reaching the five per cent threshold for parties, qualifying for five per cent or more of the 120 seats in Parliament<sup>53</sup>
- 2 By winning one of the 60 General Electorates, qualifying for a proportion of the seats in Parliament approximately equal to its share of the Party Vote.<sup>54</sup>

The likely increase in the number of parties represented in Parliament will entail a related decrease in the percentage of seats available to the two traditional parties, National and Labour, which have dominated the New Zealand Parliament for 50 years until 1985 when "frenetic parliamentary activity and change" brought about significant change.<sup>55</sup> In the two years preceding the first MMP election, the number of parties with seats in Parliament grew. The main reason was that members resigned from the two main parties and formed or joined other smaller parties. In 1995, nine parties held seats in the House. One party, United New Zealand, was formed in 1995 and drew its members from three other parties represented in the House.<sup>56</sup> Despite the proliferation of parties preceding the first MMP election, the five per cent threshold will ensure that very few of them hold seats after the election. In fact, the results of one opinion poll in September

53 Above n 45, s 191.

54 Above n 45, s 191.

55 D McGee *Parliamentary Practice in New Zealand* (Government Printer, Wellington, 1994) 6.

56 National, Labour, Future New Zealand.



1995 indicated that only four parties would qualify for seats from the party list allocation.<sup>57</sup>

*E End of Duopoly*

Whether the number of parties is three, four or five, their presence in the House will be significant. Even a small party which wins just five per cent of the party vote will hold at least six seats. In this way, the Act spells the end of the traditional Labour-National duopoly. Boston suggests that it is improbable that any one party will be able to secure a majority of seats without at least 46-47 per cent of the list vote.<sup>58</sup> "In New Zealand, parties do not often win such high levels of electoral support..." Indeed, no party has won more than 50 per cent of the vote since 1951. Certain constitutional factors favour the formation of minority governments: there is no requirement for the government to hold a majority of seats in the House or to face a vote of confidence.

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<sup>57</sup> See "Backing for National up - poll" *Dominion*, Wellington, New Zealand, 13 September 1995, 1.

<sup>58</sup> Above n 4, 3.

#### IV CABINET

Cabinet is the key decision making body of government in New Zealand. It is the grouping of responsible ministers who together constitute the Executive. For half a century, New Zealand has had single party cabinets. If coalition government eventuates under MMP, then it is this tradition of cabinet which will end. While parliament is already accustomed to several parties sharing the chamber, and individual party caucuses will continue to meet separately, it is cabinet as a body which stands to undergo the greatest constitutional change. Coalition government places more than a single party round the cabinet table.

#### I CABINET

Palmer has noted that Cabinet is a creature of constitutional convention that has been largely ignored by traditional constitutional law.<sup>59</sup> He has also described cabinet as the "elective dictatorship".<sup>60</sup> Cabinet is not a legally created body and there is no formal procedure for appointment to it. Instead, parliamentary parties conduct the appointment process themselves.<sup>61</sup> McLeay claims that the only formal constraint on its power is the triennial general election.<sup>62</sup> A British cabinet minister has noted:

"If it has any such existence at all, it is an informal committee of the Privy Council."<sup>63</sup> Its constitutional significance is major. Mulgan describes Cabinet

<sup>59</sup> Above n 31, 106. *Com'n in Crisis*

<sup>60</sup> N McMillan *Top of the Greasy Pole: New Zealand's Prime Ministers of Recent Times* (McIndoe, Dunedin, 1993) 31.

<sup>61</sup> E McLeay *The Cabinet and Political Power in New Zealand* (Oxford University Press, Auckland, 1995) 17.

<sup>62</sup> Above n 61, 6.

<sup>63</sup> Lord Hailsham *A Sparrow's Flight: The Memoirs of Lord Hailsham of Marylebone* (Collins, London, 1990) 298.

as "the apex of New Zealand's system of responsible party government".<sup>64</sup> It has authority over the agencies of government through direct executive decisions "or through legislative enactment passed by the Parliament whose agenda it controls". Cabinet, "the vital pivot of the entire government system"<sup>65</sup>, the "cockpit of the decision-making system",<sup>66</sup> is effectively created by the Prime Minister who advises the Governor General.

## II PRIME MINISTER

Despite the increase in the number of parties at the cabinet table, coalition governments, like those of FPP, rely on a single individual to hold the post of Prime Minister. The Prime Minister may not necessarily be the leader of any individual party. Where the Prime Minister commands such support by virtue of coalition, the Prime Minister is left accountable to coalition partners on an almost daily basis. Rather than having a free hand in choosing the cabinet, a coalition Prime Minister will consult with the partners "building on the principles and conventions" already established for single-party majority governments.<sup>67</sup>

### A *Determining the Prime Minister*

Palmer has noted that the role of Prime Minister is not established in law but according to convention.<sup>68</sup> McGee describes the Prime Minister as "the member of the House who commands majority support from the other members". While majority support could in the past be presumed in the case of a member whose party alone held a majority of the seats in the House, no such automatic presumption can be made concerning the support of members of Party A for the leader of Party B in a proposed coalition prior to the first sitting of the House. Parliamentary support for the appointment of the Prime Minister and other Ministers of the Crown is not formally tested. McGee says there is no legal or political necessity for this to be ratified or

64 Richard Mulgan *Politics in New Zealand* (Auckland University Press, Auckland, 1994)

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65 Mai Chen and Sir Geoffrey Palmer *Public Law in New Zealand* (Oxford University Press, Auckland, 1993) 217.

66 Geoffrey Palmer *Unbridled Power: An Interpretation of New Zealand's Constitution and Government* (Oxford University Press, Auckland, 1979) 10.

67 Above n 64, 72.

68 Above n 60, 80.

confirmed by the House when it meets.<sup>69</sup> "But, whatever the precise arrangements, it is the political situation as represented by the members elected to serve in the House which determines who is to govern, not the whim or pleasure of the Crown."

*B Appointment of Prime Minister*

"Convention dictates that the leader of the party with the support of the House is chosen as Prime Minister, although the Governor-General is not bound to follow anyone's advice on this matter."<sup>70</sup> This important convention does not account for numerous variations that are possible through coalitions. The obvious example is where no one party has the support of the House. Following inter-party negotiation after an MMP election, it may be a coalition of parties - rather than a single party - which commands the support of the House. Further, within such a coalition of parties, the Prime Minister is likely to be the leader of the party with the most members in Parliament. Mulgan comments that "[u]nder a coalition government, the largest party in the coalition partnership will usually provide the prime minister who will negotiate with other party leaders about the Cabinet membership". Considering the constitutional significance of cabinet to the governance of New Zealand, it is noteworthy that very few conventions exist concerning how a Prime Minister should go about forming a cabinet in a coalition context. This is especially so when examining issues of accountability in relation to coalition government.

