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CONSCIENCE VOTING IN NEW ZEALAND

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ABSTRACT

In New Zealand, political colleagues agreeing to disagree during legislative voting is called conscience voting. It is applied to some of the most contentious issues to come before parliament, and the legislation that results often has far-reaching implications on all citizens. This combination of contention and disagreement within a party has, over time, resulted in a parliamentary voting procedure with identifiable causes, patterns and protocols. Although conscience voting is rooted in the Westminster style of parliament and also exists in other countries, New Zealand has developed its own style that reflects the uniqueness of its culture and the hybrid nature of its political system.

This thesis unpacks the concept of conscience voting by investigating its role in New Zealand's parliamentary democracy: how and why it developed, the reasons it is used, the procedural framework within which it exists in New Zealand, and the specific issues faced by both parties and politicians when confronted with conscience matters. In a departure from most previous studies on this subject that have analysed the patterns of conscience votes themselves, this thesis is an exploration of conscience voting as a parliamentary concept. In particular, it does not view conscience voting as a series of unrelated events but as the result of a mechanism that has become institutionalised – formally and informally – after long practice.

Conscience voting became increasingly common after World War Two, and the expectations of MPs that intra-party dissent would be handled with a conscience vote grew along with it. Despite constituting just 5% of all bills, by the 1980s the expectations surrounding the practice had grown sufficiently powerful that, as a concept, conscience voting had taken on a life of its own. Parties no longer solely determined whether a conscience vote would be held. Remarkably, the conventions and protocols that govern conscience voting are largely unwritten, with their understanding being passed from one set of parliamentarians to the next through a process of enculturation. Untangling this process and its implications is the purpose of this thesis.

ACKNOWLEDGEMENTS

A Chinese proverb says that a journey of a thousand miles starts with a single step. I took my first step on this journey because I was passionately interested in New Zealand politics, and it was taken with a combination of excitement and trepidation. Subsequent steps became, variously, challenging, frightening and lonely, though always very rewarding. As each step was taken towards my goal, an awareness grew that a doctorate is not something done alone, but necessarily involves a host of people that contribute in a variety of ways. The completion of this thesis, therefore, marks the end of a very long journey that the following people accompanied me on, either in whole or in part.

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To all of these people I offer my sincere thanks and appreciation.

A doctorate is a path less travelled, and it is, perhaps, fortunate that we do not know the length or course of the thesis journey before we start, for, if we did, many of us may not begin at all. For me, the completion of my thesis brings both relief and sadness – relief that I have made it to my destination, and sadness that a much enjoyed era of my life has come to an end. Doctorates are not just an end, however, and I look forward to its completion marking the beginning of a new era and a new journey.

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CHAPTER ONE: INTRODUCTION

"...in differing on this question, we should try to differ as friends, not as enemies."¹

"...it will be a bad day for the country when men have ceased to have differences of opinion. There is no reason, when men are elected to the national Assembly, why they should not be able to act according to their individual opinions."²

In politics, differences of opinion are inevitable. The range and complexity of policy issues faced by politicians means that political colleagues, no matter how ideologically similar, rarely agree on everything. Differences that would ordinarily be unnoticed in most relationships become exacerbated when placed under the pressure of factors such as public opinion, media scrutiny, the views of constituents, the work of interest groups and the stresses of rapid social change. These differences are magnified still further when highly contentious issues are being debated.³

Despite such pressures, it is not inevitable that disagreements should end the close working association of political colleagues, and powerful motivations exist for members of the same political persuasion to continue working together. Working in unison brings significant political, social and personal benefits, so agreeing to disagree on certain occasions in order to achieve or retain the benefits of the greater good for their collective interests is a not unreasonable practical response.

In New Zealand, political colleagues agreeing to disagree during legislative voting is called conscience voting, and the emergence and operation of this conflict resolution technique is the subject of this study. In a departure from most previous studies on this subject that have analysed the patterns of conscience votes themselves, this thesis is an exploration of New Zealand conscience voting as a parliamentary concept; it elucidates its conceptual underpinnings, narrates its historical antecedents, considers various perspectives of conscience voting such as that of parties, MPs and of parliament itself, and speculates on the implications of the trends and patterns that have been occurring within its practice.

Conscience Voting as a Concept

Although agreeing to disagree may seem straightforward, as a concept and in practice conscience voting is not simple. Its presence in a parliamentary system so dominated by parties is enigmatic – its use is not consistent, there is an element of arbitrariness to the issues to which it is applied, and little is understood about why it has grown to become an influential parliamentary convention. Further, conscience votes are often held when some of the most controversial issues come before parliament – at the very time when parties are arguably needed most, they retreat, leaving individual parliamentarians to struggle with the complex and difficult issues involved. The central question of this thesis therefore becomes: why should conscience votes exist at all? And, secondarily, given that they do exist, what is the role conscience voting plays in how legislative decisions are made in New Zealand?

In its pure form, the Westminster parliamentary system upon which the New Zealand parliament is based values a direct citizen-representative relationship. Originally, both the British and New Zealand

¹ *NZPD*, Vol. 81, 30 August 1893, 496. Alcoholic Liquors Sale Control Bill, William Pember Reeves

² *NZPD*, Vol. 158, 7 August 1912, 677. Elected Executives Bill, James Alexander Young

³ An MP once commented during a capital punishment debate that "it is very difficult to get 34 people in any group to agree wholeheartedly on a question of this nature." *NZPD*, Vol. 328, 13 September 1961, 2208-9. Crimes Bill, Ernest Aderman

forms of the Westminster system were originally infused with a 'blindness' towards political groupings, seeing only individual MPs who represented electorates. The formation in both countries of formal groupings of parliamentarians to campaign, debate and vote together on a regular basis in the late nineteenth and early twentieth centuries, however, ensured that, in practice, members of parliament became primarily responsible not only to their constituents but also to their party.⁴ During this period, many politicians and commentators viewed the establishment of parties in New Zealand as inevitable because of their ability to provide teamwork and marshal resources.⁵ Power and policy outcomes could be enhanced by working together and, as a result, the country would be better served. Nevertheless, 'party politics' – a distinct way of doing politics that was widely viewed as underhand and dishonest, and which was based more on game theory than the public interest – was criticised by many.⁶ Party politics, it was argued, would undermine the relationship between constituent and MP, distorting democracy in the process and making the parliamentarian a mere puppet in the service of their party rather than their country.

Such opposition failed to prevent parties from coming to dominate almost every aspect of parliamentary life in New Zealand however, and, as expected, party politics increasingly demanded an unprecedented level of unity and discipline from MPs. This progressively created a new set of relationships from which at least three consequences flowed. First, the member's influence within their party, rather than on the floor of the House, became a key determinant of effective representation for the local electorate. Second, the decision-making process came to be conducted behind closed doors in the parliamentary caucus room, reducing transparency and lessening importance of the debating chamber. Third, the role of parliament declined in favour of the power of the executive.

Such dynamics created a number of tensions for individual MPs, the final one listed below being most relevant to this study:

1. Election: Although voters may value their local MP for his or her personal characteristics, MPs have little chance of election without the support of a party.
2. Accountability: While constituents often continue to hold their representative to account for their actions, it is the MP's party that is largely responsible for the development and implementation of policy.
3. Opinion: Despite the dominant position parties have come to hold, a party's policies and the MP's personal convictions are sometimes irreconcilable. At times, disagreement over policy

⁴ "Westminster parliamentary procedure treats each MP as an independent individual chosen to represent a particular electorate. It assumes that MPs will speak and vote according to their individual judgement. In fact, as everyone recognises, MPs have been elected as members of particular political parties and are expected to follow the collective opinion of their party colleagues." Richard Mulgan, *Politics in New Zealand*, 3rd ed. (Auckland: Auckland University Press, 2004), 67.

⁵ For discussions of New Zealand parties, see R.M. Chapman, "Political Culture: The Purposes of Party and the Current Challenge," in *New Zealand Politics in Perspective*, ed. Hyam Gold (Auckland: Longman Paul, 1989), Ian R. Fletcher, "Parties in the New Zealand House of Representatives, 1870-1890" (University of Canterbury, 1982), John E. Martin, "Political Participation and Electoral Change in Nineteenth-Century New Zealand," *Political Science* 57, no. 1 (2005), Raymond Miller, *Party Politics in New Zealand* (Melbourne: Oxford University Press, 2005), Austin Mitchell, *Government by Party* (Christchurch: Whitcombe and Tombs Ltd, 1966), Gilbert Wood, "The Political Structure of New Zealand 1858-1861" (University of Otago, 1965).

⁶ Country Party, "The Political Platform of the New Zealand Country Party," (192?), Edward Melland, *The Case against Party Government in New Zealand* (Dunedin: Wise, Cavin & Co., 1891), Edward Melland, *Party Government: Causes, Effects, Remedy* (Manchester: Charles H. Barber, 1912), Captain H.M. Rushworth, "A Sick Dominion: What Are the Causes?," *Waikato Times*, 1 October 1928.

becomes so great that parties are forced to abandon their policy and hand decisions on the issue back to the individual parliamentarian. When this happens, party managers release their members from the strictures of party cohesion, enabling the adoption of policy positions contrary to their party colleagues and the expression of individual opinion in the voting lobbies with no adverse repercussions. In theory, the very concept of party dissolves, albeit temporarily. Parties essentially disband for the duration of the debate to be replaced by however many individual MPs exist at the time in the New Zealand parliament. Individual MPs may maintain partisan positions but do so on their own initiative, in effect creating (currently) 120 parties instead of the seven that usually operate. The party decision to remove their whip, the process of casting an unwhipped division and the decisions faced by the individual MP are components of what is known as conscience voting.

This thesis unpacks the concept of conscience voting by investigating the role of conscience voting in New Zealand's parliamentary democracy: how and why it developed, the reasons it is used, the procedural framework within which it exists in New Zealand, and the specific issues faced by both parties and politicians when confronted with conscience matters.

Conscience Voting in Practice

In this study, a bill receives a conscience vote when one or more parties permit their members to vote without the dictates of the party whip at least once during the entire passage of the bill through the House. Using this definition, recourse to conscience voting has occurred during 236 bills in the New Zealand parliament since the advent of modern political parties in 1891.⁷

Various thematic typologies of these bills are possible, making a simple summary difficult. A typology focusing upon the subject of the bill would be quite different from one focusing upon questions about the role of the state, though both would be valid issues for consideration. The Crimes (Substituted Section 59) Amendment Bill (2005), commonly called the Anti-Smacking Bill, for example, could either be viewed as a bill to protect children or as an attempt to involve the state more in how parents raise their families. Further difficulty arises from the fact that some bills encompass more than one issue. For example, the Prostitution Reform Bill (2000) legalised prostitution, but it also extended health and safety laws to include the sex industry.

For the purpose of analysis, Table 1.1 begins at a relatively detailed level of categorisation, classifying these 236 bills according to the principal 'Subject' of each respective bill. Subsequent analysis aggregates these subjects to a higher level of categorisation, called 'Topics'. For example, the subjects of water safety, road safety and smoke-free legislation are subsequently summarised as 'Health and Safety' topics.

⁷ This study excludes votes on administrative issues such as the appointment of the Speaker and the appointment of members of the Abortion Advisory Council.

Table 1.1: Subjects of Conscience Voting in New Zealand by Decade⁸

Subject	Year of First Introduction into the House													TOTAL
	1890s	1900s	1910s	1920s	1930s	1940s	1950s	1960s	1970s	1980s	1990s	2000s	2010s	
Regulation of Alcohol	7	4	6	4	2	2	1	7	8	9	4	7		61
Regulation of Gambling	3	4	7	5			2			4	6	2		33
Provisions Relating to Marriage and Divorce	2	10	2		1			2	2		1	1		21
Outlawing Capital Punishment	1	1		1			1	1		1				6
Religious Instruction in Public Schools	1	1		4	2			1						9
Promoting an Elected Executive	5	7	3	2										17
Female Enfranchisement	8	1												9
Introduction of Summer Time		1	4	7										12
Adjustments to the Education System			1											1
Restriction of Advertising						1								1
Controlling Land Settlement							1							1
Provision of Infrastructure							1							1
Availability of Credit								1						1
Creation of the Office of the Ombudsman								1						1
Governance of Auckland								1						1
Censorship of Literature								1						1
Regulating Abortion									4	3				7
Improving Road Safety									1	1	2			4
Changes to Shop Trading Hours										1	3	6		10
Legalising Homosexuality									1	1		2		4
Provision of Adoption Information										3				3
Improving Water Safety										1				1
Reducing Accidents from Fireworks										1				1
Restricting Public Smoking											3	1		4
Legalising Euthanasia											1	1		2
Protecting Human Rights											2			2
DNA Sampling from Suspected Criminals											1			1
Human Assisted Reproduction											1			1
Prohibiting Corporal Punishment											1			1
Introducing Electoral Reform											3			3
Improving the Care of Children											1	1		2
Settlement of Treaty of Waitangi Claims												2		2
Youth Crime Sentencing												2		2
Legalising Medicinal Use of Cannabis												1		1
Parental Discipline												1		1
Restricting Public Display of Gang Insignia												1		1
Microchipping of Dogs												1		1
Regulating Prostitution												2		2
Altering Travel Documentation												1		1
Protecting Animal Welfare												1		1
Altering Employment Relations												1		1
Increasing Tax (from Smokers)													1	1
TOTAL	27	29	23	23	5	3	6	15	16	25	29	34	1	236

Note: 2010s refers to the period January to August 2010.

Until World War Two, only a handful of issues were the focus of conscience votes. The regulation of alcohol and gambling, questions of marriage and divorce, a few early attempts to abolish capital punishment, the teaching of religion in public schools, attempts to adopt the Swiss system of electing the executive, and female enfranchisement were essentially the only issues that consistently split parties at that time. Some of these issues have remained contentious to this day but others are no longer so. Where the latter is the case, it is mainly because the issue itself has ceased to exist e.g. summer time has now been introduced, capital punishment has now been abolished, and women are fully enfranchised. Conversely, some of the early issues continue as conscience votes to this day, though not always because they remain contentious. Liquor licensing is now less contentious than it used to be but

⁸ A full list of conscience votes is in Appendix 1, and Appendix 2 explains their classification into both Subjects and Topics.

continues to be granted a conscience vote for historical reasons.⁹ Issues of marriage and divorce and, to a lesser extent, gambling, are also much less contentious than they used to be but also remain as conscience votes. One of the recurring themes throughout this thesis is the inertia generated by particular legislative subjects being regularly granted conscience votes – once granted, they very rarely revert to ‘normal’ legislative treatment. The historical record of conscience voting clearly demonstrates that, almost without exception, once a matter becomes known as a conscience issue, it will remain so for the foreseeable future.¹⁰

Overwhelmingly, the most common topic causing party divisions is alcohol, with more than a quarter of all conscience vote bills addressing this theme (Table 1.2). Gambling and Marriage/ Family/ Children issues have also been granted conscience votes in relatively high numbers.

Table 1.2: Topics of Conscience Votes, 1891-2010

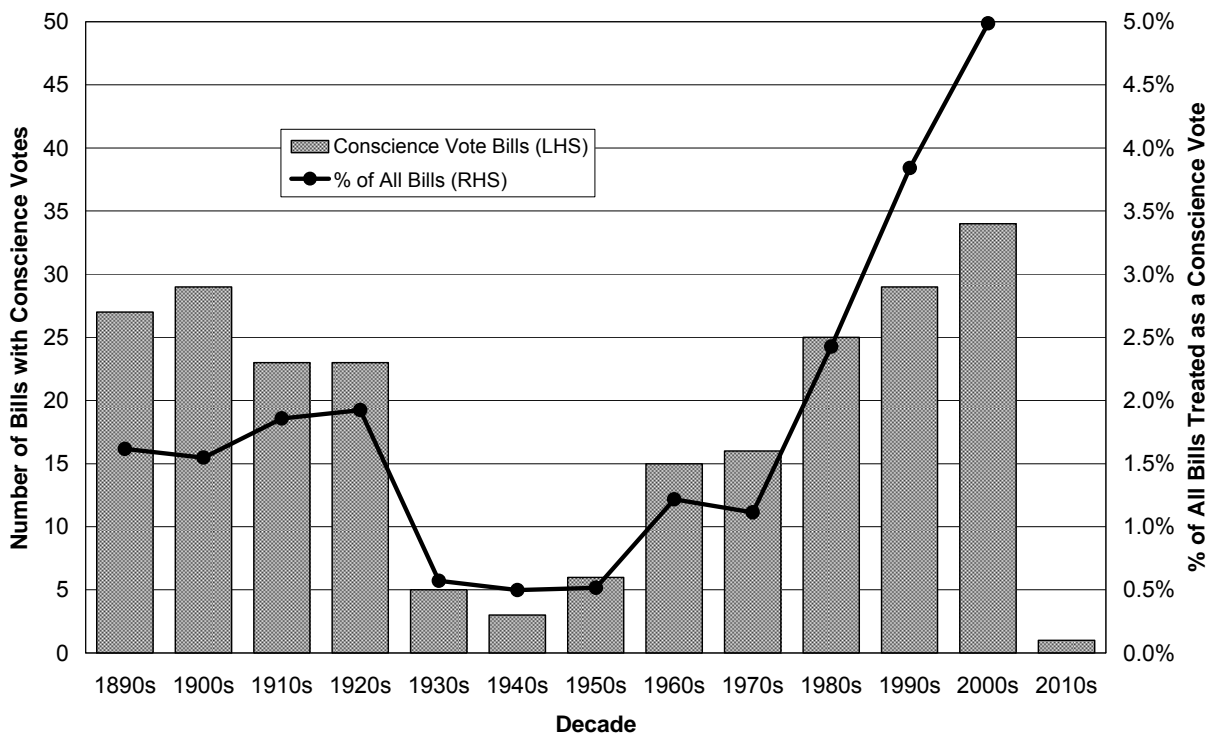
Topic	TOTAL	%
Alcohol	62	26%
Gambling	33	14%
Marriage/Family/Children	28	12%
Constitutional Reform	19	8%
Summer Time	12	5%
Health and Safety	12	5%
Crime and Punishment	11	5%
Electoral Reform	11	5%
Shop Trading Hours	10	4%
Religious Instruction	9	4%
Abortion	7	3%
Homosexuality	4	2%
Business/Employment	3	1%
Rights (Human and Animal)	3	1%
Governance and Infrastructure	2	1%
Miscellaneous	2	1%
Euthanasia	2	1%
Prostitution	2	1%
Treaty of Waitangi Settlement	2	1%
Education	1	0%
Censorship	1	0%
Drugs	1	0%
TOTAL	236	100%

Not only have conscience issues become more diverse, but conscience votes appear to be becoming more frequent, both in absolute terms and relative to the total number of bills before parliament (Figure 1.1). The 2000s witnessed 34 bills receiving conscience votes, five more than the previous decade, and more than has been seen in any other decade to date. Bills receiving conscience votes now account for 5.0% of all bills before parliament – a small proportion of total bills, certainly, but a figure that has increased ten-fold since the 1950s.

⁹ In 1971, a National MP commented during one liquor debate that “Much of the heat and acrimony has gone out of public controversy on the liquor question...” *NZPD*, Vol. 374, 15 September 1971, 3259-60. Sale of Liquor Amendment Bill, Peter Wilkinson

¹⁰ The extension of summer time, very contentious in the early 20th century but less so in later decades, is a rare exception – multiple parliamentary votes to extend summer time in the last 20 years have not been conscience votes.

Figure 1.1: Number of Conscience Votes, and Proportion of Bills, by Decade



Notes: Bills are classified by year of first introduction. As at August 2010, only one unwhipped vote – a split party vote – had been held in the 2010s.

The key factors driving the patterns in Figure 1.1 are explored in Chapters Five and Six, but the relatively loose discipline of New Zealand’s early political parties contributed significantly to the high numbers of conscience votes between 1890 and 1930. After 1930, party discipline became very tight, driven partly by the rise of the more cohesive Labour party, and partly by the response of the opposition parties in forming the National party, thus ushering in New Zealand’s period of two-party politics. Although party discipline has remained tight ever since, the changing social, economic and political environments, particularly from the 1960s has meant that parties have become internally divided more regularly. The widening of the range of issues and the increasing frequency of conscience votes, particularly since the 1980s, suggests that departing from the party position may be becoming easier. As such, one of the hypotheses of this thesis is that an expectation is growing amongst MPs that intra-party disagreements are now more acceptable – that they can and will be tolerated by the use of the conscience vote. This expectation was encouraged with the adoption of MMP in 1996, which represented the end of the two party era and ushered in a different set of political rules. Governments are now coalitions, and policy positions are, therefore, less settled than previously. The greater diversity of parliamentarians seen under MMP also makes the strict discipline of the two party era less tenable now.

Further, one of MMP’s corollaries, the Party Vote,¹¹ has enabled enterprising parties and MPs to take advantage of alternative voting practices such as the Split Party Vote, an anomalous scenario where the party itself splits its vote between both lobbies. Split party votes, considered by this thesis to be a form of conscience voting, are now a formal part of the Standing Orders and have been increasingly utilised by

¹¹ Voting procedure is explained in Chapter Seven, but a Party Vote is a division vote cast by a party as a corporate entity, rather than forcing individual members to enter the lobbies. As such, it speeds up the voting process where a division is required but a conscience vote is not being granted.

parties to accommodate disagreement between their members – 56% of the conscience votes held since 1996 have included one or more split party votes, and 44% have been exclusively split party votes. A number of the ‘new’ conscience issues such as Treaty of Waitangi settlements, employment relations, animal welfare, the prohibition of gang insignia, excise duties from the sale of tobacco, and even changes to travel documentation have received only a split party, rather than a traditional conscience, vote. Essentially, the formalisation of the split party vote in parliamentary procedure has altered the process of dissenting, flagging to MPs that disagreeing with their party is less momentous than it used to be and giving parties a procedurally simpler way to accommodate it.

A second hypothesis of this thesis is that conscience voting has now become so entrenched in parliamentary politics in New Zealand that parties no longer have a free hand in which issues are whipped and which are not – the conscience voting concept is bigger than parties themselves. This theme is also explored throughout this thesis and revisited in the Conclusion.

Interesting changes have also occurred in the type of bill being granted a conscience vote. Prior to the 1940s, most conscience votes were held on members bills, reaching a peak of 80% in the 1930s (Table 1.3). Since then, however, the majority of conscience votes have been on government bills – members (and local) bills only constituted around 13% of conscience votes during the 1960s and 1970s, for example. There are signs that this pattern could once again be reversing however, as two thirds of conscience votes were members (and local) bills in the 2000s, a reflection of the range of issues parliament is dealing with and the increasing popularity of the private members ballot as a way of bringing issues to the attention of the government.

Table 1.3: Type of Conscience Vote Bill by Decade

Type of Bill	Year of First Introduction													TOTAL
	1890s	1900s	1910s	1920s	1930s	1940s	1950s	1960s	1970s	1980s	1990s	2000s	2010s	
Government	7	6	8	7	1	2	5	13	14	13	19	11	1	107
Members	20	23	15	16	4	1		1	2	12	10	20		124
Local							1	1				3		5
TOTALS	27	29	23	23	5	3	6	15	16	25	29	34	1	236

Type of Bill	1890s	1900s	1910s	1920s	1930s	1940s	1950s	1960s	1970s	1980s	1990s	2000s	2010s	TOTAL
Government	26%	21%	35%	30%	20%	67%	83%	87%	88%	52%	66%	32%	100%	45%
Members	74%	79%	65%	70%	80%	33%	0%	7%	13%	48%	34%	59%	0%	53%
Local							17%	7%				9%		2%
TOTALS	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Notes: 2010s refers to the period January to August 2010.

Some columns do not add to 100% because percentages have been rounded.

In general, bills receiving conscience votes have achieved greater legislative success since World War Two, although this can partly be explained by the greater proportion of conscience bills being government sponsored during that period. Most conscience bills were unsuccessful in the early decades, but once government-sponsored conscience votes became more common in the 1950s, their success rate dramatically improved (Table 1.4). Government bills enjoy a much higher success rate than do members bills – just seventeen of the 124 members bills granted conscience votes have become law (Table 1.5). By contrast, just eleven of the 107 government conscience bills have failed to become law, and five of these were not defeated but were discharged or lapsed. The last defeat suffered by a government conscience bill was in 1928. This fact points up a paradox, addressed more fully in Chapter

Eight, as to why the outcome of government-sponsored bills should be so predictable when they ostensibly receive divisions that are unwhipped.

Table 1.4: Success of Conscience Bills by Decade

Passed into law	Year of First Introduction													TOTAL
	1890s	1900s	1910s	1920s	1930s	1940s	1950s	1960s	1970s	1980s	1990s	2000s	2010s	
n/a			1									1		2
No	21	25	14	18	4	1		1	2	5	10	18		119
Yes	6	4	8	5	1	2	6	14	14	20	19	15	1	115
TOTALS	27	29	23	23	5	3	6	15	16	25	29	34	1	236

Passed into law	1890s	1900s	1910s	1920s	1930s	1940s	1950s	1960s	1970s	1980s	1990s	2000s	2010s	TOTAL
n/a			4%									3%		1%
No	78%	86%	61%	78%	80%	33%	0%	7%	13%	20%	34%	53%		50%
Yes	22%	14%	35%	22%	20%	67%	100%	93%	88%	80%	66%	44%	100%	49%
TOTALS	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Note: 2010s refers to the period January to August 2010.

Table 1.5: Success of Conscience Bills by Type of Bill, 1891-2010

Type of Bill	Bill Passed Into Law?			TOTAL
	Yes	No	n/a	
Government	95	11	1	107
Local	3	2		5
Members	17	106	1	124
TOTAL	115	119	2	236

Notes: n/a = One vote in 1910 was on government-sponsored 'Gambling Resolutions' that led to gaming legislation but was not legislative itself. One members bill is still before parliament so it is too early to judge its success.

The Nature of Conscience Votes

The collection of topics which are the subject of conscience votes exist in point of fact but are not necessarily secured by strict logic. A cursory assessment has led some to the conclusion that what these issues have in common is their element of contention, their infusion of morality, and/or their potential to alter the social values of society.¹² Peter Richards described conscience issues as “social questions which have strong moral overtones” and Robert Chapman called them “cross-polarising value issues”.¹³ Michael Cullen, with more wit but not necessarily greater accuracy, described them as “matters that involve anything that somebody might enjoy doing.”¹⁴ A former Speaker of the House was more prosaic in simply defining conscience issues as arising “on the grounds of the traditional understanding of that term over many Parliaments or out of the flow of debate—public debate as well as in the House.”¹⁵

A more analytic assessment of the subjects listed in Table 1.1 inevitably leads to the conclusion that contention, morality and social values alone do not account for the usage of the conscience vote. In the first place, not all of the issues in Table 1.1 may be characterised in this way, and some are clearly more contentious or moral than others. Second, many issues which are similarly contentious or moral are not granted conscience votes. Table 1.6 lists a representative selection of bills that could, on the face of it, be conscience votes, but which have not been so treated. Other factors are clearly relevant to the use of this parliamentary decision making mechanism.

¹² David McGee, *Parliamentary Practice in New Zealand*, 3rd ed. (Wellington: Dunmore Publishing, 2005).

¹³ Chapman, "Political Culture," 18, Peter Richards, *Parliament and Conscience* (London: Allen & Unwin, 1970), 7.

¹⁴ NZPD, Vol. 558, 13 December 1996, 38. Appointment of Deputy Speaker, Michael Cullen

¹⁵ NZPD, Vol. 558, 13 December 1996, 38. Speaker Kidd

Table 1.6: Selected Bills Not Granted Conscience Votes

Name of Bill	Year of First Introduction	Subject	Comments
Indecent Publications Bill	1910, 1954, 1958	Censorship of literature	The 1963 censorship bill was a conscience vote
Women's Parliamentary Rights Bill	1919	Granted women the right to stand for parliament	Previous bills relating to female suffrage and right to stand had been conscience votes.
Transport Amendment Bill	1968	Introduced blood alcohol limits and breath testing	Essentially a non-partisan issue
Electoral Amendment Bill	1975	Procedural changes to how elections are run and who can vote	Other bills relating to electoral reform have been conscience votes
Human Rights Commission Bill	1976	Established Human Rights Commission, limited legitimate areas of discrimination	Other bills relating to human rights have been conscience votes
Gaming and Lotteries Bill	1977	Revised and updated law on gambling	Almost all gambling legislation are conscience votes as a matter of course
Shop Trading Hours Bill	1977	Changed the legal hours of trading	Shop trading traditionally a conscience issue
Massage Parlours Bill	1977	The licensing of massage parlour staff	High degree of moral content
Matrimonial Property Amendment Bill	1980, 1983, 1985, 1986, 1998	Made various adjustments to the divorce laws	Marriage and divorce a long-standing conscience issue
Criminal Investigations Bill	1988	Compulsory taking of blood samples from suspected criminals	The 1994 equivalent of this bill was a conscience vote
NZ Bill of Rights Bill	1989	Formalised the rights of citizens	Other constitutional and human rights bills have been conscience votes
Smoke-Free Environments Bill	1990, 1995	Created smoke-free environments	Treated along party lines, although other similar bills have been conscience votes
Supreme Court Bill	2002	Abolished appeals to the Privy Council, established NZ Supreme Court	Constitutional reform is generally considered an issue that should be above party politics
Hazardous Substances and New Organisms Amendment Bill	2003	Lifted the experimentation ban on genetically modified organisms	Although no precedent existed, genetic modification was extremely controversial, both within and without parliament

It has been suggested that, instead, the essence of conscience issues stems from their ability to offend fundamental beliefs about life and ethics held by politicians and/or the public. Such beliefs derive from one's worldview, which defines one's identity and provides a framework with which to make sense of the world – the expression of worldviews through legislation is one means by which people seek to actualise their beliefs in policy terms.¹⁶ According to the literature that has built up around moral issues in legislatures, there is a direct relationship between the extent to which they offend people's core beliefs and the emotion invested in the debate by the participants. Antagonists are not just debating a legislative policy but the very basis of what defines their identity as a member of society.¹⁷ When the emotion leads to a threshold of political tolerance being crossed, party elites search for an avenue of

¹⁶ Former Labour Minister and Speaker Margaret Wilson once recognised that conscience “debates bring out some interesting perspectives, which in truth reflect a deeply-held personal view.” She pointed out that “the reality, however, is that the law has to cater to the needs of people as they actually live their lives, not as they do in some fairy-tale book.” *NZPD*, Vol. 590, 13 March 2001, 8137. Property (Relationships) Amendment Bill

¹⁷ Christopher Z. Mooney, “The Public Clash of Private Values,” in *The Public Clash of Private Values: The Politics of Morality Policy*, ed. Christopher Z. Mooney (New York: Chatham House Publishers, 2001).

'exit' from the issue.¹⁸ This avenue is frequently found in conscience voting. It is, therefore, no surprise that conscience debates have been characterised by a high degree of emotionalism¹⁹ and a relative absence of the "logic of negotiation".²⁰ Without the averaging influence of political parties, conscience votes can become "...government by decibels, a system by which the loudest voice gets the biggest vote."²¹

Other authors have postulated that conscience votes are not unconnected events but reflect the flow through history of views of social organisation. From this perspective, clashes between worldviews are not merely purposeless disagreements but represent an impulse towards either orthodoxy or progressivism.²² The former is generally associated with a preference for status-differentiation in which people know their place within traditional hierarchical societies, whereas the latter is usually achieved through status-egalitarianism which is a 'progressive' thinking about human dignity and human rights.²³ In a wider sense this tension reflects a culture war, a struggle over the control of society's values, with the battles partly being played out through public policy in general and legislation in particular. Some of this legislation is on what have come to be called conscience issues, the pattern of which, over time, reflects the evolution of social arrangements. Thus, conscience voting becomes a tool in the struggle for domination over the ability to define reality for oneself and society generally.²⁴ This is the logic behind Jordan and Richardson's description of conscience issues as "value changing" issues denoting their ability to address fundamental beliefs giving rise to modes of behaviour,²⁵ and Smith and Tatalovich's description of moral legislation involving the "redistribution of values."²⁶

Society is constantly changing, and it is the opinion of many that the law must change with it. Conscience votes are applied to a higher than average proportion of controversial matters that have the potential to alter social values, and that leads to the charge that conscience votes are sometimes used to lead, rather than follow, social change.²⁷ This charge was not uncommonly stated, for example, by opponents of the Crimes (Substituted Section 59) Amendment Bill (2005) which sought to remove the justification of reasonable force for physical parental discipline.

¹⁸ Robert Packenham, "Legislatures and Political Development," in *Legislatures in Developmental Perspective*, ed. A. Kornberg and L.D. Musolf (Durham, N.C.: Duke University Press, 1970).

¹⁹ See, for example, *NZPD*, Vol. 472, 2 July 1986, 2596, Homosexual Law Reform Bill, Jim Anderton: "...the possibility of objective, well informed, as well as unemotional, consideration of the matter has been shown to be difficult if not well nigh impossible." *NZPD*, Vol. 407, 3 November 1976, 3572, Sale of Liquor Amendment Bill (No.2), Jim McLay: "Questions relating to liquor have been the subject of polls and also of controversy since the earliest days. ... It is within that context that we are this evening debating this amendment Bill, and because of the many emotional overtones that attach to it we are to have a free or conscience vote." *NZPD*, Vol. 397, 23 May 1975, 1375, Hospitals Amendment Bill, Mary Batchelor: "There has been a great deal of emotion in this debate, and much good argument, but the more I have heard that argument in the speeches of members the more I have been left with the opinion that this Bill should not be read a third time because, in a sense, we are bringing our emotions into the House."

²⁰ Grant Jordan and Jeremy Richardson, "The British Policy Style or the Logic of Negotiation?," in *Policy Styles in Western Europe*, ed. Jeremy Richardson (London: George Allen and Unwin, 1982), 100-2.

²¹ *NZPD*, Vol. 414, 11 October 1977, 3552, Contraception, Sterilisation, and Abortion Bill, Ben Couch. In like manner, Doug Graham pleaded for a debate free of emotion, warning that "The validity of an argument is not enhanced by the volume used in debate." *NZPD*, Vol. 537, 27 July 1993, 16906, Human Rights Bill

²² T. Alexander Smith and Raymond Tatalovich, *Cultures at War: Moral Conflicts in Western Democracies* (Toronto: Broadview Press, 2003), 39.

²³ *Ibid.*, 240.

²⁴ James Davison Hunter, *Culture Wars: The Struggle to Define America* (New York: BasicBooks, 1991), 43, 46, 52.

²⁵ Jordan and Richardson, "The British Policy Style or the Logic of Negotiation?," 100-2.

²⁶ Smith and Tatalovich, *Cultures at War*, 76.

²⁷ *NZPD*, Vol. 550, 4 October 1995, 9494. Sale of Liquor (Off-Licence) Amendment Bill, Roger Maxwell

It is not just the depth of feeling these matters generate within both the community and parliament, but also the deep philosophical dilemmas they raise that have the potential to cause political tension. Disagreement over whether parliament should involve itself in the issue at all is not uncommon, and this disagreement is both ideological and philosophical. While some contend it is not the role of the state to be proscribing the otherwise legitimate behaviour of citizens, others see an important role for the law in protecting people from themselves. Such debates not infrequently invoke a subtext around whether there is a role for law in legislating morality. Whether the realm of law is entirely distinct from morality or whether law should reflect society's moral code is a question parliamentarians must frequently confront. Such questions are debated with greater frequency when conscience issues come before parliament, and both the role of the state and the relationship between law and morality become axes around which divisions during conscience issues form.

The absence of considerations of personal conscience from this brief survey of the definitional aspects of conscience votes is deliberate – although individual MPs may invoke their conscience in making a voting decision, it is not often a factor in what issues are unwhipped. Conscience is a moral sense of right or wrong, especially as affecting the moral quality of a person's behaviour,²⁸ which may or may not be utilised in parliamentary decision making. Either way, it is clear that conscience is not limited to conscience issues, for many bills invoke the conscience of both individual members and parties. The existence of what is called the 'conscience vote' suggests that there is a boundary beyond which MPs should not or do not exercise their personal conscience. Some commentators have noted the arbitrariness of treating only some issues as if they involved conscience.²⁹ One MP complained that, because a certain bill was a conscience vote, "that implies that most other matters that come before Parliament are not conscience issues. It is an interesting reflection on parliamentary priorities and values that whether or how people are housed and the standard of living and health care of people, and nuclear weapons and their use—surely the ultimate in immorality and inhumanity—are not considered to be matters of conscience."³⁰ The same MP believed that parliament should give a greater, rather than a lesser, role to conscience in decision making because, ultimately, all bills affect people and are therefore legitimate arenas for the expression of conscience:

I suggest in passing that all major issues that impact on the lives of people are conscience issues. Whether people are unemployed, whether they have health services available to them, whether they have obstacles to educational opportunity, whether families are threatened by a hostile socio-economic environment, and whether people have adequate and affordable housing are all conscience issues. Those matters are all human issues because they impact on the lives of ordinary people. In my view we do not have the selective morality – or the luxury of it – to declare that some of those matters are conscience issues and some are not.³¹

In theory, all decisions have a moral component and subjecting only some of them to personal conscience is difficult to rationally justify. To this extent, conscience voting is poorly named, for the element of conscience fails to provide any reliable explanation for the why, what or when of the use of conscience voting.

²⁸ "Conscience," in *Oxford English Dictionary* (1989).

²⁹ See for example, Peter Jones, "Members of Parliament and Issues of Conscience," in *Party, Parliament and Personality*, ed. Peter Jones (London: Routledge, 1995), Chris Trotter, "A Matter of Conscience," *The Independent*, 15 December 2004.

³⁰ *NZPD*, Vol. 466, 9 October 1985, 7265-6, Homosexual Law Reform Bill, Jim Anderton.