*C Public Role of Prime Minister*

Although Cabinet is a committee and operates within the convention of collective responsibility, its decisions and views are, by tradition, presented publicly by the Prime Minister. Just as Prime Ministers in FPP governments have come to represent their administrations, Prime Ministers in coalition governments shoulder an important responsibility in presenting an image of unity and cohesion. If any one individual can be held accountable for the performance of a coalition government, it is the Prime Minister. Just as FPP Prime Ministers, assisted by the convention of collective responsibility, are able to disguise disunity in Cabinet when it is rumoured to exist, coalition

<sup>69</sup> Above n 55, 3.

Secretary of the Cabinet *Cabinet Office Manual* (Cabinet Office, Wellington, 1994)

Prime Ministers have the challenge of articulating decisions reached between ministers with affiliations to parties elected on different manifestos.

Many of the observations that have been made about the unifying role of the Prime Minister in a FPP cabinet, particularly regarding the relationship between the Prime Minister and the other ministers, could be applied to partners in a coalition cabinet. Mulgan has commented:<sup>71</sup>

In political reality, ministers do not act independently but as members of a team under a single leader, the prime minister, who acts as coordinator and spokesperson of their collective effort. Reasons of electoral survival encourage what good administrative practice would independently recommend, that ministers, as members of a common enterprise, should stand or fall together and seek to submerge their differences within a collective body to which they all defer.

#### *D Chairing Cabinet*

The Prime Minister, more than any other individual, has the onus of maintaining the coalition. As formal votes are rarely taken at cabinet, the personal judgement of the prime minister is the vital factor in establishing the result of discussions. If formal votes were taken to resolve issues, then powerful factions within cabinet would always dominate. When the prime minister has the prerogative to summarise and decide issues, then the case for the minority can sometimes be favoured. This prerogative is of greater value in the case of a coalition cabinet where the views of the minor partner can easily be overshadowed due to force of numbers. Cohesion and teamwork in cabinet are essential to effective government.<sup>72</sup> There is no formula or set of rules by which this is achieved. However, the success of coalition cabinets may depend on the judgement and management skills of the prime minister.

Single party cabinets also depended on the leader's ability to listen, consult, motivate and unify colleagues. Sir Keith Holyoake, a prime minister in the FPP era, was a "consensus politician" by virtue of involving others in the decision-making process.<sup>73</sup> Significantly for a consensus politician, he also

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71 Above n 64, 70.

72 Above n 60, 21.

73 Above n 60, 14.

believed that "an ounce of loyalty to a leader was worth a ton of intelligence".<sup>74</sup> Ministers of minority parties in cabinet will discover that consultation and accountability is a two-way process; in return for being consulted, they will be expected to display as much loyalty to the prime minister as do other ministers.

### *E Coalition Agreements*

Just as the coalition agreement and its various elements are important for the health of the coalition partners, they are also important for the information of the voting public. If the public are kept ignorant of vital undertakings made by coalition partners to each other, either in terms of policy or legislative programme, then the government becomes even less accountable. The electorate is ignorant of the basis on which the elected are governing.

### *Cabinet Unity*

Agreements are important not only for establishing the policy directions of government but also for reasons of political management. Past New Zealand coalitions point to the need for a shared philosophy. On 12 July 1917 Findlay observed that rumour persistently suggested that the Cabinet lacked the "strenuous cohesion and co-operation essential to unity of purpose and effort". He quoted Burke to the effect that "a Cabinet composed of isolated individuals, without faith, plighted tie, or common principle, is an Administration constitutionally impotent".<sup>75</sup>

### *F Official Information*

The 'Danks' Committee Report on Official Information which contributed towards the development of the Official Information Act 1982 did not extend to information generated and held by Parliament.<sup>76</sup> It did, however, enunciate important principles which it expected would be applied to Parliament and other bodies in due course, and which are relevant to a discussion of accountability. The arguments for increased openness in

<sup>74</sup> Above n 60, 90.

<sup>75</sup> NZPD vol 178 (1917) 361. Quoted in above n 35.

<sup>76</sup> "Towards Open Government", General Report (Committee on Official Information, Government Printer, Wellington, 1981). The Committee was chaired by Sir Alan Danks.

government centred on participation, accountability and effective government:

1 *Participation*

The principle that a better informed public is better able to play the part required of it in the democratic system - and to judge policies and electoral platforms;

2 *Accountability*

Access to official information is an essential factor in making sure that politicians and administrators are accountable for their actions. Secrecy is an impediment to accountability and breeds suspicion. The pressure for accountability applies increasingly to the political executive.

3 *Effective government*

Not all the government's decisions are foreshadowed in election platforms. Change requires public understanding and agreement.

*Coalition Agreements and Programmes*

If such matters were concealed, the government of the country would be in the hands of a political entity which was not itself registered with the Electoral Commission and which has no known policy of its own distinct from the separate policies of its constituent parties. There will always be political reasons for concealing agreements between parties. However, two key statements from the Danks Report bear quoting:

Nowadays it is generally recognised that the Government has a responsibility to keep the people informed of its activities and make clear the reasons for its decisions.<sup>77</sup>

The fact that the release of certain information may give rise to criticism or embarrassment of the government is not an adequate reason for withholding it from the public.<sup>78</sup>

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77 Above n 76, 5.

78 Above n 76, 19, para 47.

The summary of the Report commented:<sup>79</sup>

The case for more openness in government is compelling. It rests on democratic participation in public affairs, on accountability, on a concern for the interests of individuals, and on the effectiveness of government.

In the MMP era, information about coalitions, the reasons for them and the undertakings given to each other by partners, will be essential to evaluating government policy. In this regard, much will depend on the ability of the Prime Minister of a coalition government in articulating the goals and policies of the government and in establishing the cohesion required to sustain the coalition.

### III MINISTERS

#### A *Executive Councillor's Oath*

Cabinet and the Executive Council are two distinct bodies. McLeay has noted that although the memberships of the two tends to be the same, they have different functions: Cabinet decides policy while the Executive Council tenders advice to the Governor-General when the law requires advice to be tendered in this way.<sup>80</sup>

The Executive Councillor's Oath *inter alia* provides that:<sup>81</sup>

I...will to the best of my judgment...freely give my counsel and advice to the Governor-General...for the good management of the affairs of New Zealand. That I will not directly nor indirectly reveal such matters as shall be debated in Council and committed to my secrecy, but that I will in all things be a true and faithful Councillor. So help me God.