³¹ *NZPD*, Vol. 503, 5 December 1989, 14216. Contraception, Sterilisation, and Abortion Amendment Bill, Jim Anderton

Theories that appeal to basic identities, social organisation or conscience for their explanatory power fail to account for all of the conscience votes held in New Zealand. It is unclear what 'basic identity' was offended when daylight saving became a conscience vote early in the twentieth century, or how the compulsory fencing of swimming pools was a battle over the values of society, or what role conscience played in electoral reform. It is easy to conclude, therefore, that no theory on its own has sufficient explanatory power to account for conscience voting as it is or to predict future manifestations.

Politics is not prescriptive, and what may be expected on the basis of theory is not necessarily what actually happens. Part of the problem is that attempting to understand conscience voting solely on the basis of the content of the subject matter fails to perceive its essentially political nature. The ability of these issues to create divisions within parties is precisely where the parliamentary mechanism becomes politicised. Because political parties, as the key parliamentary actors, are driven mainly by their desire to govern, they are sensitive to issues that have the potential to damage their reputation with voters. Political tension frequently manifests in disagreement, and disagreement can result in party disunity. It is, therefore, not just the nature of the issue that is pivotal, but what is at stake for key political agents that influence when and why conscience votes are granted. Pragmatism and precedent also play important roles in shaping parliamentary decision-making.

It must not be imagined that the members of caucus are automatically the nemesis of party cohesion during conscience votes. Paradoxically, the unwhipped vote is invoked because caucus desires to maintain, rather than destroy, party unity. On such occasions, caucus acts as a forum for diversity, enabling alternative positions to be presented before either a party position emerges or the conscience voting mechanism is invoked. Where the latter course is chosen, conscience voting serves, rather than inhibits, party unity by channelling any disunity away from the party itself.³² As such, conscience voting is a parliamentary mechanism in the service of parties, used precisely because, first, they wish to maintain popular support and, second, because there are few moral issues about which parties are capable of reaching complete agreement.

Legislative initiative has traditionally been vested in the executive branch of government, but during conscience votes the centrality of parliament itself is restored. Sometimes this result is deliberate. Although referring to the British context, Pakenham's description of this phenomenon is apposite: "When the political system seems to have reached an impasse and the mechanisms for decision-making ... seem incapable of providing a way out of the situation, the elites sometimes turn to the legislature for either the substance or the form, or both."³³ At other times, the executive's reduced role is a consequence they are forced to accept. The government in general, and members of the executive in particular, surrender some of their control over legislation when they submit it to a conscience vote, sometimes resigning themselves to achieving less than what they had hoped or, occasionally, the reverse of what they desired.³⁴

³² Austin Mitchell, "Caucus: The New Zealand Parliamentary Parties," *Journal of Commonwealth Political Studies* 6, no. 1 (1968): 19-20.

³³ Pakenham, "Legislatures and Political Development."

³⁴ Sir Geoffrey Palmer, Personal Interview, 17 February 2009. *NZPD*, Vol. 345, 22 October 1965, 3771. Sale of Liquor Amendment Bill, Ralph Hanan

The Concept of Conscience Voting

Although the unwhipped parliamentary division is central to the conscience voting procedure, the *concept* of conscience voting extends beyond mere parliamentary procedure. Like many procedures, conscience voting in New Zealand has become institutionalised through long use and is now surrounded by a set of expectations, precedents, protocols and parliamentary mores. Consequently, what is today known as 'conscience voting' includes not just the act of casting an unwhipped vote but also the conventions attached to the execution of such a vote, the expectations that inevitably build up over time around the appropriate subjects of unwhipped votes, and the unwritten and usually unspoken understanding about the role of such votes in a parliamentary democracy.

This distinction between conscience voting as a behaviour and conscience voting as a political institution is subtle but vital. Most of the literature on the subject addresses only the former, that is, conscience voting as the act of voting without party whips. Voting patterns naturally become the focus of such studies. Considering conscience voting itself, rather than individual conscience votes, however, lends itself to additional considerations such as its role in parliamentary legislative decision-making, its historical development and evolution, party decision-making mechanisms, parties as political actors in their own right, and the relationship between conscience voting and social change. Conscience voting is, therefore, an institution incorporating, but wider than, conscience votes.

Terminology

The study of conscience voting invokes a range of terms and concepts that are overlapping and/or cross-cutting. It is, therefore, important that the key terms and concepts be defined early.

Free Vote, Unwhipped Vote

Free voting and unwhipped voting are essentially equivalent. During such votes no voting instructions are issued to MPs by party managers, the normal requirements for party cohesion are relaxed and a temporary suspension of the mechanisms of party discipline is put in force. Under such circumstances, individual members are permitted to decide for themselves which way they will vote. It is important to note, however, that the possession of such freedom doesn't necessarily mean that a division will actually be held or, if it is, that it will result in colleagues voting in opposing lobbies.

The decision to permit a free vote is usually made by party leaders and whips, based on criteria of their own choosing. At times their decision may be made for them by an insistent member or members of caucus, or by precedent, by the activity of other parties, or other factors, and it is entirely possible for some parties to be casting free votes while others are not.³⁵

Free voting is the term most commonly employed in Britain and Canada, and the term was also used in New Zealand until the 1970s.

Conscience Issue

A conscience issue is an issue that is generally considered socially or morally sensitive which often, though not always, receives an unwhipped vote. A particular vote being whipped during a conscience

³⁵ One constraint upon New Zealand political parties in this respect is the decisions of the post-1996 Business Committee which has considerable authority to determine how parliamentary business will be conducted. The Business Committee is discussed further in Chapter Seven.

issue in no way diminishes the understanding of it as a conscience issue, however, indicating that the notion of 'conscience issue' is held independently from the legislative treatment it actually receives. A substantial overlap between conscience issues and unwhipped votes exists, but the overlap is not complete.

Exactly what constitutes a conscience issue defies simple definition. It is historically formed, relying heavily on past practice and precedent, and is culturally shaped by both society and parliament. Conscience issues reside in convention, being invoked at appropriate times by party and parliamentary elites. For parliamentarians especially, the notion of what is a conscience issue is caught, rather than taught; MPs become inculcated into its nature as part of learning the informal and formal norms that govern parliament.

Conscience Vote

In conventional use, the term conscience vote is used synonymously with both the terms free vote and whipped vote, but this is not entirely justified. First, the predominant notion in 'free voting' is freedom from party cohesion; likewise, the essence of 'unwhipped voting' is its unwhipped status. By contrast, conscience voting is a richer and wider concept than either of these alternatives and shifts the focus subtly but perceptibly to the intentions, motivations, justifications and expectations that surround the casting of an unwhipped vote. At this level of detail, conscience voting may be regarded as an institution in its own right rather than the residual voting mechanism employed when party whips are not operating.

Second, the term 'conscience vote' is often used interchangeably with 'conscience issue,' in such circumstances denoting that the issue is a socially or morally contentious matter that is often, though not always, treated with an unwhipped vote. The implication is that a 'conscience issue' has a meaning independent from the act of voting, thus distinguishing it from an unwhipped or free vote and again indicating the presence of a set of surrounding expectations not encapsulated by these other terms.

Although the terms free voting and unwhipped voting are both known and occasionally used in New Zealand, conscience voting is the more common phrase in this country.³⁶ Confusingly, conscience votes were known in New Zealand as free votes prior to the 1970s. The story of how the term emerged is instructive, revealing much about the term's meaning, and the details of this narrative are provided in Chapters Five and Six.

Because this study focuses upon New Zealand, 'conscience voting' and 'conscience votes' are the preferred terms, although 'free voting' and 'unwhipped voting' are sometimes used when discussing overseas experience, when the voting mechanism itself (as opposed to the institutional aspects) is being considered, or when it is being discussed historically.

In definitional terms, a conscience vote is defined as a vote where the managers of a party issue no voting instructions, instead permitting all (though sometimes some) of the members of their party to vote as they wish. This distinguishes conscience voting from dissent, which is unsanctioned by party managers. A conscience bill is defined as a bill in which at least one parliamentary party grants its members at least one unwhipped vote at some stage during its passage through parliament, whether or not a division occurs.

³⁶ This also applies to Australia.

Personal Vote

Conscience votes are sometimes referred to as 'personal votes,' especially in New Zealand, but this is misleading. A conscience vote is indeed cast by individuals personally but, strictly speaking, the term 'Personal Vote' refers to the New Zealand parliamentary voting procedure used when conducting unwhipped divisions. A 'Personal Vote,' at least in New Zealand, is the voting procedure outlined in the parliamentary Standing Orders, rather than a reference to the relative freedom of those voting from their party whip. Adopted in the 1996 revision of the Standing Orders initiated when New Zealand adopted the MMP electoral system, Personal Votes are intended to facilitate situations where individual voting is required or desirable, such as during conscience votes. Personal votes are most readily understood as being distinct from 'Party Votes', the alternative voting procedure whereby the party whip or party leader votes for the members of their party. 'Conscience voting' is, therefore, a party mechanism; 'Personal voting' is a parliamentary process. Personal and Party Votes are discussed further in Chapter Seven.

Roll Call Vote

Modern Westminster political systems are usually characterised by tightly disciplined parties. In some other political systems, such as the congressional system used in many parts of the Americas, party discipline is sufficiently loose that the concept of conscience voting loses much of its force. In these countries, the equivalent of conscience voting is the roll call vote whereby votes are cast by individual MPs and recorded on a 'roll'. Although on the face of it this resembles conscience voting, roll call voting is not equivalent because it is devoid of the political considerations that derive from tight party discipline, the conditions under which it is removed, and the implications of this for parliament, the party and the individual member of parliament.

Key themes and Tensions in CVing

The study of conscience voting touches upon several important themes which are implicit throughout this thesis.

First, the role of the state is invoked by conscience voting because a number of conscience issues have turned upon whether the state has a role in constraining the freedom of citizens. Smoke-free legislation, for example, inevitably raises questions about what role the state should play in legislating private behaviour. Other conscience issues to have confronted this issue include whether the state should be responsible for ending the lives of convicted criminals, whether it can legitimately force swimming pool owners to have them fenced, or whether seat belts should be compulsorily worn.

Second, because New Zealand is a representative democracy dominated by political parties, conscience votes not infrequently provoke discussion about the relationship between the citizen and the representative. Some argue that conscience voting is a more pure form of democracy that should be extended beyond the current range of conscience issues, whilst others argue it leads to poorer outcomes in a complex modern society. Still others take a middle road and extend the principle of conscience voting to incorporate the freedom of citizens to make their own decisions on such matters through the use of some form of direct democracy.

Third, the quality of parliamentary decision-making during conscience votes is an additional fertile area for ongoing debate which also opens up a very long-standing debate about the role of parties in a democracy. The experience of conscience voting has led some participants to applaud the legislative

outcomes it has produced, while provoking others to conclude that the result is a poor example of democracy in action.

Fourth, conscience voting focuses attention on the ability of the Westminster parliamentary system of government to adequately handle legislation on conscience issues. A system designed for issues that are predominantly economic in nature and which has come to be dominated by political parties may not be adequately equipped to make good decisions on conscience issues. Procedural questions can, therefore, be raised from such a study which are important beyond the mere exercise of unwhipped voting.

The Importance of the Subject

Conscience voting is frequently called upon to deal with some of the most important legislation that comes before parliament. On such issues, the MPs in parliament at the time, without special training, knowledge or expertise, and operating within an institution accustomed to the dominance of decision-making by party, are sometimes required to make judgements that deeply affect the personal lives of citizens and the fabric of society. This imbalance between the nature of the system and the magnitude of the decisions being made led one newspaper editorialist to express his belief that conscience issues are “too important to be left to the ‘conscience’ or the whims of politicians.”³⁷ In like manner, an MP once commented during a particularly contentious conscience issue that “I believe Parliament is not well equipped to handle issues of this kind, but such is the level of public protest and involvement that handle the question it must.”³⁸ Thus, parliament’s questionable ability to handle conscience issues well makes conscience voting a very important subject for study.

The need for academic interest in conscience voting derives from several factors. First, the mere fact that political parties stand at a distance during 5% of all votes in the New Zealand parliament requires explanation. Second, the subjects to which conscience votes are applied are both interesting and enigmatic, demanding elaboration as a result. Third, the way in which MPs behave when bereft of their usual party guidance invites empirical study. Fourth, conscience voting has been invoked in a number of political and public debates relating to wider issues such as democratic representation, the power of the executive, legislative integrity, and the role of the state. In addition, the question of whether conscience votes improve decision making, are therefore desirable, and, as a corollary, whether political parties are undesirable for democracy has important implications for related fields of study. Fifth, conscience voting is not a static concept, and both its form and its practice continues to evolve. Further evolution will have inevitable consequences for parties, parliamentarians, parliament and citizens, and the shape of parliamentary democracy in New Zealand may be quite different in the future as a result. In particular, conscience voting is becoming more frequent – conscience votes have been employed to deal with a wider range of issues more frequently since the middle of the twentieth century. They are also broadening in scope and deepening in their impact on both private and social life.³⁹ A continuation of

³⁷ Editorial, "Alcohol Reform Too Important for Conscience Voting," *Sunday Star Times*, 2 May 2010.

³⁸ *NZPD*, Vol. 414, 11 October 1977, 3527. Contraception, Sterilisation, and Abortion Bill, William Rowling

³⁹ See also David Lindsey, "A Brief History of Conscience Voting in New Zealand," *Australasian Parliamentary Review* 23, no. 1 (2008). The implications of the evolution of conscience voting is not limited to New Zealand. In Australia, the importance of conscience vote issues have been increasing, and in Canada there are regular calls – and promises – for more free voting as a way of reforming their parliamentary system. Deirdre McKeown and Rob Lundie, "Conscience Votes in the Federal Parliament since 1996," *Australasian Parliamentary Review* 23, no. 1

these trends raises questions about the role of parties, party cohesion and governance structures in the future. Sixth, because many conscience issues are moral in nature and conscience voting often represents the legislative outcome of moral debates, it is vital that frameworks be developed to adequately conceptualise their passage through parliament. These frameworks are currently conspicuously absent.

Structure of the Thesis

This study focuses upon four themes implicit in the New Zealand parliamentary phenomenon known as conscience voting:

1. A conceptual framework for a scholarly consideration of conscience voting.
2. Historical antecedents for conscience voting in New Zealand.
3. The way in which conscience voting operates procedurally within the New Zealand parliament.
4. The perspective of parties and MPs during conscience votes.

These themes provide the framework for the current investigation.

Chapters Two to Four are contextual, addressing the current state of research in the field and the principles by which conscience voting operates within democratic, especially Westminster, systems. The first published work on conscience voting in 1970 has been followed by only a handful of studies, very few of which have reflected upon the wider themes raised by conscience voting. In an attempt to place the study of conscience voting upon firmer conceptual ground, Chapter Two discusses the research that has been conducted to date in this field, concluding that while the patterns of conscience voting have been partially analysed, conscience voting as a mechanism is largely unstudied.

Possessing the conceptual tools to think constructively about this field of study is essential if a future research agenda is to achieve an understanding of all aspects of conscience voting. Chapter Three seeks to move the field in this direction by arguing that a multifaceted approach to understanding its role in a democracy is required, and canvasses a number of literatures at the edges of the field for their value in strengthening the conceptual foundations of conscience voting. Theorising on its own is insufficient for a full understanding of the role of conscience voting, however, so Chapter Four discusses the principles behind its place within the Westminster system of government. Asking what contribution conscience voting makes to the practice of democracy in New Zealand, this chapter finds that five themes are central: representation, accountability, decision-making, civic function and personal conscience.

The conceptual understanding of conscience voting having been addressed, the thesis then moves to exploring how conscience voting operates within New Zealand. Chapters Five and Six demonstrate how the principles elucidated in Chapters Two to Four interacted with the political realities of colonial New Zealand to emerge as the modern concept of conscience voting. What exists today can be attributed to

(2008). Thomas D'Aquino, *Parliamentary Democracy in Canada: Issues for Reform* (Toronto: Methuen, 1983), Lucinda Flavelle and Philip Kaye, "Party Discipline and Legislative Voting," *Canadian Parliamentary Review* 9, no. 2 (1986), *Free Votes Enabling Act*, 1st Session, 36th Parliament, Bill M 205 -- 1996, Jonathan Lemco, "The Fusion of Powers, Party Discipline, and the Canadian Parliament: A Critical Assessment," *Presidential Studies Quarterly* 18, no. 2 (1988), Office of the [Canadian] Prime Minister, *Democratic Reform* (2004 [cited 24 June 2005]; available from http://pm.gc.ca/eng/dem_reform.asp).

specific issues, contexts and people, and the historic legacy of early New Zealand impacts more upon modern politics than is generally realised.

Conscience voting in New Zealand operates within a political system that has been largely designed around cohesive parties. The institution of conscience voting therefore exists in large measure outside of the parliamentary standing orders. This creates both tensions and anomalies that are relevant to the practice of conscience voting in New Zealand, and Chapter Seven discusses these with a view to addressing the question: What are the procedural issues surrounding the practice of conscience voting within a system designed around cohesive parties?

Chapters Eight and Nine recognise that the locus of conscience voting is not merely conceptual, abstract, historical or procedural but, in its actual practice, is determined by political parties and individual MPs. The challenges and issues facing each of these political agents mean that neither parties nor MPs operate with an entirely free hand. These two chapters discuss the issues faced by parties and politicians respectively when faced with a conscience matter.

Finally, Chapter Ten concludes the discussion by reflecting upon what lessons can be learned from the practice of conscience voting in New Zealand, as well as discussing what the implications of contemporary trends suggests about the future of both conscience voting and political parties in New Zealand.

Methodological Approach

As noted in later chapters, especially Chapter 2, much of the existing literature on unwhipped voting is quantitative in nature which has, in turn, given the field a particular shape. The selection of methodology tends to have a funnelling effect on the research question, design and output of social science research,⁴⁰ and this seems to be the case with the literature on conscience voting. One of the objectives of this work has been to attempt to widen the research agenda of this field by augmenting it with a more rigorous conceptual framework. Successful empirical studies require adequate theorisations of their subject matter,⁴¹ and this is one of the major contributions of this thesis. This theoretical contribution, which is the major focus of Chapter 3, complements the qualitative discussions in much of the remainder of the thesis on such subjects as the experience of parties and MPs during conscience votes and the historical emergence of conscience voting as a decision making mechanism.

At the same time, holding too tenaciously to a purely qualitative research paradigm is also limiting, as it fails to provide statistical support for the assertions being made. Quantitative analysis enables the researcher to stand at a distance, providing relatively objective assessments of the subject matter. In reality, much, even most, social science research, including in the area of parliamentary studies, is a combination of both qualitative and quantitative methodological approaches, with strict methodological 'rule breaking' the norm rather than the exception.⁴² This study, therefore, combines quantitative research with a range of qualitative techniques, including interviews, anecdotes and mini case studies.

⁴⁰ Manfred Max Bergman, "The Politics, Fashions, and Conventions of Research Methods," *Journal of Mixed Methods Research* 5, no. 2 (2011): 100.

⁴¹ *Ibid.*

⁴² Abbas Tashakkori and Charles Teddlie, "Putting the Human Back In "Human Research Methodology": The Researcher in Mixed Methods Research," *Journal of Mixed Methods Research* 4, no. 4 (2010): 271-2.

Such a mixed research methodology has the support of a dynamic and growing literature. Rather than pressing the case for the superiority of either a qualitative or quantitative approach to social research, even in a particular context, this literature explicitly recognises that a combination of both approaches not only enhances the research output but is also routinely used by researchers without necessarily being expressly admitted.⁴³ The essence of the mixed method approach is in asserting the essential compatibility between quantitative and qualitative data by weakening the link between epistemology and method.⁴⁴ That a variety of methods, rather than a limited and predetermined range, can contribute towards knowledge in any field is a foundational belief of this approach. For example, Creswell and Plano Clark demonstrate how qualitative data can illumine scientific research that is traditionally understood only with quantitative techniques.⁴⁵ These authors cite a study by Aldridge, Fraser and Huang that contained both quantitative 'experimental' stages and a qualitative 'interpretive' phase, only proceeding to make their conclusions after both stages had been completed.⁴⁶ The study sought to understand some of the intercultural differences between Australia and Taiwan that lead to students' varying classroom experiences. The qualitative information was needed to interpret and understand the quantitative data, providing a culturally sensitive basis from which to understand the differences – both similarities and interesting anomalies. This approach is not dissimilar to that used in the present study, with the quantitative data on conscience voting being augmented by parliamentarians' narratives drawn from both the official records and personal interviews. Like Aldridge, Fraser and Huang, this study also found this mixed approach provided a much higher level of certainty that the experiences of politicians and parties during conscience votes were interpreted correctly. Burnham, Lutz and Layton-Henry also assert the importance of both approaches to liberal arts disciplines such as politics, especially in enabling alternative perspectives such as feminist, anti-racist and Marxist approaches to make contributions to the wider debate.⁴⁷ Retaining methodological flexibility is vital to permitting such minority perspectives to challenge mainstream paradigms, and rests upon positing – and valuing – pragmatism as a credible paradigm in its own right. Although not a minority voice as such, conscience votes are a relatively anomalous practice within a parliamentary system that expects votes to be cast by parties, not individual MPs. Listening to the MPs' voices therefore demands research methods that are constructivist as well as institutionalist.

The mixed method approach received a boost during the post-positivist and postmodern eras because of their general scepticism of absolute values and the notion of Truth. A growing number of researchers have come to insist that both the quantitative and qualitative approaches share a number of fundamental values, such as their belief in the value-ladenness of inquiry, the belief in the theory-ladenness of facts, a belief that reality is multiple and constructed, a belief in the fallibility of knowledge, and an

⁴³ L. Datta, "Paradigm Wars: A Basis for Peaceful Coexistence and Beyond," in *The Qualitative-Quantitative Debate: New Perspectives*, ed. C. S. Reichardt and S. F. Rallis (San Francisco: Jossey-Bass, 1994).

⁴⁴ K. R. Howe, "Against the Quantitative-Qualitative Incompatibility Thesis or Dogmas Die Hard," *Educational Researcher* 17 (1988).

⁴⁵ John W. Creswell and Vicki L. Plano Clark, *Designing and Conducting Mixed Methods Research* (Thousand Oaks: Sage, 2007).

⁴⁶ J.M. Aldridge, B.J. Fraser, and T.I. Huang, "Investigating Classroom Environments in Taiwan and Australia with Multiple Research Methods," *Journal of Educational Research* 93, no. 1 (1999). in Creswell and Clark, *Designing and Conducting Mixed Methods Research*, 48-50.

⁴⁷ Peter Burnham et al., *Research Methods in Politics*, ed. B. Guy Peters, Jon Pierre, and Gerry Stoker, 2nd ed., *Political Analysis* (Basingstoke: Palgrave Macmillan, 2008).

understanding that theory is frequently underdetermined by facts.⁴⁸ The confluence between the search for more compatibility between research approaches and the tenets of the post-positivist paradigm meant that what became right was what worked, thus making the qualitative-quantitative 'war' both irrelevant and redundant.⁴⁹ Consistent with this view, the present study asserts that both quantitative and qualitative data is necessary to fully understand the concept of conscience voting because of its many-faceted nature. Conscience voting encapsulates the full range of experiences from the very human, even personal, experience of MPs during such votes, to the patterns generated at a corporate level which can only be garnered and analysed statistically if the forces generating them are to be understood. The mixed methodology is, therefore, the most appropriate for a study with this subject matter.

Most importantly, a database has been constructed of all the conscience votes held in New Zealand since the first in 1891. This database includes information about the title of the bill, the topics and subjects addressed, the total number of votes and the number of conscience votes conducted in both the House and the Committee of the Whole House, whether it was a members or government bill, whether the bill became law and, if not, what became of it, and what proportion of the conscience votes were conducted using voices, party divisions or split party votes. This information is listed comprehensively in Appendices 1 and 2 for the benefit of researchers in this area who may choose to analyse or develop it further.

From this database, summary statistics have been constructed to, at times, illustrate points made in this thesis and, at other times, present evidence to elucidate the answer to a particular question being discussed. The general principle of data presentation is that these summary statistics and other data be, for the most part, presented in table format only, the intention being that future researchers can access as much raw data as possible. For example, where percentages are calculated, the actual numbers are also provided. Graphs are used sparingly, as it is usually difficult to access the raw data behind a graph without also providing a supporting table.

In addition to the main database discussed above, a database of extracts from parliamentary debates on conscience votes was constructed from the New Zealand Parliamentary Debates, otherwise known as Hansard. These extracts also constitute part of the raw data of this research, and have furnished the study with a considerable amount of information, albeit non-statistical, on the participation of parliamentarians in conscience votes, their attitudes towards various aspects of unwhipped voting, intra-party tensions, procedural anomalies and as a narrative on the human element in parliamentary voting resulting from personal anecdotes. This qualitative raw data has been principally used to provide the range of issues facing the institutions involved in conscience voting, such as individual MPs, political parties, the media, the Speaker and parliament itself. To a considerable extent, the mining of this official record has provided the principal body of evidence from which this study draws its conclusions about conscience voting. The raw data from this database of extracts is presented in the form of quotes in

⁴⁸ C.S. Reichardt and S.F. Rallis, "Qualitative and Quantitative Inquiries Are Not Incompatible: A Call for a New Partnership," in *The Qualitative-Quantitative Debate: New Perspectives*, ed. C.S. Reichardt and S.F. Rallis (San Francisco: Jossey-Bass, 1994), 85.

⁴⁹ Abbas Tashakkori and Charles Teddlie, *Mixed Methodology: Combining Qualitative and Quantitative Approaches*, ed. Leonard Bickman and Debra J. Rog, vol. 46, *Applied Social Research Methods Series* (Thousand Oaks: Sage, 1998), 12-3, Charles Teddlie and Abbas Tashakkori, *Foundations of Mixed Methods Research: Integrating Quantitative and Qualitative Approaches in the Social and Behavioral Sciences* (Thousand Oaks: Sage, 2009).

support of particular points being made in the text, as well as noting references to the official record in general discussion. The sheer number of quotes relevant to some issues means that only those most relevant, illustrative or unique have been provided, however.

To elucidate the 'stories' of parliamentarians even further than was available in the official record, a number of current and former MPs were selected to interview one-on-one. These interviews were qualitative in nature and do not constitute a survey of MPs. The MPs were selected based on their expressed interest in the subject as measured by their comments in Hansard, particular relevance to one or more of the issues noted in this thesis, and/or their expertise or experience in a particular field of enquiry. The interview questions were, therefore, different for each interviewee. For example, Steve Maharey, Labour MP for Palmerston North and cabinet minister in the Clark Labour government from 1999 to 2005, gave several important speeches in the House on the impact the introduction of the Mixed Member Proportional electoral system would have if introduced into New Zealand. He explicitly related the need for a more inclusive electoral system to the changing structure of society away from the dichotomous class-based structure of pre-World War 2 New Zealand that the two major parties traditionally represented towards the much more diverse and fragmented society New Zealand now is. Without mentioning it by name, he was asserting the importance of the New Political Culture – discussed in Chapter Three – to justify the need for the political change that, as is commonly observed in such controversial situations, parties were distancing themselves from through the use of the conscience vote. He, more than any other MP, brought a less emotional and more scholarly approach to the issue that was worth exploring in more detail in a personal interview. Similarly, Jonathan Hunt, New Zealand's second longest serving MP, served in a range of parliamentary capacities of relevance to conscience voting including chief party whip, cabinet minister, Leader of the House and Speaker. His experience, combined with his frequent mentions of conscience voting as a valuable decision making technique, meant that a private interview with him was expected to furnish further valuable qualitative information. In addition, some non-political experts, such as the Clerk of the House and members of the press corps, were also interviewed for their unique perspectives. These interviews were conducted from 2005 to 2009, and were conducted at a time and location of the interviewees' choosing. They were also conducted within the University of Auckland's ethical guidelines, ethics approval having been obtained before they were undertaken. With the permission of the interviewees, most of the interviews were audio recorded in order that they could be analysed by the researcher at a later date. This enabled quotes obtained from these interviews, for example, to be provided verbatim. The data gleaned from these interviews was used illustratively throughout this thesis where relevant. The interviewees are listed in Appendix 4.

There are challenges in incorporating the experiential and anecdotal information provided by such 'experts' into a wider research project that is not avowedly constructivist. In the first place, it is not at all clear who constitutes an expert, who is the most relevant expert to interview, and how many experts should be interviewed. In this study, the researcher made a subjective judgement that the people questioned were likely to provide useful, or at least interesting, information on one or more issues that had already been identified from other sources as important to the institution of conscience voting. Survey methodology was not attempted due to the likelihood that this technique would still not provide responses from all or even most MPs, and that many of the experts interviewed were former, not

current, parliamentarians. Second, it is difficult for the researcher to not read into statements made by the interviewees what the researcher wants or expects to hear, especially when the interview is not highly structured. Questions are inevitably asked that are leading, because it is not just the interviewees' interests that are being explored, but also the researcher's. In addition, information provided by the interviewee is selected and utilised selectively in order to illustrate points being made or issues being raised from other sources, rather than allowing the expert to determine the research agenda on his or her own terms.

Such challenges in interviewing experts have been discussed by Bogner, Littig and Menz,⁵⁰ who suggest that expert interviews can also have a considerable attraction for social science researcher. Such interviews can shorten the data-gathering phase of research, especially in the initial phases of the project, by enabling the researcher to directly access relevant information that would be time consuming to obtain by techniques such as observation or surveys. Further, expert interviews provide access to 'inside information' that would otherwise be difficult to obtain, such as was the case in this study. In the main, the researcher is excluded from caucus rooms debates, informal agreements, political bartering and the events that form the private attitudes of MPs. Interviewing the people directly involved is by far the easiest and fastest way to obtain such information.⁵¹

In summary, this thesis has drawn upon a number of data sources, the principal ones of which are listed below.

1. Academic literature. Published works from New Zealand and overseas have been used to summarise the literature on conscience voting and related subjects. This literature has been utilised particularly in Chapters Two and Three which are the literature review and the conceptual framework for conscience voting respectively. Certain works have been particularly important and are referred to in other chapters also, such as Kelson's 'Voting in the New Zealand House of Representatives' and John Martin's *The House*.
2. The official record. The New Zealand Parliamentary Debates, otherwise known as Hansard, and the Journals of the House of Representatives have been heavily used as sources of raw data. Hansard and the Journals of the House were used extensively to calculate the list of conscience votes, obtain quantitative data for analysis of the conscience voting record and voting patterns, data-mine for information on the conscience voting process and its practice, and embellish points made with quotes and references. Less formally, official records utilised also includes lists of the MPs since 1891, reports from government and semi-government bodies such as the Law Commission, semi-official works on parliamentary practice and procedure such as David McGee's *Parliamentary Practice in New Zealand*, and a number of items on parliament's website, particularly the bills digests.
3. Personal interviews. A number of interviews were conducted, either on the phone or by email, with people of particular interest to this study. The purpose of these interviews was not to

⁵⁰ Alexander Bogner, Beate Littig, and Wolfgang Menz, eds., *Interviewing Experts, Research Methods* (Hampshire, UK: Palgrave MacMillan, 2009).

⁵¹ See also M. Meuser and U. Nagel, "Expertinneninterviews – Vielfach Erprobt, Wenig Bedacht. Ein Beitrag Zur Qualitativen Methodendiskussion," in *Qualitativ-Empirische Sozialforschung. Konzepte, Methoden, Analysen*, ed. D. Garz and K. Kraimer (Opladen: Westdeutscher Verlag, 1991)., as mentioned by Bogner, Littig, and Menz, eds., *Interviewing Experts*.

conduct a survey but to obtain some opinions and experiences of people who are or have been integrally involved in aspects of conscience voting. This qualitative data has been used to illustrate points made and to obtain information on processes not otherwise public, such as the process parties use to decide a conscience vote will be held. The interviewees included a range of current and former MPs, Speakers of the House, parliamentary staff, members of the parliamentary press corps and academics. Most were New Zealand-based but in some cases the opportunity arose to interview counterparts in Australia and Britain.

4. Biographies. Useful information on the experiences and opinions of current and former MPs, as well as changes in parliamentary practice, can often be obtained from biographies, numerous of which were read for this study. These included biographies of Sir Robert Muldoon, John A. Lee, David Lange and Michael Laws.

A number of other methodological points, listed below, are crucial to understanding the approach taken to classifying and analysing conscience votes in this study.

1. The database of conscience votes compiled for this study goes up to, and includes, August 2010.
2. Because the legislative process rather than its product is the focus of this study, the practice in almost all cases has been to refer to parliamentary bills rather than acts.
3. Bills are dated from when they were first introduced into parliament, not when they were passed into law. Thus, the Prostitution Reform Act (2003) is referred to as the Prostitution Reform Bill (2000).
4. Where a bill is renamed during its passage through the House, the practice has, in general, been to use its final name.
5. All but one of the conscience votes included in this study are legislative votes. The single exception is a series of conscience votes announced and held in 1910 during a discussion of Resolutions related to whether to repeal the licensing of bookmakers. These Resolutions were later passed into law with a subsequent Bill, but the Resolutions themselves have been included because they were explicitly conscience votes.
6. Votes on matters of parliamentary administration, such as the election of the Speaker, members of the Abortion Advisory Council or the Ombudsman have not been included in this study.
7. The treatment of bills in the Legislative Council, abolished in 1953, has not been included in this study.
8. The use of abbreviations and acronyms have been kept to a minimum, but references to Hansard are given as *NZPD* (New Zealand Parliamentary Debates), the mixed member proportional electoral system is sometimes referred to as MMP, and reference to parliament's Committee of the Whole House is occasionally shortened to CWH.

Determining A Conscience Vote Has Been Held

Conscience votes are not self-identifying, and considerable effort is required to both identify them and determine the attitudes of the parties and members involved in debates. Although a certain degree of

surmising is inevitable, the following sources are important in deciding whether or not a bill has received a conscience vote. This outline is intended to aid the interpretation of the raw data collected for this study as well as to assist future researchers.

The issue is traditionally a conscience vote

Although by no means absolute, the subject of a vote is a good clue as to its status. Some issues are almost automatically unwhipped e.g. votes on most alcohol and gambling issues, while others are always whipped e.g. budget bills. There are grey areas, however, such as divisions on purely administrative aspects of conscience issues that may not be conducted with a conscience vote.

Explicit statements from the Speaker

During the course of the debate, the Speaker may have occasion to note that the issue will be a conscience vote. He or she may do this for any number of reasons, such as a courtesy to parliamentarians or because of the need to vary regular debating procedure. Such a statement from the Speaker is fairly definitive that the whips are not operating for at least some parties, although individual parties are nevertheless still free to make their own determinations.

Explicit statements from parties via the whips

Parties themselves sometimes announce that whips will not be operating during a vote or a bill. Such a pronouncement may be made by the party whip at the beginning of, during, or even before, the debate. This information sometimes finds its way into one of the official sources such as Hansard or a select committee report, or is reported by the media.

Explicit statements from members during their speeches

Members themselves not infrequently make reference to the issue before them being a conscience vote in the course of their debate speeches. Care needs to be taken over interpreting such statements, however, as the MPs may be mistaken in their understanding, or they may simply be describing a desire rather than reality.⁵² Further, MPs may refer to the bill being a conscience issue as opposed to a conscience vote, the distinction being important to how the vote was actually treated – an issue may be a conscience issue without its vote being unwhipped and vice versa.

Explicit statements in the select committee report

On occasion, parties sometimes choose to make a voluntary statement in the select committee report that their party is treating the bill either in part or in its entirety as a conscience vote.

Colleagues disagreeing with each other during the debate

The usual attitude expressed during parliamentary debates is mutual support and respect towards party colleagues. During conscience vote debates, however, members frequently state outright that they disagree with one or more of their colleagues, not infrequently following this up by voting in the opposing lobby.

Use of personal pronouns during debate

During conscience vote debates, the personal pronoun 'I' is frequently substituted for either the plural 'we' or for the name of their party. Although such a test is not infallible – 'I' can be used even during

⁵² Former Clerk of the House of Representatives, David McGee, was dismissive of the statements of MPs, saying that "I wouldn't listen to anything an MP said." David McGee, Personal Interview, 18 February 2009.

whipped votes, and 'we' doesn't necessarily refer to their party – such terminology provides a clue as to the status of a vote.

Media reports

Statements in the media, either by MPs or by journalists, are helpful in determining the status of a vote. Members of the parliamentary press corps follow parliamentary proceedings, including conscience votes, carefully, and the whipping status of votes is sometimes reported.

Statements from MPs outside parliament

MPs may make statements during extra-parliamentary speeches, interviews or conversations that a vote was or will be unwhipped. Such statements are sometimes reported in the media, or become general knowledge in some other way.

The absence of 'pairs' during a vote

Prior to 1996, parties operated a system of 'pairing' whereby members were permitted to be absent from divisions if they could 'pair' themselves with a member from an opposing party who also wished to be absent. These 'pairs' were recorded by the Speaker and reported in Hansard. The use of pairing during a vote and its consequent reporting in the official record generally indicates that a vote was whipped, as without whipping no pairing would be necessary. Nevertheless, before around 1970, pairs were sometimes used despite the vote being unwhipped.

Party Whips as Tellers

In general, it is conventional for party whips to act as tellers during divisions that are whipped.⁵³ On the other hand, a member who calls for a division during a conscience vote is required to supply their own teller.⁵⁴ If a private member is listed as a teller, therefore, it is an indication that the vote was probably unwhipped.

The Use of 'Party Speak'

Carefully observed, a different type of dialogue is discernible during an unwhipped debate. When a bill is whipped, the language – here termed 'party speak' – is characterised by the greater use of argument than opinion, higher levels of personal attacks, recourse to pre-prepared notes, and use of the third person. Conversely, during conscience votes the opposite is more evident.