The Oath focuses on values of a national kind that transcend party differences between Councillors. A unifying object is "the good management of New Zealand". The requirement for secrecy contributes to the unity of the Council.

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<sup>79</sup> Above n 76, 39.  
Above n 61, 17.  
Above n 5, s 19.



B *Instability As An Instrument Of Accountability*

1 *Secure Majority*

A criticism of some FPP governments has been the dictatorial style of the Executive. Such a style is dependent on having an automatic majority in the House. A minority government, whether single party or coalition, does not possess an automatic majority and can proceed with its legislative programme only with the negotiated support of opposition parties. In circumstances where the Opposition parties collectively have the power to vote governments down, instability is the voice of parliamentary accountability. Lost divisions in the House potentially amount to a failure of the coalition to enact legislation that is central to the coalition agreement reached between the partners at the time of the formation of the coalition. As a voted-down government will not be able to honour its coalition commitments, the lack of stability results in a diminution of accountability. In the MMP era, government parties may have to accept the fact that not all divisions are winnable. 'Ending the coalition' will become a legitimate action but Ministers who do so should justify their action against the terms of the coalition agreement. In the New Zealand House of Representatives, too much is left to individual responsibility. In contrast, Sweden requires an absolute majority of all MPs to defeat a government.<sup>82</sup> Other nations require 'constructive' votes of no-confidence whereby an alternative government is named as part of the motion.

2 *Powers of the Executive*

Hailsham, in discussing the Executive in the context of elective dictatorship, draws a clear distinction between executive government and the right to legislate, affirming that "[g]eneral legislature should be representative of public opinion."<sup>83</sup> He notes that executive government carries with it the right to financial and economic control and control of the Civil Service. "These should depend on the majority in the Commons." Hailsham comments that given these rights, the government should not also have the right of unlimited powers to change the law. He does not at this point consider the possibility of minority government; but if he is acknowledging that a

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82 Above n 13, 72.

83 Above n 6, 151.

government requires a working majority and there are too many parties for any one to govern in its own right, then coalition government - or at least minority government coupled with strong inter-party agreements on confidence and supply - would seem the only alternative.

Hailsham's point is applicable, nonetheless, to either a single-party or a coalition cabinet. If, under constitutional arrangements, they both assume the right to unlimited power to legislate then both can be said to suffer from the same malaise of elective dictatorship. An important quality of coalition government in countering such dictatorship tendencies is the mere fact of its mixed composition. With more than one party present in cabinet, there is greater political pressure on individual parties to withdraw in protest. Hailsham does note the 'see-saw' tendency of opposing parties, usually the two major ones, to alternatively undo their predecessor's work once in cabinet. Coalition government does offer the opportunity to break this cycle by including in cabinet parties with different perspectives on the predecessor's programme. It is also possible that one or more coalition partners may have been members of the previous government. In this light, one implication of a coalition is a lessening of the temptation to alter what has gone before.

### 3 *Need for New Conventions*

Mulgan predicts that in terms of selecting ministers, "procedures will be gradually developed among New Zealand parties, building on the principles and conventions devised for dealing with single-party majority governments".<sup>84</sup> Judging by the protracted and inconclusive coalition discussions that surrounded the Alliance and Labour parties during the course of 1995, the need for guidelines, principles, conventions and indeed experience of establishing coalition governments is real. However, this may not necessarily be the case. Such conventions will be acquired over time. Certainly, the conventions of the two major parties as they stand in 1995 appear set to create conflict if they entered into a grand coalition with each other. An example is the different mechanisms employed by the parties to select members of Cabinet. Whereas it is the responsibility of the National prime minister to personally select ministers from within the caucus, under

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<sup>84</sup>

Above n 64, 71-72.

Labour party rules it is caucus which determines which members will become ministers.

### *C Cabinet Size*

Cabinet size is the first vital element for a coalition Prime Minister to determine: whether to establish a minimum winning cabinet with just a single partner, or to form a maximum winning cabinet that includes more partners than are essential in order to ensure a parliamentary majority. A smaller cabinet is not necessarily weaker if the partners are willing to vote together on a broad range of issues; a larger coalition cabinet might have the numbers on issues of confidence and supply yet be divided on a broad range of issues. Creating viable, accountable cabinets containing members not of one's own party will be one of the great constitutional challenges of political management in the coming era.

### *Assignment of Portfolios*

For a coalition, some appointments are to be understood in terms of maintaining knowledge of a partner's behaviour. Therefore, for reasons of monitoring and accountability, associate and deputy minister roles could be allocated to parties not holding the portfolio responsibility.<sup>85</sup> Denmark employs a system of 'contact ministers' where each minister has a 'shadow' from the other partner to monitor and discuss contentious issues. Serious problems are referred to a cabinet committee.<sup>86</sup>

### *D Collective Responsibility*

Decisions at cabinet are usually reached by consensus rather than by vote. Despite this apparently relaxed method of reaching a decision, the implications for all ministers are severe.<sup>87</sup>

Once a decision has been made, however, it is to be supported collectively by all Ministers, regardless of their personal views and whether or not they were at the meeting concerned.

<sup>85</sup> Mackie T and Hogwood B (eds) *Unlocking the Cabinet: Cabinet Structures in Comparative Perspective* (Sage, London, 1985). Quoted by in n 4, 9.

<sup>86</sup> See J Boston "Electoral Reform in New Zealand", *Australian Quarterly* 66, 3 Spring 1994, 85.

<sup>87</sup> Above n 70, Chapter 3, A4.

The convention of collective responsibility is:<sup>88</sup>

...an essential underpinning of the system of Cabinet Government, whereby Ministers are required to advise the Sovereign (in practice, the Governor-General) on matters of public importance. Ministers whose opposition to a Cabinet decision is such that they wish to publicly dissociate themselves from it must first resign from the Cabinet.

Palmer has called the doctrine of collective responsibility "one of the key elements of cabinet government and it has important consequences for the way the system works".<sup>89</sup> The sense of unanimity serves to promote the appearance of cabinet unity; avoids confusion about the government's policy; enables people to know who are responsible and to hold them accountable.

Every minister must be prepared to defend every government policy - that advances the value of cohesion and purposefulness...The doctrine of collective responsibility is the quintessential ingredient of the adversary approach to politics generated by the Westminster system. There can only be one view in the government itself and all the members of cabinet must defend it. The principle goes further. Those who hold office as ministers or under-secretaries outside cabinet are also bound by the doctrine, despite the fact that they have no voice in making the cabinet decision."