Voting patterns

Some degree of party-splitting is commonly observable during conscience votes, and the voting patterns are therefore useful in determining whether or not they were whipped, but the use of these patterns nevertheless requires caution. Other clues are needed to distinguish split-voting from mere dissent, for example, and, conversely, a conscience vote may still have occurred even though members of a party voted in unison.

Specifically Post-1996 Indicators

Personal vote (post 1996)

Although not strictly necessitated by the introduction of MMP, the voting procedure was amended in 1996 to include not just two stages (voice vote and division) but three – Voice Vote, Party Vote and

⁵³ Henry J. L. May, "The Role of the Whips," *Political Science* 15, no. 2 (1963): 52.

⁵⁴ *NZPD*, Vol. 461, 8 March 1985, 3519. Homosexual Law Reform Bill, Jim McLay

Personal Vote. The Party Vote enables, for the first time, each party to cast its vote as a corporate entity, and distinguishes it from the Personal Vote which remains a vote cast by individual MPs. As a result, a Personal Vote can be assumed to be an unwhipped vote with a very high degree of certainty.

Proxy voting

As a replacement for the informal system of 'pairing', the post-1996 Standing Orders permits proxy voting, irrespective of the cause of the absence. Proxy votes are only cast during Personal Votes because the party has an automatic proxy during Party Votes.⁵⁵ Thus, if a proxy vote is cast, it can be safely assumed that the division was unwhipped.

Split-Party Voting

An additional post-1996 innovation was the permitting of Split Party Voting. A party may cast a proportion of its votes in both, rather than the usual single, lobby. Although the MPs themselves do not personally enter their lobby of choice, their party agrees to cast their preferred vote on their behalf. Split Party Votes are, technically, Party Votes, but they occupy a grey area for conscience voting, discussed further in Chapter Seven, in which a Party Vote (i.e. a whipped vote) is technically cast but a caucus split leads the party to cast votes in both lobbies. Given that the individual member still appears to have a determining role in their voting decision, and given that the party agrees to the split, it can be distinguished from mere dissent and considered a form of conscience voting.⁵⁶

Challenges to Determining a Conscience Vote

Despite the battery of indicators listed above and the comprehensiveness of New Zealand's official records, a number of factors make the researcher's task challenging when investigating conscience voting.

1. Prior to 1891, parties were relatively loose associations of men with common interests. Voting along party lines was not, therefore, a feature of parliamentary life, and the concept of the conscience vote pre-1891 is almost a misnomer. Even after 1891, party discipline was not tight by modern standards and many bills were not strongly whipped – members crossed the floor frequently and without penalty. The distinction between a whipped and an unwhipped vote was not definitive until as late as 1930.
2. Conscience votes may be applied to specific, and sometimes minor, parts of bills and not the complete piece of legislation. Most bills receive multiple votes throughout their passage through parliament, and not all of these votes are necessarily treated the same way. The attitudes and intentions of MPs and parties are commonly different at each stage of the legislative process.⁵⁷ The first reading, for example, may be a party vote whilst the second reading a conscience vote. It is not unusual for a bill to contain a single aspect over which one or more parties grant a conscience vote, the rest of the bill being a party vote. The Transport Safety Bill (1991), for

⁵⁵ These terms and distinctions are discussed further in Chapter Seven.

⁵⁶ An example of a split party vote is the Land Transport Bill 1998 during which the Labour party split its vote on the 3rd reading, 8 for the Ayes and 29 for the Noes. *NZPD*, Vol. 574, 3 December 1998, 13834. Compare this to the Foreshore and Seabed Bill 2004, where the Labour party cast a Party Vote only in the Ayes lobby but two of its members dissented and were therefore entered, in accordance with the Standing Orders, in the Journals under 'Other Votes' to indicate votes that are not part of a party vote. *NZPD*, Vol. 617, 6 May 2004, 12743.

⁵⁷ See *NZPD*, Vol. 412, 19 August 1977, 2362. Contraception, Sterilisation, and Abortion Bill, George Gair

example, was a conscience vote for just a few provisions in the Committee stage pertaining to random breath testing and driver alcohol levels.

3. Because the use of unwhipped voting is generally a party rather than parliamentary decision, the voting procedure on a bill is often not uniform between the parties. Thus, many conscience votes are unwhipped by some parties and whipped by others.
4. Although the institutional outcome is the same regardless of the motive for the conscience vote, it must not be assumed that conscience votes are necessarily the result of high principles as opposed to political pragmatism. A conscience vote may differ little from other forms of party division.

- Dissent

A party may declare a conscience vote when there would otherwise be a risk of members crossing the floor, thus blurring the distinction between a conscience vote and dissent.⁵⁸ Although members crossing the floor and/or abstaining are reminiscent of some aspects of conscience voting, the presence of one or more dissenting members does not automatically qualify a bill to be classified as a conscience vote. An element of agreement between the party and its members that a vote will be unwhipped as well as a degree of universality of the vote being unwhipped for the whole party is required. The National party has been known to excuse their members from supporting a bill they knew would result in some of their members crossing the floor, as in 1957 when Roman Catholic candidates were explicitly excused from supporting their party over the issue of state aid to private schools.⁵⁹ Labour, at times, has also permitted a degree of dissent. Liberalisation of the law relating to homosexuality was Labour policy, but the Homosexual Law Reform Bill (1985) was a conscience vote for all members because of a number of Labour members who would have dissented.⁶⁰

- Split Party Voting

The potential for dissent is also sometimes the motive for the use of split-party voting, discussed elsewhere in this chapter. The second reading of the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill (2005) was a split party vote for the National party because one of their members disagreed with the position of the rest of her party. The National party judged a split party vote to be a better alternative than risking overt dissent. Pre-1996, this scenario would have resulted in a conscience vote as the only alternative to a party vote. Such situations make it difficult to classify these votes, particularly when a conscience vote proper is not also held.

- Managed opposition

On rare occasions, a conscience vote may be held in order to ensure a debate is

⁵⁸ Former MP Marilyn Waring wrote: "I remember Joe Walding [MP for Palmerston North] crossing the floor once: minutes before the bill was declared a "conscience" issue on the grounds that it contained clauses relating to liquor licensing." Marilyn Waring, "Contract or Conscience?," *NZ Listener*, September 24 1988.

⁵⁹ R.S. Milne, *Political Parties in New Zealand* (London: Oxford University Press, 1966), 140.

⁶⁰ Maryan Street, Personal Interview, 30 August 2007. For discussions of cross-voting vis-à-vis conscience voting in New Zealand see also Sharon P. Cottrell, "Parliament and Conscience" (University of Canterbury, 1974), Michael Hobby, "The Crack of the Whip? : Party Cohesiveness and Institutional Consensus : The New Zealand House of Representatives, 1936-85" (University of Canterbury, 1987).

created. Although no examples of this are known to have occurred in New Zealand, such a scenario has been observed in Australia:

I want to make it clear that it is clearly government policy to have this referendum and therefore this measure has the support of the government. But, because of the provisions in the referendum legislation, if there is to be a formal no case circulated there must obviously be managed opposition to the bill. That is the reason why some of my colleagues, with my full support and authority, are going to vote against this measure, so they can be the authors of the no case.⁶¹

5. A party may announce that their members are free from the whip but the voting record might indicate a bloc vote, making it unclear 1) to what extent it was actually considered free by the individual members of the caucus, and 2) which aspects of the bill were unwhipped and which were not. For example, while officially an unwhipped vote for National MPs, all members of that party agreed to vote together during consideration of the select committee report on the Matrimonial Property Amendment Bill (2000). During the debate on that bill, Tony Ryall, a National party spokesman, stated that “while at the end of this debate there will be a free vote, National MPs have agreed to vote en bloc against the reporting back of this bill.”⁶² Parties themselves sometimes refer to this scenario as a ‘collective conscience vote’, an unofficial but widely recognised term denoting the freedom of party members from the party whip vote but also, as a result of discussion in caucus, their (freely reached) unanimity of opinion.⁶³ Such an occasion was the Broadcasting (Television Advertising of Liquor) Bill (1983) where the leader of the Labour party announced during a media interview that his party would be casting a ‘collective conscience vote.’⁶⁴
6. MPs sometimes state that a bill is unwhipped when in fact this is not the case. Declarations of a conscience vote are not necessarily sufficient to enable such a conclusion, even when a division is held. During the introduction of the Mixed Member Proportional Representation Referendum Bill (1992), a National member asserted that she was treating it as a conscience vote even though her party clearly didn’t view it this way.⁶⁵ The cleavage between the concepts of a conscience vote and a conscience issue, discussed earlier in this chapter, is partly responsible for such confusion. Sometimes MPs say the former when they mean the latter and, when they do, it does not automatically mean that the vote will be unwhipped. In such situations, the MP is stating that this is a conscience issue within the traditional understanding of that term, without necessarily meaning to imply that their party has agreed to remove the whip when the vote is actually taken. A second reason for the confusion is that a number of conscience issues, such as road safety, are treated by parliament in a non-partisan manner. Thus, when MPs say that they are free to vote as they like, they are sometimes referring to the fact that all parliamentarians have agreed to work together without recourse to party politics.

⁶¹ *Debates*, 9 August 1999, 8173, House of Representatives, Constitution Alteration (Establishment of Republic) Bill, John Howard, in McKeown and Lundie, "Conscience Votes in the Federal Parliament since 1996."

⁶² *NZPD*, Vol. 588, 14 November 2000, 6518. Matrimonial Property Amendment Bill

⁶³ Although National MPs have alleged, at various times, that a collective conscience vote is a peculiarity of the Labour Party's constitution deriving from Labour's Rule 242, neither the term nor the concept is officially part of the constitution of any of the parties that have been in the New Zealand parliament.

⁶⁴ *NZPD*, Vol. 451, 29 July 1983, 943

⁶⁵ *NZPD*, Vol. 530, 7 October 1992, 11545. Christine Fletcher

7. In some instances, parties may state a preferred policy position on a conscience issue, blurring the distinction between unwhipped and whipped voting. Party positions may even be explicitly acknowledged and voting patterns may also show little or no dissent, despite it officially being a conscience vote. There may be a number of reasons why party positions might legitimately exist during a conscience vote.
- While the party itself may have determined to act as a party on the matter, they might feel powerless to prevent a conscience vote from being conducted because of tradition, precedent, convention or the expectations of MPs.
 - A party may formally have a policy position on the matter but permit a conscience vote to occur to accommodate the views of one or more insistent members. During the Fencing of Swimming Pools Bill (1986), the voting patterns made it appear as if the Labour caucus was wholly unified in support of it, but the Bill's sponsor admitted that while most of his caucus supported the measure, there were some members of his party who were about to "find it necessary to be devoting themselves to urgent public business elsewhere at the time the Bill comes before the House."⁶⁶
 - A party may act as a party on just some stages of a conscience bill's progress through parliament, after which members will be unwhipped. During the Sale of Liquor (Objections to Applications) Amendment Bill (2008), one speaker referred to the role of party in an earlier stage of the Bill:

On behalf of the National Party I am very pleased to say that we will support the Sale of Liquor (Objections to Applications) Amendment Bill going to the select committee. It is very unusual in a matter like this to have party support as opposed to a conscience vote, but I think that most people in this House certainly appreciate the fact that...over-consumption of liquor has become a severe problem in parts of the country.⁶⁷
8. Most conscience votes involve divisions, but sometimes this is not the case. A total of 27 conscience bills have passed through parliament without a division being held but which were clearly considered by the parliamentary participants to have been unwhipped. Examples include the Broadcasting (Liquor Advertising) Bill (1992), the Sale of Liquor (Off-Licence) Amendment Bill (1991), the Racing Amendment Bill (1988), the Broadcasting (Television Advertising of Liquor) Bill (1983), and the Licensing Amendment Bills of 1963 and 1981. The challenge of classifying such bills is that voting patterns are of no assistance in determining the whipping status of the vote because only the outcome, not the voting decisions of individual MPs, are recorded during voice votes. This study has taken the approach that a bill may be unwhipped without actually receiving a division – the important component is freedom from the party whip, and this may be exercised with the voice as well as the feet.
9. Some matters such as alcohol, gambling and Sunday trading are perennial conscience issues and are granted unwhipped votes as a matter of course. The presence of certain factors, however, mean that, even in these cases, it cannot be assumed that every vote will be so treated.

⁶⁶ NZPD, Vol. 479, 1 April 1987, 8228. Fencing of Swimming Pools Bill

⁶⁷ NZPD, Vol. 648, 2 July 2008, 17155. Judith Collins

- Bills on conscience issues that primarily contain administrative provisions are often not treated with conscience votes. Such was the case with the Gaming and Lotteries Amendment Bill (No.2) (1991) which “merely tidie[d] up the Gaming and Lotteries Act as it relates to machine gaming.”⁶⁸ A lengthy discussion ensued during debate on the Sale of Liquor Bill (1989) about which aspects of the bill should be considered a conscience vote because most of it, though ostensibly about alcohol, was administrative in nature.⁶⁹ And during the Contraception, Sterilisation, and Abortion Bill (1977) the Speaker was mindful of the distinction between a conscience issue and a procedural matter in his reluctance to accept a closure motion during discussion on the order of the day: “I am always reluctant to accept the closure motion on a matter which involves a free vote in the House, or a conscience vote, but I am not too sure that this is a conscience matter—it is more a procedural matter.”⁷⁰
- Some conscience votes are held on non-legislative matters, and have not been included in this study. Examples of these votes include the election of the Speaker at the beginning of each parliament, appointments to the Abortion Supervisory Committee, votes on reviews of the parliamentary Standing Orders, and the now obsolete practice of holding a non-party vote on the end-of-session adjournment vote.⁷¹
- Prior to 1996, private members bills that involved the appropriation of money either directly or indirectly were not permitted to be introduced without the assent of the government or a message from the Governor General.⁷² The subsequent involvement of the government in such bills means that, consequently, they are not usually treated as conscience votes despite involving a conscience issue. The Gaming Duties Amendment Bill (1995), for example, was a party vote because, though ostensibly involving gambling, it contained provisions affecting the taxation of the gaming industry.

⁶⁸ *NZPD*, Vol. 518, 5 August 1991, 3776. Peter Tapsell

⁶⁹ For example, questions about the administrative body responsible for the issuing of liquor licenses. See *NZPD*, Vol. 498, 30 May 1989, 10965, Robert Tizard. See also *NZPD*, Vol. 345, 22 October 1965, 3772. Sale of Liquor Amendment Bill, Ralph Hanan

⁷⁰ *NZPD*, Vol. 416, 13 December 1977, 5308. Contraception, Sterilisation, and Abortion Bill, Acting Speaker

⁷¹ Martin explains that, in the first half of the twentieth century, “the House would engage in a ‘mock Parliament’ on the final day of the session” after the inevitable rush of legislation late in a parliamentary session. The final day “would culminate with the motion to adjourn the House. In 1888 the practice of calling the House into the Council chamber to hear the proroguing of Parliament ... was abandoned. From then on, the Premier (as Leader of the House) moved the adjournment, and then the Governor proclaimed the prorogation in the Gazette. Often a division was called on this motion, more to record those remaining to the bitter end than as a real contest. By the 1920s the humorous custom of negating the adjournment motion had developed, and the Speaker had to be inventive to bring proceedings to a close. The practice continued during the first Labour government, and by the 1940s this division was described facetiously as the only truly non-party vote left in the House. By now a one-vote majority was engineered, usually recorded by absurdly appointed tellers and with a distribution of voters that mocked the usual lines of difference in the House.” John E. Martin, *The House: New Zealand’s House of Representatives 1854-2004* (Palmerston North: Dunmore Publishing, 2004), 198.

⁷² Since 1996, a financial veto can be exercised by the government i.e. the default position is now reversed, in that private members bills involving an appropriation may now be introduced, but the government can stop them if they do not wish them to proceed. See House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 316. Also see further discussion of this in Chapter Seven. For the pre-1996 situation, see the discussion during the Contraception, Sterilisation, and Abortion Amendment Bill, *NZPD*, Vol. 503, 5 December 1989, 14217-20

Similarly, the Adult Adoption Information Amendment Bill (1991) was not a conscience vote because it dealt exclusively with the charging of fees for adoption information.⁷³

10. Bills are sometimes split into more than one piece of legislation at some point in their passage and it is debatable whether each resulting bill should be treated as a separate conscience vote, or just the main bill. This issue contains a number of distinct manifestations which become important when calculating conscience voting statistics:

- Both 'parent' and 'child' bills receive conscience votes.
The Relationships (Statutory References) Bill (2004), for example, was originally introduced into the House as a single piece of legislation but was split into 23 separate bills by the Committee of the Whole House upon recommendation of the Justice and Electoral Select Committee after its second reading. All 23 bills passed into law in 2005 after each receiving a personal vote on its third reading. The bill as a whole was clearly a conscience issue, but the question remains: is this one conscience bill or 23?
- The parent bill receives a conscience vote but the child bills do not.
The Care of Children Bill (2003), which had received conscience votes, was split into two bills by the Committee of the Whole House. The child bills were both subsequently successfully progressed to their third reading with party votes. In this case, the question becomes: Is this one conscience bill or two?
- The parent bill receives a conscience vote but only some of the child bills do.
The Racing Amendment Bill (1994) progressed with conscience votes to its final stages and was split into six separate bills after the Committee stage, only three of which were conscience votes during their third readings. Is this one, three or six conscience bills?
- The parent bill does not receive a conscience vote but one or more of the child bills do.
With respect to statistical analysis, should the parent and sibling bills be ignored?
- A child bill is elevated to the status of a parent bill.
The Sale Of Liquor (Youth Alcohol Harm Reduction) Amendment Bill (2005), for example, was split into two bills upon recommendation of the select committee, with the first bill being negatived at its second reading, and the second beginning the legislative process again with another first (and second) reading. This study considers these to be two separate (parent) bills.

For the sake of simplicity and to avoid duplication, this thesis has counted only the 'parent' bills, not the 'child' bills, except in the final case cited above.

11. Conscience votes are frequently, and sometimes solely, conducted during the Committee stage. Although technically these are not votes of the House but of the Committee of the Whole House, they have been included in this study. Unfortunately, before 1996 Hansard did not record debate during the Committal, only the outcomes of votes, thus preventing as comprehensive an assessment as is preferable regarding which of these votes were unwhipped.