Some scholars question the durability of the convention of collective responsibility.<sup>90</sup> Although coalition cabinets will contain 'strange bedfellows', the potential for disagreement is not necessarily greater than with FPP cabinets, and the principle of collective responsibility may be even more useful for all concerned.<sup>91</sup>

The doctrine of collective responsibility is better understood and has generally only been experienced in a context of single party cabinets. As

Above n 70, Chapter 3, A5.

Above n 31, 153.

<sup>90</sup> Roderic Alley "The Powers of the Prime Minister" in Hyam Gold (ed) *New Zealand Politics in Perspective* (Longman Paul, Auckland, 1992)175; in same book, see also p 66.

Above n 70, Chapter 3, A4 - 5. See also above n 64, 81 - 82. "Governments...need to display unity in order to maintain public confidence in their administration."

coalition cabinets are relatively unknown in New Zealand, it is speculative to comment on the applicability of the doctrine of collective responsibility. Hailsham believes the doctrine can only survive under single party government; coalition cabinets, already burdened with normal operating pressures, involve too many logistical problems in keeping "junior ministers and influential backbenchers" in touch.<sup>92</sup> Coalition cabinets, in his view, would become "like any other committee of which the membership is mixed and responsible to different caucuses".

*E Termination Of Coalition*

The termination of a coalition is also important in terms of accountability. One partner is always accountable to the other for its behaviour in government. Each partner maintains accountability with its own principles as well as the electorate by reserving the right to leave the coalition when its performance is detrimental to basic principles.

Hailsham maintains that one of the means the elective dictatorship employs to perpetuate itself, to prolong its life, is through "the adroit use of the power of dissolution".<sup>93</sup> Hailsham contends that the prerogative of dissolution in the hands of a skilful prime minister actually establishes the elective dictatorship.<sup>94</sup> If the power of a prime minister to dissolve parliament is seen to be a threat to accountability in the broad sense, then coalition government offers a diffusion of that power. Under a coalition, any partner whose membership is essential to sustain a majority in the House, is able to collapse the government by withdrawing from the coalition.

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92 Above n 6, 207, 208.

93 Above n 6, 127.

94 Above n 6, 188.

## V CAUCUS

### I CAUCUS AND THE COALITION CABINET

#### A *Caucus*

Caucus, the regular meeting of all the members of a parliamentary party, is an important grouping that constitutes a vital stage of the process by which the Executive has traditionally controlled Parliament. Caucus decisions have been dominated by cabinet due to cabinet's effective voting majority in caucus. Caucus decisions are binding on members. As the government caucus traditionally holds a majority in the House, caucus decisions have effectively pre-determined the outcome of proposed legislation.

The Government caucus is a "sounding board" for policy developed within Cabinet.<sup>95</sup> Proportional Representation will see several strongly represented parties in the House. Each one will hold its own caucus. Forming temporary voting coalitions is not impossible in these circumstances, but to achieve agreements outside of the House will demand greater levels of liaison between caucuses than was evident under FPP. Coalitions last when partners vote as a bloc in Parliament, but recent events suggest politics is becoming less sectarian and the age of lobby-fodder MPs is under threat.<sup>96</sup> However, while every meeting of a coalition cabinet fosters a sense of working with other parties, every meeting of separate caucuses fosters a sense of sectarian politics. To develop caucus accountability to coalition commitments, a new practice of combined caucuses could be developed.

#### B *Caucus and MMP*

<sup>95</sup> Above n 31, 162.

An example is the decision of Christchurch City Council Labour Party candidates not to contest the local body election as a political party.

The Electoral Act 1993 presents a challenge to the nature, objectives and operations not just of the government caucus but in fact every caucus within the House of Representatives. With the likely decline of single party domination of parliament, New Zealand enters an era where parliament as a collective of its constituent parties and individual members has a clearly enhanced power to determine legislation. In such an environment, deprived of a guaranteed majority, a minority government caucus will be unable to predetermine the result of divisions in the House. The government caucus will spend more time in preparing arguments to be used in debates, and in determining alliances with other parties, that are critical to achieving necessary majorities for various bills. Instead of being a 'rubber stamping' mechanism for cabinet proposals, the government caucus will be a forum for debate about content of bills and inter-party voting strategies. Voting strategies developed between different party caucuses are brief working coalitions that represent accountability by virtue of the dialogue that takes place between parties.

#### *C Ministers in Caucus*

Coalition ministers will not be able to dominate their respective caucuses to the degree which government ministers have in the past. For one reason, they may be outnumbered by backbenchers. Backbenchers will see caucus as a crucial time to influence their own ministers and draw them back to party principles. For political reasons, backbenchers - and parties themselves - may prefer to stick to their publicly-known principles than 'sell out' to compromises made in the coalition Cabinet. The stability of governments will depend on caucus support for the coalition agreement. In fact, a coalition is ineffective unless constituent parties can be relied upon to vote together in Parliament.

While there will be pressure on its members to conform to whipping requirements, the new arrangement will also give caucus a new power over Cabinet. One of the tensions that arises in the MMP era is on the issue of to whom members should be accountable when it comes to voting in the house. The Burkean principle suggests members should think for themselves and decide the best way to vote. In possible conflict with this is the pressure, expressed in either party rules or pledges, to vote with the party caucus in the House. There have been times in the recent past when members of Parliament have withdrawn from the parliamentary party on

matters of principle where they have felt their caucus had unacceptably departed from party principles. Similar pressures will occur for caucus members when their parties form coalitions with other parties.

#### *D Bloc voting*

Bills, even bills that have been developed through consultation between coalition partners, have reduced chance of enactment if the partners do not vote as a bloc in Parliament. If coalition government either is unable to tightly whip its members in the House, or if the MMP environment permits free voting amongst MPs, then no government, certainly no coalition government, can be held accountable for the success or failure of specific legislation in the House. Election promises and manifestos are reduced to wish lists with no guarantee of enactment. In 1995, the leader of the Alliance Party asked the Labour Party leader for an assurance that she could "deliver her caucus" if there was a coalition deal between the two parties prior to the next election.<sup>97</sup> "Ms Clark has replied all caucus decisions are binding on all MPs on matters of policy."

At best, parties can offer directions and ambitions and their performance can be measured not by legislative achievement but by the degree of effort and negotiation applied to specific policies. In determining the degree of responsibility for legislative performance, the electorate will assess the effort and the voting patterns of each coalition partner. In this way, one particular partner may be credited with the success or failure of a bill. The transparency of the voting process in the House enables the public to assess party position and responsibility for each piece of legislation. This method is the clearest way in which coalition partners can be individually assessed by the electorate. While it is in the interests of a coalition to maintain collective strength in the House, there will always be a political need to demonstrate in what ways the partners differ as parties, particularly in the lead-up to a general election.