⁷³ NZPD, Vol. 518, 5 August 1991, 3835. Adult Information Adoption Amendment Bill, Jonathan Hunt

12. A range of matters are explicitly non-partisan, making these votes a special kind of conscience vote. For example, in the early twentieth century, education policy was an issue over which party lines were not taken and a consensus was actively sought. Foreign affairs was, between 1946 and the late 1960s, similarly treated. When electoral reform has been discussed it has also usually been non-partisan, a pattern that persists today, and many decisions made by the coalition war governments were also above party policy. In addition, at various times a number of relatively non-partisan committees have operated, including the Parliamentary Service Commission (instituted in 1985), the Privileges Committee, the Local Bills Committee, the Public Expenditure Committee (from 1962 to 1985), the Electoral Law Committee (1956), the post-1956 Representation Committee, and the Business Committee (established upon the introduction of MMP in 1996). Non-partisan legislation, in which members are clearly free to vote as they please, has been included in this study.
13. Divisions on administrative provisions are usually whipped, even during conscience votes. For example, votes on urgency motions and referrals to select committees are almost always done on a party basis.
14. Dissent and/or conscience voting may be masked by ostensibly legitimate parliamentary practices. For example, the advent of Party Voting in 1996 enabled parties to vote as corporate entities on behalf of their members, but no requirement existed or exists for parties to a) cast votes for all of their members, b) notify the House that they are casting less votes than the number of their members, or c) name the members who have been excluded from the Party Vote. Although the reason for casting less votes than they are entitled to may be entirely mundane, it is also a way of effectively masking dissent where the party does not wish to draw attention to the fact. Thus, one or more party members who do not agree with the party position may be happy to cast a form of 'abstention' by means of simply not being included in the Party Vote count. This makes it extremely difficult to determine whether dissent and/or freedom from the whip is present.
15. A bill that has been treated as a conscience matter may not actually become law. Approximately a quarter of bills receiving conscience votes fail to gain a majority or are merely discharged before their final reading. Examples of bills with this fate include the Sale of Liquor (Health Warnings) Amendment Bill (2000), the Death with Dignity Bill (2003) and the Shop Trading Hours (Easter Trading Local Exemption) Bill (2004).

CHAPTER TWO: THE CONSCIENCE VOTING LITERATURE

Conscience voting is a poorly studied phenomenon, and there seems to be no obvious explanation as to why this should be the case. The interest generated in conscience issues is greater than would ordinarily be implied by the relatively small number of unwhipped votes – the mere fact of the uncertainty of outcome gives these votes an interest and a media profile that would be otherwise lacking; the subjects of conscience votes – abortion, euthanasia, prostitution and gambling among them – can hardly be said to be unimportant; the procedural implications of the conscience voting mechanism are constitutionally significant; and the political implications of the increasing use of conscience votes are significant for MPs, political parties and parliament. A more robust understanding of conscience voting is needed, but it needn't be independent of the current, albeit sparse, literature. To this end, this chapter places the current study in the sequence of the few conscience voting studies that have been done since 1970, as well as locating its content within the themes that have emerged from this literature.

The overview in this chapter is in four parts. First, obstacles that may have held, or may be holding, the field back are discussed. Second, the emergence of the literature on conscience voting is considered through an historical lens. Third, the patterns of conscience votes and conscience voting are explained from the findings of the current literature. Finally, the state of the literature is summarised.

Obstacles to the Study of Conscience Voting

Samuel Beer's view that party cohesion in the late 1960s "was so close to 100 per cent that there was no longer any point in measuring it"¹ seemed to have an influence on parliamentary studies long after it was understood to be inaccurate. The assumption of irrelevancy that came to prevail as a result worked against studying conscience voting for such aspects as its democratic contribution (e.g. does it contribute to better democratic representation?), its institutional role (e.g. how does it contribute to the respect given to parliament?), its historical place (e.g. how and why did it develop?), its philosophical tensions (e.g. what is the role of personal conscience in the midst of parties based on corporate solidarity and an adversarial parliament?), or even its conceptual value (e.g. what can it tell us about what we as a society value?).

Progress on the conceptual aspects of conscience voting has been slow for a number of reasons, including because such questions are not easy to answer. Take, for example, the question of what a conscience issue actually is. Various attempts at explanation are contained within the literature, but none treat the subject comprehensively or holistically. Cowley, for instance, in his otherwise useful volume *Conscience and Parliament*,² expressed himself obligated to attempt a systematic definition of conscience issues, but after a half-hearted survey of the possibilities he declared that "it is impossible to define clearly what we mean by an issue of conscience."³ What he meant was that he was not able to account for every instance of conscience voting with the prima facie explanations he had canvassed, but in his next sentence he admitted the inadequacy of this: "whatever should be, there *are* at present issues within British politics which are seen as special because of their supposed 'moral' nature", and

¹ Samuel H. Beer, *Modern British Politics* (London: Faber, 1969), 350-1.

² Philip Cowley, ed., *Conscience and Parliament* (London: Frank Cass Publishers, 1998).

³ Philip Cowley, "Introduction," in *Conscience and Parliament*, ed. Philip Cowley (London: Frank Cass Publishers, 1998), 3.

"[t]he phrases 'issue of conscience' and 'moral issues' are a frequently used, convenient, but essentially misleading shorthand for these issues."⁴ In the academic equivalent of throwing in the towel, Cowley concluded that free vote issues are simply those matters that are treated with free votes. Cowley's contribution cannot claim infancy of the subject matter in its defence. His book is one of the latest publications in this field and merely reflects the poor progress made since conscience voting as a subject of inquiry was first identified by the academic community.

Conceptual challenges aside, there is a further obstacle to high quality investigative work on the subject: reliable analysis is also challenging. There is considerable complexity in identifying the relevant factors and explaining their operation, even for the empirical aspects of conscience voting such as voting patterns. Researchers have employed a range of statistical techniques such as least squares regression, logistics regression and factor analysis, but it is naïve to believe that they are sufficient on their own. Not all voting behaviour is explainable with such models, and many factors such as interest group activity, direct constituency pressure, covert party pressures, public opinion, the debate in the House, personal conscience and prejudices of the MP and the general political climate are not readily quantifiable. In addition, measurement of non-attendance at conscience vote divisions is complicated by unquantifiable factors such as ill health, constituency work or other commitments that have non-random effects.⁵ Further, the institutional structure of conscience voting may in itself also act to encourage MPs towards non-voting with similar effects. The traditionally close association between unwhipped votes and private members bills in Britain, for example, means that certain patterns are replicated during conscience votes in the way in which they are introduced, handled by the House, and voted upon. Conscience vote divisions almost always occur on a Friday in that country, for instance, which coincides with the day on which attendance in the House is lowest. Sometimes they are also held at a time when MPs are travelling back to their constituencies, a particular disadvantage for those that are far from London and therefore need to leave earlier. Regional effects may therefore be exaggerated in such circumstances as British MPs from northern districts, Scotland, and Northern Ireland have been shown to vote differently on some issues than their more southern counterparts.⁶ Further, British parliamentary convention dictates that ministers of the crown do not vote on 10 minute rule bills, further skewing the voting patterns of unwhipped votes in that country.⁷

The Emergence of Conscience Voting Literature

Conscience voting as a subject in its own right did not attract significant scholarly attention until the 1970s when Peter Richards published his benchmark *Parliament and Conscience*. Prior to this time, parliamentary works tended to merely allude to conscience voting in the course of discussing related subjects. In Britain, for example, unwhipped votes were dealt with in the context of subjects such as the

⁴ Ibid.

⁵ Charles Pattie, Ron Johnston, and Mark Stuart, "Voting without Party?," in *Conscience and Parliament*, ed. Philip Cowley (London: Frank Cass Publishers, 1998), 150.

⁶ John R. Hibbing and David Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes," *Legislative Studies Quarterly* 12, no. 2 (1987).

⁷ Private members legislation that is introduced and allocated just 10 minutes of debating time. A kind of mini debate that serves to raise the consciousness of parliament on the issue. Commonly, although not usually, an unwhipped vote.

English style of parliamentary government,⁸ parliamentary divisions,⁹ whipping,¹⁰ party dissidence,¹¹ capital punishment,¹² private members' bills,¹³ backbenchers,¹⁴ pressure groups¹⁵ and public policy.¹⁶

Richards' was the first work to confront the subject head on, although even he was primarily concerned with the role of conscience in parliament rather than conscience voting *per se*. In keeping with his heavy use of case studies to examine how parliament deals with moral issues, Richards' tone throughout the book was essentially historical rather than analytical, describing the course of events rather than analysing them. His use of case studies contextualised the conscience vote, enabling a considerable amount of detail to be provided about factions, tensions, internal discussions, parliamentary anomalies and the causes of particular political responses, but by themselves they were limited in the extent to which they could construct a conceptual framework.

As the first study of its kind, Richards established a template for future studies that began not with conscience voting *per se*, but with the legislative issue over which the unwhipped vote was put to use. His treatment of the subject with case studies was adopted by subsequent researchers, despite the fact that some branches of the social sciences had by then begun to adopt more synthetic approaches to research. To this extent, Richards' study was a product of its time, bound by 1960s approaches to social science. As a benchmark study for the subfield of conscience voting, it had an enduring influence that is felt even today.

Richards' approach led, naturally enough, to conclusions that were largely generic. In his summation, Richards reflected approvingly upon the role conscience voting played in British parliamentary democracy. He noted, though failed to prove, that conscience voting produced effects that amounted to "a healthy advance for democratic values", including giving parliament "a new vitality", members being "forced to think for themselves about the questions at issue," putting "Parliament at the heart of the decision-making process," and, due to the recessive position of parties during conscience votes, enabling "problems to be faced that would otherwise be avoided."¹⁷

In 1979, Pothier, perhaps inspired by Richards, conducted a case study of a series of four capital punishment debates in the Canadian House of Commons. Though a case study in the Richards mould, Pothier's article is engaging and satisfying – its heavy use of personal interviews with relevant participants, its perceptive blending of the opinions presented with a discussion of the definition of a conscience vote, and its balanced consideration of the role of conscience voting in a democratic

⁸ Harold Laski, *Parliamentary Government in England* (New York: The Viking Press, 1938).

⁹ Leslie Wolf-Phillips, "Parliamentary Divisions and Proxy Voting," *Parliamentary Affairs* 18, no. 4 (1964).

¹⁰ Viscount Gladstone, "The Chief Whip in the British Parliament," *The American Political Science Review* 21, no. 3 (1927).

¹¹ Hugh Berrington, "Partisanship and Dissidence in the Nineteenth-Century House of Commons," *Parliamentary Affairs* 21 (1968).

¹² James B. Christoph, *Capital Punishment and British Politics: The British Movement to Abolish the Death Penalty 1945-1957* (Chicago: Chicago University Press, 1962).

¹³ Peter Bromhead, *Private Members Bills in the British Parliament* (London: Routledge and Kegan Paul, 1956), Peter Richards, "Private Members Legislation," in *The House of Commons in the Twentieth Century*, ed. S.A. Walkland (Oxford: Clarendon Press, 1979), Peter Richards, "Private Members Legislation," in *The Commons in the Seventies*, ed. S.A. Walkland and Michael Ryle (London: Martin Robinson, 1977).

¹⁴ Philip Norton, "Private Legislation and the Influence of the Backbench MP," *Parliamentary Affairs* 30 (1977), Peter G. Richards, *The Backbenchers* (London: Faber and Faber, 1972).

¹⁵ Bridget Pym, *Pressure Groups and the Permissive Society* (Newton Abbot: David and Charles, 1974).

¹⁶ Ivor Burton and Gavin Drewry, *Legislation and Public Policy: Public Bills in the 1970-74 Parliament* (London: Macmillan, 1981).

¹⁷ Richards, *Parliament and Conscience*, 215.

parliament makes this one of the best studies of its type in this field. Unfortunately, it is also one of the least cited articles in this field, perhaps because its Canadian focus makes it less useful to a field dominated by British academics.

Pothier came to view the use of conscience voting in Canada as something of a last resort for parties. Even on an issue like capital punishment, conscience voting was only used "by default [because] ...divisions within the two major parties were so strong"¹⁸ there was no alternative. Pothier traced this predisposition towards party politics, even on a conscience issue like capital punishment, to the strongly entrenched partisan nature of both federal and provincial politics in Canada. The author pressed the enquiry further towards whether a more regular loosening of party discipline would be beneficial for parliamentary government. Such a question reflects a long-standing debate in Canada about the power of the executive¹⁹ – does it dominate the political agenda too much? Should every parliamentary vote be considered a vote of confidence? And how can backbenchers be given more power whilst still recognising the central role of parties in parliamentary government? In this context, many Canadians believe that free voting has the promise to shift the balance of power away from the executive towards parliament itself. Taking the series of capital punishment bills as case studies of such a question, Pothier essentially concludes that the regular use of conscience voting, though empowering backbenchers, would have the effect of substantially altering the way parliament operated. In particular, parties would find alternative methods of gauging and influencing the opinions of its members, though considerable time and expense would be expended in doing so. Drawing upon the experience of the capital punishment debates, strong motivations for maintaining traditional party discipline are provided by the greater efficiency of time and effort gained by doing so and the commensurate increase in predictability of the voting outcome. For these reasons, Pothier believed it unlikely that conscience votes "on other issues will become the wave of the future"²⁰ in Canada, at least. So far, her expectation appears prescient.

The sparing use of quantitative analysis in these scholarly pieces began to change in 1980 when Moyser presented a classification analysis of some conscience voting patterns in the British House of Commons in the second half of the 1960s,²¹ roughly the same period Richards had considered. Moyser's quantitative analysis, while pioneering, was published only in conference proceedings, however, and did not reach a wide audience. Its use of statistical tools was also rudimentary, lacking a test of statistical significance, for example.

Hibbing and Marsh perceived these shortcomings and, setting out to rectify them, published their results in 1987.²² Their intention was "to improve upon these scattered attempts to come to terms with the reasons MPs vote the way they do when they are not forced to follow the mandates of the party."²³ Hibbing and Marsh's approach was unashamedly statistical and focused upon micro-patterns. As such,

¹⁸ Dianne Pothier, "Parties and Free Votes in the Canadian House of Commons: The Case of Capital Punishment," *Journal of Canadian Studies* (1979): 92.

¹⁹ D'Aquino, *Issues for Reform*, Flavelle and Kaye, "Party Discipline.", Lemco, "The Fusion of Powers, Party Discipline, and the Canadian Parliament.", James A. McGrath, "Report of the Special Committee on Reform of the House of Commons," (Ottawa: 1985).

²⁰ Pothier, "Parties and Free Votes in the Canadian House of Commons," 94.

²¹ George Moyser, "Voting Patterns on Moral Issues in the British House of Commons, 1964-1969," in *Annual Conference of the Political Studies Association* (Exeter, UK: 1980).

²² Hibbing and Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes."

²³ *Ibid.*: 279.

their subjects were individual MPs, the dependent variable was the voting patterns of these MPs, and the independent variables included party affiliation, age, gender, religion, union membership, education, previous occupation, electoral security (seat marginality), and the location of the MP's constituency.

Their analysis, like the earlier studies, revealed that party allegiance was, by far, the most influential predictor of voting behaviour even when whips were not operating. MPs' voting patterns during unwhipped votes were closely correlated with that of their party colleagues. As Hibbing and Marsh pointed out, however, such a correlation "leaves much unexplained."²⁴ Questions remain, for example, about why colleagues from the respective parties were more or less split depending upon the issue, and whether correlation with party allegiance represents a continuing concern with party loyalty and promotion prospects or whether shared policy views motivate colleagues to vote together. In addition, a significant proportion of voting behaviour is not attributable to party allegiance but to other factors, and these additional factors, such as constituency characteristics, region and religion, will vary with political and historical context. In Britain of the 1960s and 1970s, all of these factors were relatively important – Britain's plurality voting system ensured that at least some consideration of the views of constituents was likely, the presence of Irish and Scottish nationalists in the parliament as well as a strong contrast between urban and rural, and northern and southern, constituents made region relevant factors, and a strong Catholic presence amongst both the community and MPs meant a religious effect was likely to show up in voting patterns during unwhipped votes. All of these factors have, perhaps, lessened in the Britain of the 21st century, and, regardless, they certainly differ from other countries such as New Zealand.

Other researchers replicated Hibbing and Marsh's study. Just one year later, another analysis of voting patterns came to a similar conclusion – party was indeed the most important independent variable in the decisions MPs make during unwhipped votes.²⁵ The authors, Marsh and Read, were engaged at the time in a larger project of examining the procedures, processes and politics of private members bills in Britain, and, for them, free voting was an aspect of this wider process. In that country, especially in the 1960s, private members bills and conscience votes were largely synonymous, with the latter giving procedural expression to the former, and the former defining the subjects of the latter. This relationship was begun and fostered during the so-called 'golden age' of private members bills when most were, indeed, granted unwhipped votes.²⁶ The coupling of private members bills and free votes in Britain is less automatic now, but the perception that there is a close relationship between them persists, the legacy of both the actual situation during the 1960s and studies such as Marsh and Read's that drew attention to it.

In one way, situating the study of free voting in its political context is both healthy and necessary. Yet at the same time it serves to illustrate the fact that the study of conscience voting has largely been considered a secondary outcome of the study of other, more important, political processes. It also makes it difficult to extract principles that could illuminate comparative studies of the subject. The ballot for the drawing of private members bills, the ways in which private members bills may be introduced, the

²⁴ *Ibid.*: 292.

²⁵ David Marsh and Melvyn Read, *Private Members' Bills* (Cambridge: Cambridge University Press, 1988).

²⁶ Philip Cowley, "Unbridled Passions? Free Votes, Issues of Conscience and the Accountability of British Members of Parliament," *Journal of Legislative Studies* 4, no. 2 (1998): 75.

time allocated to their debate, and the tactics used to defeat them²⁷ are, or were, all highly relevant to free voting in Britain but are less so in most other countries.

By the end of the twentieth century, parliaments around the world were responding to a range of socio-demographic forces. Demographic diversity, cultural renaissance, the rise of radical religion, the relationship between morality and law and between religion and the state, multiculturalism, a heightened focus upon individual rights and the appropriate shape of representative democracy in a postmodern society provided a new imperative for parliamentary research. The academic study of parliament was believed by some to have stagnated, however, requiring a new focus upon analysis rather than description if it was to become relevant to the modern world.²⁸

In this context, some researchers gained, albeit hesitatingly, an appreciation of the vast and untapped potential of conscience voting to illuminate such matters as parliamentary decision making processes, party discipline, the role of an MP, the relationship between the member and his or her constituents, and the implications of a polity's electoral system on its politics. It is therefore no coincidence that by the mid-1990s the most productive period in the conscience voting literature was about to begin.

Previous studies had established that party was important, but it was necessary to unpack the notion of 'voting with party' into something more meaningful. Building on Hibbing and Marsh's work in searching for multivariate correlations, Read, Marsh and Richards coded voting patterns according to a liberal-conservative scale, a technique that allowed them to highlight the ideological propensities of those who voted each way rather than just the fact that they voted with others of like mind.²⁹ Using both the previously studied capital punishment votes and the never before studied issue of the liberalisation of homosexuality laws, it was observed that cultural change is related more to generational effects than to intra-party discipleship. Younger voters of both the British Labour and Conservative parties were found to be more inclined to vote in a liberal direction than older voters of either party.

Cognisant of the value, but also the limitations, of quantitative analysis, Read, Marsh and Richards also devoted considerable space to discussing some of the non-quantifiable factors inherent in free voting. The authors discussed six: interest group activity, constituency pressure, party pressures, public opinion, the parliamentary debates themselves and individual conscience. By discussing all these factors in the context of the votes analysed, the authors successfully broadened the consideration of conscience voting to include the way in which it touches, and is touched by, a range of structures that contribute to the outcome of the vote. Thus, the inputs as well as outputs of voting are important, even if they are non-quantifiable.

In another important study, Pattie, Fieldhouse and Johnston focused upon the electoral consequences of MPs' voting patterns. The authors viewed both conscience votes and rebellions as opportunities for MPs to vote as individuals, either because of their electoral situation (perhaps a strongly Catholic constituency) or in order to promote a particular electoral situation (perhaps a slim majority they wished

²⁷ "Governments rarely defeat bills, or cause bills to be defeated. The chief Government sanction is to withhold time..." Marsh and Read, *Private Members' Bills*, 63.

²⁸ Read, Marsh and Richards began their article by lamenting that "It is 21 years since Samuel Patterson took a justifiable swipe at studies of the British House of Commons. He argued: 'There has been an enormous amount of writing about Parliament but little of what we would call research.' ... Unfortunately, there is still force in such criticisms..." Melvyn Read, David Marsh, and David Richards, "Why Did They Do It? Voting on Homosexuality and Capital Punishment in the House of Commons," *Parliamentary Affairs* 47, no. 3 (1994): 374.

²⁹ *Ibid.*

to buttress). The study helpfully asked whether constituency effects might be a contributor to voting patterns, an aspect either overlooked or treated cursorily by previous studies. Six votes were considered and compared across five different issues which were, in turn, divided into 'populist' and 'moral' issues. It was found that the electoral effects of supposedly 'populist' votes such as those on the proposed 'poll tax' and restoration of the death penalty may be greater than those of 'moral' issues like embryo research and abortion rights, the implication being that the dominant effect of party as reported by previous studies may be more or less dominant depending upon the issue – when there is opportunity (in terms of both an unwhipped vote and the public salience of the issue) for MPs to improve their image amongst their constituents they are inclined to take it. Conversely, the authors discerned that the voting records of individual MP's may influence a small proportion of voters, an effect which is statistically moderate but which may be politically significant if their electorate is marginal.

A parallel study in Canada broadened the research base to consider free voting in a provincial legislature.³⁰ Overby hypothesised that a smaller, provincial parliament may be less institutionalised, with leaders having fewer party sticks and carrots to wield over party members. In consequence, parties may be less dominant and constituency effects correspondingly greater during conscience votes than that found at the national level. Constituency effects were found to be small and insignificant, however, with partisan influence once again explaining most of the voting behaviour. Gender was also statistically significant during certain issues such as homosexuality, however. In explaining these results, Overby developed a new hypothesis: that smaller, provincial parliaments provide the conditions within which party leaders find it easier, not harder, to exercise discipline over their party members, a conclusion that has implications for those who suggest that devolution of power in federal polities from the national to the state level would address some of the power imbalance in favour of the executive perceived by some in Canada. It also buttresses the implications of earlier studies that party discipline rather than party members *per se* is key to understanding the influence of party during conscience votes.

In 1997, Overby, Tatalovich and Studlar published the results of what they claimed to be the first quantitative study of unwhipped votes in the Canadian House of Commons (Pothier's study was not quantitative, and Overby had focused on a provincial government).³¹ A statistical model was built that contained 17 variables covering personal, constituency and partisan factors. In an interesting finding, the model's predictive capability improved as voting on a piece of legislation neared its conclusion. That is, voting became more partisan the closer the voting got to the third reading division.³² In addition to noting the secondary influence of religion generally, they joined the growing list of studies identifying the dominance of party in voting decision-making, thus indicating a high level of generalisability of findings between Westminster parliaments.

According to Mughan and Scully in 1997, however, studies to that date had treated parliament as if it was a stable unit, analysing voting outcomes without respect to the element of change. Without accounting for the processes by which personnel change occurs, such studies are "limited [in their] ability to explain changing vote outcomes when the distribution of seats between the parties remains

³⁰ L. Martin Overby, "Free Voting in a Provincial Parliament: The Case of 'Same-Sex' Legislation in Ontario, 1994," *The Journal of Legislative Studies* 2, no. 3 (1996).

³¹ L. Marvin Overby, Raymond Tatalovich, and Donley T. Studlar, "Party and Free Votes in Canada: Abortion in the House of Commons," *Party Politics* 4, no. 3 (1998).

³² *Ibid.*: 389.

much the same from one division to the next."³³ Drawing upon the literature on party realignments, Mughan and Scully argue that parliamentary change can be achieved through either 'conversion' or 'replacement'. The former refers to voters changing party allegiance, while the latter refers to the arrival and/or departure of constituents into or out of an electorate. In an analogous fashion, vote outcomes differ for similar reasons, either because MPs convert or because they are replaced during a general election. After discussing different vote outcomes across divisions on both capital punishment and the televising of parliament, Mughan and Scully found that replacement is the more important of these two sources of change on account of the fact that changing one's mind is generally seen as undesirable. Although a modest contribution in terms of fresh theory, the use of a conceptual framework borrowed from another literature to improve the clarity of thinking on the process of change and its relationship to unwhipped voting brought more conceptual rigour to the field than had previously been seen. For the first time, the study of conscience voting looked beyond empirical patterns to wider political themes.

Although the conscience voting literature was slowly making connections between MPs, constituents and voting behaviour, practically all of the work so far had used the individual MP as the unit of analysis. That conscience voting as a parliamentary procedure existed at any other level of analysis had not occupied the attention of any researcher to date. Perhaps sensing that sufficient micro-political analysis had been done to achieve an adequate, albeit sketchy, body of knowledge on the subject, Cowley and Stuart pitched their 1997 analysis at what they called "macro questions of party behaviour"³⁴ – the study of parties, not individual MPs, as the unit of analysis. Their approach was ideational but not fully conceptual – it maintained the sway of empirical patterns whilst overlooking certain detail in the interests of focusing upon collective themes. The key question for Cowley and Stuart was: what patterns are observable in party groupings' responses to conscience issues? The authors measured the extent of party cohesion during conscience voting by using the Index of Party Unity, a technique also utilised by Read, Marsh and Richards in 1994, though ultimately borrowed from Rice.³⁵ The authors studied 13 conscience votes between 1979 and 1996, the widest range of unwhipped votes used in any study so far. They noted that some issues split some parties more than others, and there was a negative correlation between those that split left leaning parties and those that split their right leaning counterparts. By using this approach, the authors concluded that parties often vote cohesively even when unwhipped, and that conscience votes "are more likely to cut *down* party lines than *across* them. ... Conscience issues may split some of the parties some of the time, but they do not split all of the parties all of the time."³⁶

In another study of conscience votes in Britain between 1979 and 1997, members of the British Labour party were found to participate in higher proportions on some conscience issues such as capital punishment and indecent publications than Conservative Party members, the reverse being true for embryo research and war crimes legislation.³⁷ Non-party factors such as gender, previous occupation, education and religious profession were found to have little correlation with voting participation when

³³ Anthony Mughan and Roger M. Scully, "Accounting for Change in Free Vote Outcomes in the House of Commons," *British Journal of Political Science* 27, no. 4 (1997): 640-41.

³⁴ Philip Cowley and Mark Stuart, "Sodomy, Slaughter, Sunday Shopping and Seatbelts: Free Votes in the House of Commons, 1979 to 1996," *Party Politics* 3, no. 1 (1997): 120.

³⁵ S.A. Rice, "The Behaviour of Legislative Groups: A Method of Measurement," *Political Science Quarterly* 40, no. 1 (1925), S.A. Rice, *Quantitative Methods in Politics* (New York: Alfred A. Knopf Books Co., 1928).

³⁶ Cowley and Stuart, "Sodomy, Slaughter, Sunday Shopping and Seatbelts," 127-28.

³⁷ Pattie, Johnston, and Stuart, "Voting without Party?," 51-2.

party membership was controlled for, with the exception of MP's age, whereby younger MPs often vote in higher proportions than do older MPs. The needs of younger MPs to establish their political careers through such involvement, the possibility that age is a proxy for health, and the interest of younger MPs in conscience issues associated with the 'permissive society' were suggested as possible explanations for the correlation between age and voting participation.

By 1998, it had been 28 years since Richards had published his pioneering book. The literature had grown slowly but surely, though much of it consisted of statistical analyses of voting behaviour. It was becoming impossible to ignore problems of obsolescence – the contexts of the early studies was now becoming inapplicable to the modern era. Consequently, Cowley, in acknowledgement of Richards' valuable contribution, edited a similarly named and structured book *Conscience and Parliament*³⁸ in which he explained that "[w]ith each change, the utility of *Parliament and Conscience* as the book on conscience issues has slowly diminished. The need for a new work has become clear."³⁹ Cowley's work acknowledged the important legacy of Richards' work while also recognising that the political context and the conscience issues themselves had moved on. In updating and advancing Richards' work, Cowley's volume provided two additional aspects largely missing from the original volume. First, a chapter was added that argued more forcefully from empirical data that members of parliament voted with their party colleagues even when their whips were not operating.⁴⁰ Shared ideology, loyalty, habit and concern with career progression were found to largely account for this phenomena. Finding this unsurprising but significant, the authors were at pains to point out that this did not mean that parliamentary 'free' votes were a contradiction in terms. Instead, party acts as a kind of "ideological barometer through which MPs decide on the merits of the issues before them." Although strong, the effect of party was to give "the basic, underlying structure to MPs' decisions" from which they deviated "when some other, relevant, factor intervenes."⁴¹

Second, an emphasis was placed upon updating the (British) political context within which conscience voting operates. Three beliefs about the treatment of conscience issues within parliament were stated to have been promoted by Richards.

The first is that private members' bills – that is, bills brought forward by backbench MPs rather than by the government – are the natural vehicle for the treatment of such issues. The second is that when voting on such issues MPs are given free votes, that is, votes where the parties do not take a stance and where the party managers do not issue instructions to their MPs. The third flows directly from the first two. It is that parliament, and not the executive, is central to the resolution of such issues.⁴²

Unlike in Richards' era, Cowley argued that the first belief was now almost entirely untrue. Two decades on, the government had taken a neutral stance on a number of bills brought forward by cabinet ministers such that there was no longer a relationship between a conscience issue and the primary vehicle used for bringing it to the House. The second belief retained, in Cowley's view, some validity, although exceptions arose when parties do not consider an issue to be one of conscience, when whips are applied despite the prima facie case being that it is a conscience issue, or when a free vote is granted but pressure is nonetheless applied behind the scenes. These combined to make free votes, in the

³⁸ Cowley, ed., *Conscience and Parliament*.

³⁹ Cowley, "Conscience and Parliament," 5.

⁴⁰ Pattie, Johnston, and Stuart, "Voting without Party?."

⁴¹ *Ibid.*, 172.

⁴² Philip Cowley, "Conclusion," in *Conscience and Parliament*, ed. Philip Cowley (London: Frank Cass, 1998), 177.

1990s, "the norm...not the rule."⁴³ The third belief Cowley addressed only indirectly, but he essentially returned to the theme identified by the other chapters in his book, that "whatever else may be claimed, conscience issues are party issues."⁴⁴ In Cowley's view, the shadow of party stalks the halls of Westminster even when MPs are ostensibly free to vote as they wish, making conscience voting less a parliamentary than a party mechanism, and one which does little to lessen the centrality of the executive.

Curiously and inexplicably, after the productive 1994-98 period research on conscience voting slowed to a trickle, with few major academic pieces having been published since then. Interest seems to have been lost in the field despite the understanding of the subject being far from complete. As a result, the body of knowledge on this subject remains sketchy and many gaps still exist.

The themes that have emerged from the chronologically-based treatment of the literature in this section are centred largely upon the factors influencing voting decisions in just two parliaments. In summarising this knowledge, the next section considers the question: what, then, do we know about conscience voting? This question is addressed thematically in the following section.

Explaining Conscience Voting: The Voting Decision

Existing knowledge about conscience voting is centred upon the factors affecting MPs' voting decisions, and can be summarised under three themes: the influence of party, MPs' personal characteristics, and constituency effects. These are considered in turn below.

Party

Parties exert a powerful influence upon their members, even when the whips are removed. The sum of these influences results in a high degree of solidarity in voting patterns during conscience votes. Although issues do arise that split parties, voting during unwhipped votes is more likely to be along party lines rather than cross-cutting.⁴⁵ Party, in fact, is the most important factor in predicting voting behaviour during bills involving conscience issues. Sometimes, it is the only factor that counts.⁴⁶ This has also been found to apply in federal systems at both the state and provincial level.⁴⁷

There are a number of ways in which parties may influence the voting patterns of individual MPs. First, the promotion prospects of members are generally in the hands of party leaders. There is, therefore, a subtle but real pressure to conform to the views and behaviour of colleagues and be seen as a 'team player', avoiding any appearance of being a renegade.⁴⁸ Second, ideology is likely to be aligned to a high degree between members of a party. Even though conscience issues are often contentious, a correlation exists between membership of a party, fundamental ideological views, and attitudes towards conscience issues.⁴⁹ Indeed, it is probable that this is the reason the MPs joined their party in the first place. Parties may also develop internal cultures that shape and condition members, such that the

⁴³ Ibid., 181.

⁴⁴ Ibid., 188.

⁴⁵ Cowley and Stuart, "Sodomy, Slaughter, Sunday Shopping and Seatbelts."

⁴⁶ Mughan and Scully, "Accounting for Change in Free Vote Outcomes.", Pattie, Johnston, and Stuart, "Voting without Party?."

⁴⁷ Overby, "Free Voting in a Provincial Parliament."

⁴⁸ John Warhurst, "Conscience Voting in the Australian Federal Parliament," *Australian Journal of Politics and History* 54, no. 4 (2008), Waring, "Contract or Conscience?."

⁴⁹ Read, Marsh, and Richards, "Why Did They Do It?."

inculcated culture then acts to form or reform MPs' opinions on conscience issues.⁵⁰ There is empirical evidence that party unity has its foundation in the socialisation of party members prior to their selection as candidates.⁵¹ Political culture has led some to speculate that political ideology, rather than discipline, is the primary element maintaining party cohesion.⁵² Third, parties matter beyond the institutional advantages they offer. Their sociological attributes ensure that parties remain cohesive units even when social conditions – and the subjects of legislation – change.⁵³ Parties provide a sense of belonging and camaraderie without which it is more difficult to be politically effective. Such support exists at both an organisational and an emotional level, implicitly pressuring members to play their part in perpetuating its benefits by not voting in a dissonant fashion. And fourth, voting with colleagues is habit forming – breaking a behaviour of such long-standing is not necessarily easy or pleasant. Pothier noted that “politicians are too accustomed to engaging in partisan battles” to act as if party didn't matter when given the chance.⁵⁴

To a considerable extent, therefore, party cohesion is self-imposed,⁵⁵ the “mutual agreement of legislative participants.”⁵⁶ Those who deviate from the views of party colleagues are generally those most committed to a particular perspective on the issue at hand.⁵⁷ On the other hand, members of parties at the extremes of the ideological spectrum are more likely to remain cohesive than members of parties with more moderate policies.⁵⁸

Party influence may decrease as the conscience legislation progresses through its parliamentary stages. MPs' voting behaviour appears to be less settled in the earlier stages of a bill; MPs themselves may not have made up their mind on the issues at that point, or “MPs [may feel] at greater liberty to follow their consciences when their votes matter least.”⁵⁹ A 17 variable model that considered the 1990 C-43 bill establishing a federal abortion law in a study of the Canadian House of Commons had a less than 20% predictive capability in the early stages of the bill, but a 76% predictive capability during the third reading vote.⁶⁰ This example may be atypical however. Case studies of other issues report lower levels of change occurring through the course of a debate. Very little change occurred during debate on the 1991 War Crimes Bill in the British House of Commons, for example.⁶¹

The role of parties is influential in other ways too. Several British studies have found that MPs of more left-leaning party tend to vote cohesively on social issues such as capital punishment and

⁵⁰ Christopher Kam, "Do Ideological Preferences Explain Parliamentary Behaviour? Evidence from Great Britain and Canada," *Journal of Legislative Studies* 7, no. 4 (2001).

⁵¹ Reuven Y. Hazan, "Does Cohesion Equal Discipline? Towards a Conceptual Delineation," *Journal of Legislative Studies* 9, no. 4 (2003).

⁵² Mughan and Scully, "Accounting for Change in Free Vote Outcomes.", Philip Norton, "Cohesion without Discipline: Party Voting in the House of Lords," *Journal of Legislative Studies* 9, no. 4 (2003).

⁵³ Hazan, "Does Cohesion Equal Discipline?."

⁵⁴ Pothier, "Parties and Free Votes in the Canadian House of Commons," 92.

⁵⁵ Flavelle and Kaye, "Party Discipline."

⁵⁶ Hobby, "The Crack of the Whip?" ii.

⁵⁷ Overby, Tatalovich, and Studlar, "Party and Free Votes in Canada."

⁵⁸ Gideon Rahat, "Determinants of Party Cohesion: Evidence from the Case of the Israeli Parliament," *Parliamentary Affairs* 60, no. 2 (2007).

⁵⁹ Overby, Tatalovich, and Studlar, "Party and Free Votes in Canada," 389.

⁶⁰ *Ibid.*

⁶¹ Gabrielle Ganz, "War Crimes," in *Conscience and Parliament*, ed. Philip Cowley (London: Frank Cass, 1998), 48. Completing the triumvirate of possibilities, one New Zealand MP was of the opinion that MPs became less, rather than more, settled as a conscience bill progressed through its stages, particularly with respect to liquor bills. His view was that “Members have a comfortable habit of taking a heroic position in the lobbies when it comes to the Committee stage of a Bill relating to the sale of liquor.” *NZPD*, Vol. 498, 30 May 1989, 10978. Sale of Liquor Bill, Ralph Maxwell

homosexuality, whilst their right leaning colleagues are more likely to vote together during abortion votes, the very issue over which their political opponents were most divided.⁶² A similar pattern has been observed in New Zealand.⁶³

Cowley argues repeatedly that “whatever may be claimed, conscience issues *are* party issues”⁶⁴ and that “[a]pplying a whip to many conscience issues would not...produce levels of dissent noticeably higher than we see on some political issues where the whip is already applied as a matter of course.”⁶⁵ Similarly, Pattie, Johnston and Stuart have compared MPs during conscience votes to “salmon crossing the ocean to spawn in the river where they hatched”⁶⁶ such that what demands explanation is not that party is dominant but that any other factors matter at all.⁶⁷

Despite the progress that has been made in this area and the definitive statements of researchers like Cowley, much is unexplained about the influence of party on voting cohesion. Krehbiel, for example, asks whether it is party rules that account for cohesive voting or whether members vote together because they already agree over policy.⁶⁸ Is it, in fact, partisanship that is the motivating factor, or do pre-existing ideological leanings account for both their vote during conscience votes and their party membership? And what is the relative importance of ideology against the habits formed by party discipline and loyalty? Other issues requiring answers include the reasons for the variation in unity between parties, the way in which different issues produce variable levels of party unity, variation between government and opposition parties, the role of personal conscience, and the way in which MPs may use their vote to garner support for themselves.⁶⁹

Further, some researchers have argued that, while partisanship is important, the effect is exaggerated precisely because the ‘what’ aspect of the correlation between party and voting patterns fails to explain the ‘why’ of the question. Under one alternative view, party is merely a composite variable constructed from a raft of additional considerations. Party may be an intermediary factor, a representation of other primary factors such as shared ideology, its organisational quality, or its honesty to the electorate. Individual MPs may find it to their personal advantage to be cognisant of the views and intentions of their colleagues, but other factors are also important.⁷⁰ The desire for personal advancement through the party ranks, the desire to present a unified front and a desire to meet the expectations of constituents have been suggested at various times.