#### *E Party/Caucus*

One politician contends that MPs' freedom may be more constrained in the MMP environment. "The essential thing about MMP is that it is government

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See "Alliance walking away from talks with Labour" *Sunday Star-Times*, Wellington, New Zealand, 6 August 1995, A4.



by party. There will be very much less room for individual MPs to have their say."<sup>98</sup>

By definition, a caucus is a meeting of members of the one party. It is the principal forum in which the extra-parliamentary party can influence and control the parliamentary party. Hailsham has noted that the FPP system was more likely than any other to produce domination by an organised minority.<sup>99</sup> This was achieved through biased, and sometimes corrupt, selection committees. He therefore questions how representativeness of the British system of government. Palmer has questioned the degree of membership involvement in policy-making in political party organisations in New Zealand. Much of the policy and selection work is undertaken by a small minority within the party. Therefore, if a member of Parliament is to be accountable to the party, the first point to clarify is the meaning and identity of the party: elite minority or broad but absent majority. Hailsham notes that "party organisations in the House determine in practice the result of almost every division".<sup>100</sup>

#### F *Political Accountability*

Under coalition government, caucuses will have enhanced power simply because the number of backbenchers will more than likely be greater than the number of ministers. This is due to the fact that the full quota of ministers, rather than dominating a single caucus, will be spread over two or three separate caucuses. Ministers will no longer be able to use force of numbers in caucus to compel caucus to adopt cabinet policies. Some degree of compliance will occur simply from personal responsibility by members. A further pressure is likely to come from parties themselves. The National Party is already asking candidates for the next election to sign pledges prior to selection.

Under the concept of political accountability a governing party is expected to deliver on its election promises. Hailsham observes the danger when "a government elected by a small minority of votes...regards itself as entitled...to carry out every proposal in its election manifesto."<sup>101</sup> The

<sup>98</sup> See comments of Jonathan Hunt in "The Reality of MMP" *The Evening Post*, Wellington, New Zealand, 12 July 1995, 9.

<sup>99</sup> Above n 6, 102.

<sup>100</sup> Above n 6, 127.

<sup>101</sup> Above n 6, 129.

concept of constitutional accountability in the era of MMP may require parties not to do so.

THE PARLIAMENT

THE PARLIAMENT

Under the Constitution Act, Parliament consists of the Sovereign in right of New Zealand and the House of Representatives.<sup>100</sup> It has the power to make laws.<sup>101</sup> The New Zealand parliament has the right to its legislative powers. It is the highest authority in the country.<sup>102</sup> It is the source of the law and the binding of a government with the Crown.<sup>103</sup>

Oath of Allegiance

A person elected to represent an electoral district or a political party is required to take the Oath of Allegiance before taking the oath of Parliament. Section 17 of the Oaths and Declarations Act 1957 provides the words of the Oath:

I swear that I will be faithful and true to the allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law. So help me God.

The Oath is simple. It is a unifying measure for the members of Parliament in the sense that it is the most commitment that all members have made. The Oath reflects New Zealand's status as a constitutional monarchy. The Oath does bind all members in a shared allegiance to the one person who symbolises the New Zealand state.

<sup>100</sup> The Constitution Act 1986, s 1(1).  
<sup>101</sup> Section 116, s 117(1).  
<sup>102</sup> Section 116.  
<sup>103</sup> Section 117(2).

## VI PARLIAMENT

### I PARLIAMENT

Under the Constitution Act, Parliament consists of the Sovereign in right of New Zealand and the House of Representatives.<sup>102</sup> It has full power to make laws.<sup>103</sup> The New Zealand parliament has few limits on its legislative powers. It is almost unique in this sovereignty.<sup>104</sup> McGee notes that it shares its legislative role and "the finding of a government" with the Crown.<sup>105</sup>

#### *Oath of Allegiance*

A person elected to represent an electoral district or a political party is required to take the Oath of Allegiance before taking his or her seat in Parliament. Section 17 of the Oaths and Declarations Act 1957 provides the words of the Oath:

I, \_\_\_\_\_, swear that I will be faithful and bear true allegiance to Her...Majesty...Queen Elizabeth the Second...Her...heirs and successors, according to law. So help me God.

The Oath is simple. It is a unifying feature for the members of Parliament in the sense that it is one major commitment that all members have made. The Oath reflects New Zealand's status as a constitutional monarchy. The Oath does bond all members in a shared allegiance to the one person who symbolises the New Zealand state.

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102 The Constitution Act 1986, s 14(1).  
103 Above n 102, s 15(1),  
104 Above n 6, 135.  
105 Above n 55, 2.

A person may be a member of the Executive Council or as a Minister "only if that person is a member of Parliament".<sup>106</sup> There is no requirement for a minister to represent a party. Although it is unlikely, an independent member of Parliament could hold the balance of power and be included in a coalition cabinet. Parliament can be thus viewed as the pool of individuals as much as parties from which cabinet draws its members. McGee describes the House as "an electoral college which translates the will of the people, as expressed at a general election, into a Government composed of a Prime Minister and Ministers".<sup>107</sup>

## II EFFECT OF ELECTORAL ACT ON PARLIAMENT

### A *General*

The Electoral Act 1993 alters the power structures of government in New Zealand. The single-party cabinet with a secure majority in the House appears to be a threatened species. The majority party not only loses power to other parties but it may also have to share seats at the cabinet table with other parties in order to command a majority in the House. Due to the number of parties, and the size of the MMP parliament, there is no longer a guarantee that a particular caucus will always prevail in the House. Parliament itself is arguably the only organ of state that stands to gain in eminence and power due to the constitutional reorganisation that will accompany the arrival of MMP. Constitutionally, Parliament has always been the body that produced governments, debated legislation, and scrutinised governments. However, in the era of the duopoly of the Labour and National parties, the power of Parliament seemed to pale compared to the power of the 'elective dictatorship' of single-party government.

### B *Increased Number Of Members*

The Electoral Act 1993 will effectively increase the number of members of Parliament from 99 to 120. There are some vagaries under MMP that may lead to more than 120 members being returned, but there will be at least 21 more members than in the previous parliament. If this increase in numbers had occurred in an FPP parliament, the effect might have been to strengthen

<sup>106</sup> Above n 102, s 6(1).  
<sup>107</sup> Above n 55, 3.

the power of the government caucus without necessarily lessening the influence the majority party held in the House. The reality under MMP, however, is that the increased number of members will be proportionally spread over all the parties which manage to win list seats.<sup>108</sup>

### 1 *Power to make governments*

It was the tradition of parties abiding by their principles and disciplined voting in the House that made the consequences of election night results more predictable. By removing the predictability, the illusion of power to determine governments is lifted from the electorate. The power to make laws and to make governments has always lain with Parliament in its full constitutional sense. This simple fact may have been obscured by FPP elections where the electorate appeared to have elected a specific government, rather than simply a large group of members standing for different parties, on election day. Under MMP, with its potential to produce coalitions, the power to make governments more obviously resides with Parliament.

### 2 *Cabinet size relative to parliament*

In 1993, 27 members were appointed to positions within the Executive.<sup>109</sup> This equated to 27 per cent of the members in the House. If the same number of members work as ministers or hold other positions in the Executive under MMP, then the percentage will decrease to 23 per cent. This fall in percentage has an impact on the relative power of caucus to cabinet, and also parliament to government.

In the case of a minority single party government which held, for example, 49 seats in the House, the Cabinet would be in a position to just dominate its own caucus. It would not, however, have the numbers to dominate parliament. The government would require the support of other parties within the House on issues of confidence and supply in order to govern effectively. There is nothing innately unworkable about such an arrangement, but it does restore to parliament a force, an ability to act as a check and a balance on the Executive, that was lacking in the era of dominant single party governments. If this ability to act as a check and a balance - to in effect make the government more accountable - is attributed to having an

108 Above n 45, s 191.

109 Above n 61, 25.

opposition that outnumbered the government, then minority government can be viewed as being more accountable than majority government.

### 3 *Coalitions*

In rare circumstances, it may be possible even under MMP for a single party to win an absolute majority of seats in the House. Failing that eventuality, the only way for parties to acquire a reliable working majority will be through arrangements with other parties and in particular through the formation of coalitions. Where two or more parties, or even parties and individual members, form coalitions to establish a majority, then the opposition will consequently be less capable of limiting and controlling the government. In this way, majority government, even of the coalition variety, offers a threat to accountability.

It could be said that the three-year maximum term of Parliament as provided for by section 17 of the Constitution Act 1986 establishes a mechanism whereby any government, be it minority, majority, single party or coalition, can be held accountable by the electorate at a regular general election. However, coalition governments will never be specifically held accountable by the electorate in the absence of a registered coalition party. Also, along with the enhanced power of parliament to make governments comes the equally significant power to unmake them. The electorate may not be involved in the termination of all coalition governments. Nor does the end of a coalition government necessarily result in a general election. Just as in the colonial parliament described earlier, parliament may replace a ministry mid-term with either a single party or a new coalition.

Just as coalition government is considered more likely under MMP, the early termination of governments is also more likely. Coalition governments tend to have shorter life-spans than those of single parties. This is not necessarily a weakness if it provides a means by which parliament is able to keep the executive in check. It ensures accountability. The relevant contrast is with the FPP era when the triennial election appeared to be the principal restraint on executive government.

## II PARLIAMENT MAKES GOVERNMENTS

It should be remembered that no matter what type of cabinet is formed, its members are always drawn from the members of the House. A coalition cabinet might be said to be more accountable than a single party cabinet because its constituent parties monitor each other. A coalition cabinet reflects the diversity of parliament to a greater degree than a single party cabinet is capable. Critical to the question of this type of accountability is whether Party B is more effective as a watchdog of Party A through sharing the cabinet table, yet constrained by the convention of collective responsibility, or whether it would be more effective in the watchdog role by being free to scrutinise and question government policy as a relatively unfettered member of the opposition.

### III COALITION

#### A *Wartime Coalitions*

Preceding the First World War, the electorate was accustomed to single party government. Disunity in the Cabinet appeared to be proof that coalition government was inherently weak. Also, since the coalition had come about in the extraordinary circumstances of the War, it was easier for commentators to dismiss it as a flawed aberration of the times rather than a serious and permanent style of government. Single party government, accepted as the political norm, waited in the wings for its inevitable recall to the treasury benches. Such a train of logic does not apply within a constitutional framework, such as that encompassed by the Electoral Act 1993, which makes single party majority government most unlikely. While single party minority is quite possible, coalition government is "more likely".<sup>110</sup>

Hailsham notes that wartime coalitions, based upon a substantial agreement between the parties, are the product of the parliamentary situation of the time; their purpose is to prevent organised opposition in parliament "on condition that the majority party does not abuse its position" and that no party is entitled to pursue its internal aims in Parliament.<sup>111</sup> The new Parliamentary process heralded by the era of MMP demands more

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110 Above n 52, 145.

111 Above n 6, 198.

consultation, negotiation, "and ultimately co-operation between various political parties".<sup>112</sup>

### *B Freer Debates*

As pressure has mounted to loosen the whipping arrangements of parliamentary parties and to allow freer debates in the House, there is the increased likelihood of coalition parties having to tolerate independent stances being adopted by their MPs during parliamentary debates. In this sense, coalition governments will be more generally held to account by the whole of Parliament rather than simply a single opposition party or group of parties. Political Scientist Nigel Roberts sees advantages in multi-party involvement in framing legislation. "A bill might end up quite different from what the Government put up, but with much wider public support in the end because the controversial clauses get bargained through by the parties."<sup>113</sup> In the era of MMP, opposition members may gain rights and privileges that have customarily resided only with government members. Rather than simply listening to the concerns of opposition parties, the government could potentially be obliged to consider including opposition bills on the legislative timetable. The Standing Orders Committee is currently considering changing the rule that prevents non-Government members from proposing measures that would increase Budget spending.<sup>114</sup>

## IV PROPORTIONS IN THE HOUSE

A significant new quality of the MMP House of Representatives will be the fact that its composition potentially offers a greater reflection of popular opinion than has been possible under the duopoly of recent decades. As such, the MMP House becomes less of a forum for two-party wrangles and more of a forum for airing the diversity of arguments and views present in the nation. In ignoring the views of any particular opposition party, the government ignores the representatives of at least five per cent of the electorate. It would also be ignoring one of the reasons behind the

<sup>112</sup> Prime Minister Jim Bolger as quoted in "The Reality of MMP" *The Evening Post*, Wellington, New Zealand, 12 July 1995, 9.

<sup>113</sup> See "Boomtimes for MMP Inc." *Sunday Star-Times*, Wellington, New Zealand, 16 July 1995, C1.

<sup>114</sup> See "Papering over the cracks in the House" *Sunday Star-Times*, Wellington, New Zealand, 17 September 1995, C2.



constitutional changes to MMP: greater accountability of government due to the representation of more views in parliament. This may be of no account to a single party government that is very secure in its command of a majority in the House. However, in a parliamentary environment in which majorities cannot be taken for granted, parties both large and small will be respected and consulted. In fact, with the expected decline of duopolistic domination of the House, parties are not to be viewed only as alternative governments to each other. Instead, other parties become potential coalition partners either on particular motions or in government.

Parties themselves may change significantly due to the need to form coalitions. Hailsham has noted that parties are "the product of the voting system" and are "groupings designed to produce results under the existing system".<sup>115</sup> A multi-party parliament will forge inter-party co-operation. Coalitions, either as ongoing relationships or as temporary alliances for particular divisions, are a political necessity.

## V ROLE OF MEMBERS IN MMP PARLIAMENT

Hailsham, in reference to Burke, points out that representative government is not the same as representation by delegates obliged to follow the mandate of electors. Members should follow their conscience and not be coerced by others, even parties. He posits "the orthodox purity" of representative government as decisions being taken collectively by simple majority vote taken after debate; individual votes are influenced by argument.<sup>116</sup> Taken to its logical conclusion, every individual member of Parliament is a free agent entitled to stand apart or join coalitions with other individuals or parties. Individual members are coalitionable. This has been evidenced by the inclusion of the Right of Centre leader Ross Meurant in the National executive.

### *Burke's view of the member's role*

Members of Parliament are not to be viewed simply as obedient messengers from their parties or electorates. Edmund Burke perceived Parliament as a

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115 Above n 6, 183, 184.

116 Above n 6, 99.

place where members could think for themselves and be receptive to contrary views:<sup>117</sup>

Parliament is not a *congress* of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not [a] member of Bristol, but he is a member of *parliament*.

Burke felt the wishes of the electorate should have great weight with the member. The member should put the interests of the constituents above the member's own interests:

But his unbiased opinion, his mature judgement, his enlightened conscience, he ought not to sacrifice to you; to any man, or to any set of men living...Your representative owes you, not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion.

Burke finds justification for the member's independence of mind within the mechanism by which laws are developed:

[G]overnment and legislation are matters of reason and judgement, and not of inclination; and what sort of reason is that, in which the determination precedes the discussion; in which one set of men deliberate, and another decide; and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments?

Burke addressed his argument for an intelligent, deliberative, role for members in the House to his own constituents. Given the advent of the 'elective dictatorship' and the advent of disciplined voting, Burke's argument

<sup>117</sup> From a speech delivered by Edmund Burke at Bristol on being elected to Parliament for that city, November 1774. See AMD Hughes *Edmund Burke Selections* (1921)62-65. Cited M Chen and G Palmer *Public Law in New Zealand* (Oxford University Press, Auckland, 1993) 604-605.

is equally applicable to the proponents of caucus and cabinet control over members' behaviour in the House. Burke's view runs counter to strict party discipline. It appears to advocate an 'issue by issue' approach to debate and legislation. Such an approach suits a parliamentary style of 'jumping majorities' where, instead of relying on guaranteed majorities based on disciplined voting, proponents of bills seek the support of members of both the government and opposition parties.

## VI LACK OF DISCIPLINE IN THE HOUSE

A former Prime Minister, David Lange, has noted a decline in party discipline in the House of Representatives but, in terms that are contrary to those of Burke, questions whether it represents a triumph for parliamentary democracy:<sup>118</sup>

The price of Parliament's supremacy will be the loss of coherent government. If every MP has a licence to pursue his or her own interests, or claims the right to assert his or her own judgment, there is small chance of advancing the considered policy of a coherent and disciplined collective...Parliament, without such discipline, would be like a perpetual conscience vote, a legislative lottery...No government could carry out its programme.

The vital question here centres around the issue of when a member should be free to exercise personal judgment in Parliament. The outcome of this question has a real bearing on a member's allegiance to any collective the member belongs to. The member's party, caucus, and cabinet are all collectives to which members have traditionally deferred. In the age of MMP, the coalition will almost certainly be an added factor.

In the case of a maximum winning coalition cabinet which commands the votes of a majority of members in the House, the consequently depleted Opposition ranks may derive longer term benefit from the situation. Wood notes of the National Government coalition 1915-19:<sup>119</sup>

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<sup>118</sup> See "The chaos of partisanship" *The Dominion*, Wellington, New Zealand, 14 August 1995, 6.

<sup>119</sup> Above n 35, 222-223.

[T]he coalition gave a powerful boost to the development of Labour as an independent parliamentary force. The New Zealand Labour Party, formed in 1916, was able to capitalize on its monopoly of opposition by denouncing the policies of the coalition...

While such a development depends on the political circumstances applying at any one time, there is a political dynamic generated by majority governments which fosters the formation of shadow alternative government within the opposition ranks.

## VII OPPOSITION

### A *Coalition as an Opposition Tool*

Just as coalition is one of the only means of securing a majority in a multi-party parliament, so too is coalition one of the only means of forming a coherent opposition to government in a multi-party government. In fact, the degree to which opposition parties can work together and demonstrate the potential to coalesce is a measure of parliament's potential to offer an alternative government to that of the incumbent. Accountability in the broad sense of the word relies on conventions and practices. It is strongly dependent on the power of the House, through its individual members and constituent parties, to insist on consultation; in the extreme case, to replace the existing government party or coalition.

### B *Consultation*

Consultation between parties is a device by which governments can legitimise, and indicate support for, their policies. It is a means by which policies can be endorsed by others and shown to be not merely the products of a narrow few who happen to hold the reins of power at a given moment. In Britain, the House of Lords provides a check and balance on the legislation produced by the House of Commons. Hailsham claims that "people would not tolerate a sovereign legislature with unlimited powers of which it was itself the only organ".<sup>120</sup> The New Zealand people has tolerated such a legislature for nearly half a century. However, key elements within

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Above n 6, 149.

the New Zealand constitution which have acted as organs of accountability include the strengthened select committee system, the greater number of parties in the House, statutes facilitating more open government, and the increased consultation that appears to be a hallmark of the MMP era. Legislation developed in such a consultative environment can only reflect the diversity of viewpoints present in the House.

*C Threat of Coalitions*

Parliament is also the source of coalitions, and while two parties may coalesce in order to dominate Parliament, it is always possible that new coalitions, even involving former members of the coalition government, may be formed at any time from within the opposition ranks in the House. The ability of opposition parties to form coalitions and hence offer themselves as potential alternative governments to the current one, is a key way in which coalition governments can be held accountable. This opposition potential to form new governments is greater during the term of a minority government since the opposition holds the required numbers to form a majority government if it so resolved.

*D Coalitions Protect Minorities*

Hailsham notes that while representative government "may hope" to defend the majority of people against arbitrary government by the minority, it cannot protect minorities against arbitrary government by the majority.<sup>121</sup> The vulnerability of minorities is "diminished" where there is a plurality of parties in the House, each with a chance of winning some divisions. Even so, he notes, even with a plurality of parties, "representative government cannot adequately defend individual or minority groups which are not in a position to enforce their will". Even in the year preceding the first MMP election, there has been a noticeable increase in the amount of consultation that has occurred between parties, and most significantly, between the main government party and opposition parties. This consultation is the key means by which accountability is demonstrated in the context of parties.

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121 Above n 6, 102.

The Prime Minister may not necessarily be the leader of any individual party. Where the Prime Minister commands such support by virtue of coalition, the Prime Minister is left accountable to coalition partners on an almost daily basis. Rather than having a free hand in choosing the cabinet, a coalition Prime Minister will consult with the partners "building on the principles and conventions" already established for single-party majority governments.<sup>122</sup>

### VIII SELECT COMMITTEES

One of the most significant ways in which parliament has been able to gain in power in relation to the executive has been through the select committee system. In scrutinising bills and conducting independent inquiries, the committees have assumed substantial influence over the content of legislation and the administration of government departments and other governmental bodies.

Earlier in the paper, it was noted that the unicameral nature of the New Zealand legislature made it more vulnerable to elective dictatorship than a bi-cameral system. Select committees are a valuable tool for holding the executive accountable, not just because of the powers of the committees but also because agencies and individuals are able to make submissions to them. They are thus vehicles for participatory democracy. Commentators have already described the committees as "effectively a second chamber of Parliament, since the Government has lost the numbers to control them, and all legislation is at their mercy".<sup>123</sup> In July, 1995 the seven-member Internal Affairs Committee included representatives from five parties.<sup>124</sup>

The presence of a greater number of parties in the House in the age of MMP can only favour greater consultation between the executive and opposition parties. In 1995, the Senior Opposition Whip suggested that the reason the

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<sup>122</sup> Above n 64, 72.

<sup>123</sup> Above n 113, C2. These comments were made in the article in the context of an interview with Sir Geoffrey Palmer.

<sup>124</sup> Above n 98, 9.

Government was compromising on legislation was because "they are uncertain about their majority".<sup>125</sup>

Select committees are made up of small groups of parliamentarians who work hard on the business at hand. In the period of two party dominance, the government party was always able to ensure it had a majority on each committee. Now that the committees sometimes have several parties present, they are less vulnerable to dominance by a single party. The diversity of viewpoints present in such an intimate work group creates a greater opportunity for minority viewpoints to be heard and reflected in committee recommendations. It will increasingly difficult for a single-party government to control select committees. If there is a powerful need to coordinate the work or the policy of the committees, majority coalition government may be the only option.

The traditional two-party parliament with its rigid adversarial administration offered a very narrow range of viewpoints. Having more parties represented in Parliament facilitates greater openness. In a multi-party system, with a Parliament that "reflected something of the diversity found within society", the exercise of government becomes much more complicated.<sup>126</sup> However, the advantage that MMP and coalition government offer are levels of accountability not experienced during the course of the elective dictatorship. The "dilemma" of democracy is replaced by the diversity of democracy.

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<sup>125</sup> Above n 98, 9.

<sup>126</sup> G Capill "A Check on MPs' Power" A McRobie (ed) *Taking it to the People?: The New Zealand Electoral Referendum Debate* (Hazard Press, Christchurch, 1993) 141.

## VII SUMMARY

This paper has considered the issue of accountability when applied to coalition government.

It has defined coalition in terms of the formal sharing of power by parties. It also acknowledges the constant coalition-building that characterises a parliament less constrained by the duopoly of two major parties.

The paper has offered a broad definition of accountability that considers government's responsibilities in the act of governing rather than simply in terms of political accountability. Key features of accountable government in these terms include a participatory democracy, openness of government, inter-party co-operation, and the general diffusion of power.

In explaining this broad concept of accountability, the paper has sought illumination by considering constitutional frameworks that have failed to produce true accountability. In particular, the paper has discussed the concept of the elective dictatorship as described by Lord Hailsham and Sir Geoffrey Palmer. The elective dictatorship is characterised by unlimited power held by the a single party executive; the lack of checks and balances usually offered by an upper house or a written constitution; often two major parties who alternate in power and tend to reverse each other's policies; lack of consultation with other parties; and the general inability of minority interests and parties to have any effect on the direction of government.

The paper has given a historical background to the Electoral Act 1993. Successive governments in the 1980's abandoned election promises and proceeded to govern in the manner of 'elective dictatorships'. A guaranteed majority in Parliament ensured executive dominance. The government appeared unaccountable either to Parliament or to its public undertakings to the electorate.



In contrast to the lack of accountability evidenced in the elective dictatorship, this paper has focused on the enhanced accountability entailed by MMP. In particular, coalition government is considered as a mechanism by which governments will be most accountable in a constitutional sense.

The paper has considered the factors required for a coalition-building environment: notably, the willingness of parties to work together and for individual members of parliament to sometimes stand apart from party loyalties. To illustrate the possibility of these features, the paper has cited examples from the ministries of Stafford, Vogel and Domett in the colonial era prior to the emergence of the major parties, and also the three periods in the 20th century when New Zealand has seen coalition government.

This paper has presented analysis as to why coalition government is more possible under the electoral framework provided by the Electoral Act 1993.

Since a coalition government, by definition, involves more than one party in government, it will challenge long-standing conventions and practices surrounding cabinet, caucus and Parliament.

The paper has considered the role of the Prime Minister. As the leader, the Prime Minister will be required to demonstrate supreme skills of political management in order to reconcile and respect the different viewpoints present in the cabinet. This especially applies to the public articulation of coalition policy. The nature of coalition government establishes a new set of variables to the constitutional framework surrounding cabinet government.

The paper has noted the enhanced power of a multi-party parliament to determine governments. While a multi-party cabinet more accurately reflects the diversity of parliament, it is not an exact reflection and there will always be a tension between the two. Parliament has increasing power over legislation through the multi-party select committee system as well as proposed changes to standing orders whereby non-government members may propose bills entailing budget spending.

While factors of political management make disciplined voting more complex under coalition government, a coalition government with a parliamentary majority has - in terms of numbers on the floor of the House - as much

potential to behave like an elective dictatorship as governments elected under the provisions of the Electoral Act 1956.

Whereas political accountability rests on the performance of election promises, constitutional accountability depends more on a style of governing. Accountable government features consultation with other parties, openness, and willingness to listen to others. Coalition government is accountable in these terms due to the inter-dependency it requires between parties.

In essence, the paper posits that coalition government delivers greater levels of accountability not only because of the presence of more than a single party in cabinet, but also because coalition government is likely to occur in an era of greater inter-party co-operation and participatory democracy.

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