Aware of these objections, some researchers have made more moderate conclusions about the influence of party. After evaluating the role of parties in conscience votes over an 18 year period, one study concluded that “party serves as an ideological barometer through which MPs decide on the merits

⁶² Cowley and Stuart, "Sodomy, Slaughter, Sunday Shopping and Seatbelts," 123, Hibbing and Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes," 281-2, Marsh and Read, *Private Members' Bills*, 375.

⁶³ David Lindsey, "Conscience Voting in New Zealand" (Dissertation, University of Auckland, 2005).

⁶⁴ Cowley, "Unbridled Passions?," 81.

⁶⁵ *Ibid.*: 85.

⁶⁶ Pattie, Johnston, and Stuart, "Voting without Party?," 172.

⁶⁷ *Ibid.*

⁶⁸ Keith Krehbiel, "Where's the Party?," *British Journal of Political Science* 23, no. 2 (1993).

⁶⁹ Ulrich Sieberer, "Party Unity in Parliamentary Democracies: A Comparative Analysis," *The Journal of Legislative Studies* 12, no. 2 (2006).

⁷⁰ Hibbing and Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes."

of the issues before them... [An] ideological map ... [giving] the basic, underlying structure to MPs' decisions [from which] they deviate...only when some other, relevant, factor intervenes."⁷¹

Personal Characteristics

Few MP characteristics have been found to be influential on voting behaviour, and what correlations exist are usually issue-specific. Religion has been found to be statistically significant during abortion votes, particularly for Roman Catholic MPs who seem likely to vote conservatively on this issue.⁷² Pattie, Johnston, and Stuart found correlations with religious membership during debates on euthanasia and embryo research⁷³, and Warhurst found a similar relationship during debates on abortion, euthanasia and stem cell research.⁷⁴ In both of these studies, the correlation observed was sometimes even greater than that of their party.⁷⁵ There is evidence to suggest, however, that the influence of religion disappears when the effect of party is controlled for,⁷⁶ and those with religious professions are often completely split when it comes to other issues like homosexuality.⁷⁷ Further, the important factor with religion may not be the religion of the member themselves but the proportion of their constituents who are Roman Catholic.⁷⁸ In addition, given the general decline of organised religion in the west, findings from the 1960s and 1970s may be less applicable in more recent conscience issues. Also, the British focus of many of these studies may mean that certain aspects of the importance of religion in conscience voting may have been exaggerated when compared to the weaker tradition of religious conflict and the absence of church establishment in countries like NZ.

Gender has been found to be of some importance during votes on conscience issues of particular relevance to women such as the availability of the abortion drug RU486, although the results for votes on abortion regulation are mixed.⁷⁹ Female MPs tend to take more liberal stances on such issues than their male counterparts, although, again, the political distribution of women members may account for some of this difference. It has been noted that in legislatures such as Britain in the 1990s, for example, most of the female MPs in parliament were in a single party whose members were generally liberal on social legislation.⁸⁰ Further, in Australia, feminist groups originally opposed the use of conscience votes during abortion legislation because of the small number of women in parliament and the likelihood that this would count against what they considered favourable outcomes, but the gender composition is now more even and opposition has become muted.⁸¹ Female members from both sides of the Australian Senate have been found to be more liberal than male members for not only abortion but also euthanasia and stem cell research.⁸² In the case of abortion, the social views of female members were sufficiently strong for some of them to set aside their party ideology and sponsor a multi-partisan bill to legalise the

⁷¹ Pattie, Johnston, and Stuart, "Voting without Party?," 172.

⁷² Hibbing and Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes," 284-5.

⁷³ Pattie, Johnston, and Stuart, "Voting without Party?," 159.

⁷⁴ Warhurst, "Conscience Voting."

⁷⁵ John Baughman, "Party, Constituency, and Representation: Votes on Abortion in the British House of Commons," *Public Choice* 120 (2004): 72.

⁷⁶ Read, Marsh, and Richards, "Why Did They Do It?," 376.

⁷⁷ Hibbing and Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes," 284-5, 87-8.

⁷⁸ Overby, Tatalovich, and Studlar, "Party and Free Votes in Canada," 389.

⁷⁹ Baughman, "Party, Constituency, and Representation," 72, Helen Pringle, "The Conscience Vote and Abortion in Parliament," in *Australasian Study of Parliament Group* (Adelaide: 2007).

⁸⁰ Read, Marsh, and Richards, "Why Did They Do It?," 376.

⁸¹ Pringle, "The Conscience Vote and Abortion in Parliament."

⁸² Warhurst, "Conscience Voting."

use of RU-486.⁸³ A study of euthanasia in Australia found that a distinctive 'women's perspective' on euthanasia had been found, at least in the federal parliament, and, if continued, may have the potential to influence legislative outcomes.⁸⁴

Studies that have included union membership have found little correlation with voting behaviour during unwhipped votes, except for a moderate influence during abortion issues. Union members, at least in Britain in the 1970s, seem to have been more conservative than non-members.⁸⁵

Other personal variables seem to have little effect: age and length of tenure in parliament have been found to have only moderate impacts on some votes.⁸⁶

Factors that may appear to be inconsequential overall, however, may be important to MPs from either a particular party or MPs with cross-party characteristics such as a Catholic faith. In a study of several British conscience votes, Pattie, Johnston and Stuart identified a complex pattern of voting inclinations which appeared unpredictable at the aggregate level but which made somewhat more sense when party affiliation was controlled for. Conservatives with Oxbridge educations, for example, were slightly more likely to vote liberally on most conscience votes studied such as supporting the maintenance of fox hunting. And opposition to Sunday trading was much more likely to come from protestant MPs from the Conservative Party. For Labour MPs, Catholics were more likely to vote against abortion and women for abortion changes than their Conservative counterparts.⁸⁷

Constituency Characteristics and Consequences

The relationship between the voting patterns of MPs during unwhipped votes and the characteristics of their constituents is consistently low at both national level⁸⁸ and in provincial parliaments.⁸⁹ In Britain, Pattie, Fieldhouse and Johnston claimed to have detected a constituency effect, although only on issues they classified as 'populist' such as Britain's proposals to introduce a poll tax and restore the death penalty, both topical in 1988. By comparison, the constituency effect on issues of personal morality like embryo research and abortion rights was negligible due to what the authors argued was their lower public salience.⁹⁰ These authors claim that the existence of a populist strain in British politics suggests that MPs could exploit this to their own (and their party's) advantage in the future, although for now it seems overwhelmingly clear that parliamentary elections are contests between parties, not individual candidates.⁹¹ In Canada, Soroka, Penner and Blidook report a constituency effect during Question Time, a parliamentary session that provides MPs with an opportunity to transcend party discipline and demonstrate their cognisance of constituency concern. Although without legislative consequences,

⁸³ John Warhurst, "Euthanasia, Stem Cell Research and Ru486: Conscience Voting in the Federal Parliament During the Howard Era," in *54th Australasian Political Studies Association Conference* (City Hall, Newcastle, NSW: 2006), John Warhurst, "Reformist Women MPs Take Lead in Ethics Debates," *Canberra Times*, 5 October 2006.

⁸⁴ Sharon Broughton and Sonia Palmieri, "Gendered Contributions to Parliamentary Debates: The Case of Euthanasia," *Australian Journal of Political Science* 34, no. 1 (1999).

⁸⁵ Hibbing and Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes," 285.

⁸⁶ Marsh and Read, *Private Members' Bills*, Read, Marsh, and Richards, "Why Did They Do It?."

⁸⁷ Pattie, Johnston, and Stuart, "Voting without Party?," 165-7.

⁸⁸ Brian J. Gaines, "The Impersonal Vote? Constituency Service and Incumbency Advantage in British Elections, 1950-92," *Legislative Studies Quarterly* 23, no. 2 (1998), Hibbing and Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes," 290-1. Baughman, "Party, Constituency, and Representation," claimed to have detected a constituency effect, but only in some areas of Britain with strongly religious constituents

⁸⁹ Overby, "Free Voting in a Provincial Parliament," 180.

⁹⁰ Charles Pattie, Edward Fieldhouse, and R.J. Johnston, "The Price of Conscience: The Electoral Correlates and Consequences of Free Votes and Rebellions in the British House of Commons, 1987-92," *British Journal of Political Science* 24, no. 3 (1994).

⁹¹ Cowley, "Unbridled Passions?," 79.

Question Time provides MPs with the ability to 1) “publicly take a position on a given issue”, and 2) “actually do so”.⁹² Such a study provides indirect support for constituency influence during unwhipped voting.

Perhaps surprisingly, electoral marginality usually registers no effect at all.⁹³ A recent British study on abortion, however, suggests that the marginality of an MP’s electorate does have a small but potentially important role in influencing voting behaviour.⁹⁴ This may, for members in some parties, be related to the candidate selection process, with stronger constituency effects being generated when candidate selection and electoral campaign organisation is delegated to influential local branches.⁹⁵ Under such circumstances, a prudent MP will vote with an eye to both the electorate and the ‘selectorate’.⁹⁶

The State of the Literature

From the preceding survey, a number of conclusions can be made about the state of the conscience voting literature.

First, a certain obliqueness dominates current research on conscience voting – conscience voting is not usually the main focus of inquiry but an implicit part of an alternative, albeit related, focus. As such, conscience voting has become a by-product of studies of party discipline, the emergence of parties, parliamentary representation, parliamentary reform, parliament and conscience, or private members bills. In this manner, conscience voting tends to be viewed as a residual parliamentary procedure, a mechanism invoked by parties only once other procedures have been exhausted.

Second, the literature is devoid of any assessment of the reason, manner or significance of the emergence of conscience voting in parliamentary and party practice, making, in fact, no direct mention of the pre-1960s period at all. Consequently, contemporary case studies are largely analysed in isolation from each other, without a recognition of their shared roots or the common influences on them. Neither is there a recognition of their being encumbered with expectations inherited from past practice, or their role in contributing to the further development of conscience voting as a self-perpetuating parliamentary mechanism.

Third, the absence of a comprehensive and sophisticated comparative study has frustrated the project to fully understand conscience voting. Much of the literature is country-specific, emanating in the main from Britain and, to a lesser extent, Canada. Consequently, it reflects those countries’ parliamentary arrangements and constitutional contexts, providing little opportunity to develop generalisable conclusions. Further, the few comparative studies that exist focus upon the subjects and processes

⁹² Stuart Soroka, Erin Penner, and Kelly Blidook, "Constituency Influence in Parliament," *Canadian Journal of Political Science* 42, no. 3 (2009): 568.

⁹³ Hibbing and Marsh, "Accounting for the Voting Patterns of British MPs on Free Votes.", David Marsh and Joanna Chambers, *Abortion Politics* (London: Junction Books, 1981).

⁹⁴ Baughman, "Party, Constituency, and Representation," 76.

⁹⁵ Shaun Bowler, David M. Farrell, and Richard S. Katz, "Party Cohesion, Party Discipline, and Parliaments," in *Party Discipline and Parliamentary Government*, ed. Shaun Bowler, David M. Farrell, and Richard S. Katz, *Parliaments and Legislatures* (Columbus: Ohio State University Press, 1999), John M. Carey and Matthew Soberg Shugart, "Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas," *Electoral Studies* 14, no. 4 (1995).

⁹⁶ Baughman, "Party, Constituency, and Representation," 78.

rather than the context of conscience voting.⁹⁷ There are, therefore, few well-developed strands of thought into which to connect a New Zealand-based study.

Fourth, the conscience voting literature is unidimensional in that it employs a single interpretive framework – party discipline. The presumption that conscience voting can be reduced to the flip side of party discipline proscribes the range of studies conducted and the methodology used. No studies have been devoted to the wider themes conscience voting invokes such as the possibility it is a manifestation of a culture war, its perpetuation as a parliamentary convention, its contribution to democracy or the implication of its further evolution upon parties.⁹⁸ Further, the requirements of party cohesion on its own does not explain the many conscience votes during which no intra-party division exists but for which the party whip is removed regardless.

Fifth, the conscience voting literature overwhelmingly adopts a behavioural approach in its analysis. Studies have generally focussed on how MPs and parties behave during conscience votes, with practically no consideration given to treating conscience voting in institutional terms. In the classic understanding of conscience voting, political actors are assumed to be central – party leaders and whips are presented as making pragmatic decisions that are determinative about whether their party will have a conscience vote and, once granted, individual MPs are viewed as semi-free agents deciding which way they will cast their vote. As a result, questions such as the role of institutions, conscience voting's contribution to the development of public policy, the inescapable influence of past patterns, the cultural context and the role of conscience voting as a reflection of the changing role of the state are considerations passed over lightly, if at all.

Sixth, in the absence of a more sophisticated interpretive framework, the conscience voting literature tends to place a high premium on political pragmatism as a motivating dynamic. Political pragmatism rarely takes recourse to philosophic considerations, and the study of the outcomes of decisions made pragmatically lend themselves to empirical rather than conceptual tools. In turn, this tends towards a preoccupation with what can be observed, and what can be observed during conscience votes are voting patterns. A pragmatic view such as is being described stresses agency over structure, rationality over sentiment, the present circumstances over past practice, and immediate political requirements over the milieu of institutional conventions. This preoccupation with the empirical makes it difficult to explain rather than just describe, however, and there is a noticeable tendency towards labelling events that do

⁹⁷ For example, Deidre McKeown and Rob Lundie, "Free Votes in Australian and Some Overseas Parliaments," (Canberra: Department of the Parliamentary Library, 2002), Donley Studlar, "What Constitutes Morality Policy? A Cross-National Analysis," in *The Public Clash of Private Values: The Politics of Morality Policy*, ed. Christopher Mooney (New York: Chatham House Publishers, 2001). Studlar, however, has been working towards addressing this weakness, building the database of cross-national information necessary to conduct a comparative study that includes consideration of institutional contexts - Donley Studlar, "A Paradigm Shift in Morality Policy?," in *ECPR Workshop 21: The Dynamics of Morality Politics and Policy Across Time and Space* (Muenster: ECPR, 2010).

⁹⁸ Party unity is a natural focus of study for conscience voting because 1) party unity is relatively easy to measure. Dissent manifests in one or more party members voting against the wishes of their party, and it is a simple matter for the researcher to determine if this has occurred; 2) dissent receives a high degree of publicity, and so it has the appearance, if not the reality, of being a matter of great public importance; 3) party unity is related to the voting patterns of MPs, providing a ready database that is large enough for statistical analysis. Associated datasets are equally as amenable to quantitative analysis: MPs' personal characteristics, the characteristics of their constituents, past voting behaviour, and the ideological groupings that are political parties; 4) parliamentary political systems, particularly of the Westminster variety, tend to give a central role to political parties that results in them driving the policy agenda more than in polities with less centralised power structures. This makes the possibility of party disunity a more significant prospect, and its study is therefore given correspondingly greater prominence. For all these reasons, the prospect of applying a wide range of quantitative analytic methods to such datasets has often proved irresistible to political scientists, and those studying unwhipped votes are no exception.

not fit the expected pattern as parliamentary anomalies. Ultimately, the pragmatic strain in the literature has resulted in a collection of studies that are focused on a relatively narrow range of issues: voting behaviour, party unity and case studies of specific conscience votes that are sensitive to the details of political decision making but oblivious to their causes. Addressing the latter requires conceptual frameworks that go beyond the centrality of political actors and, for conscience voting, this has been largely absent.

In consequence of all these factors, a study designed to further our understanding of conscience voting as a parliamentary mechanism in its own right finds little to build on. The “theoretically pregnant possibilities” that Samuel Patterson once discerned in this field have, for the most part, remained unrealised.⁹⁹

⁹⁹ Samuel C. Patterson, "The British House of Commons as a Focus for Political Research," *British Journal of Political Science* 3, no. 3 (1973): 373.

CHAPTER THREE: TOWARDS A CONCEPTUAL FRAMEWORK

A better understanding of conscience voting will not emerge without an adequate conceptual framework. The question “How are we to think about conscience voting?” is as important, or more so, than the question “What happens during conscience votes?” While the previous chapter discussed the conscience voting literature and gave an assessment of its current state, the focus in this chapter moves to a review of a number of explanatory frameworks and literatures at the subject’s edges. The key question in this chapter is: Given that conscience voting is a relatively new subject for scholarly inquiry, what are the relevant conceptual frameworks for thinking about, and researching, conscience voting?

A Palette of Perspectives

A number of perspectives on conscience voting can be advanced to conceptualise its use. These perspectives are summarised in a number of statements, listed below, each of which is elaborated, in turn, in the remainder of this chapter. They are lenses through which to look at the issue, not accounts of why specific conscience votes were held. No claim is made that they are conceptually equivalent to each other, but each is believed to have one or more useful insights to contribute. Their purpose is to probe beyond the conventional focus upon the nature of the issues themselves, and to consider what forces may be intersecting to perpetuate both the parliamentary mechanism called conscience voting and its subject matter.

Conscience voting as:

1. Law and Morality: a product of disagreements over the complex relationship between law and morality.
2. Party Cohesion and Discipline: a way to minimise the impact of party disunity.
3. Morality Theory: an institutional response to issues with high moral content.
4. Public Policy: a parliamentary response to difficult questions of public policy.
5. Cultural Change: a mechanism used to deal with an arena of contested values.
6. Legitimacy, the Naked Public Square and the New Political Culture: a mechanism for parties to handle social, cultural and political change.
7. Institutionalism: a reflection of parliamentary structures and institutions prevailing at a particular time and place.
8. Historical Institutionalism: a reflection of past parliamentary practices.
9. Political Pragmatism: a pragmatic political response to contentious public issues.

Law and Morality

Although the relationship between law and morality is complex, legislation is not enacted in isolation from the moral basis of a society, and the act of law making must necessarily consider, though not necessarily directly follow, the moral code of that society. Opinions differ, however, on the nature of the connection. This was clearly illustrated in a well-known debate between two British legislative experts occasioned by the 1957 Wolfenden Report, commissioned by the British government to enquire into the

fairness of their laws on homosexuality. Among other things, the report addressed the relationship between the law and morality. The report stated that:

Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business. To say this is not to condone or encourage private immorality. On the contrary, to emphasise the personal and private nature of moral or immoral conduct is to emphasise the personal and private responsibility of the individual for his own actions, and that is a responsibility which a mature agent can properly be expected to carry for himself without the threat of punishment from the law. ... The function of the criminal law is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against the exploitation or corruption of others. ... There must remain the realm of private morality and immorality, which is not the law's business.¹

The report spawned a public discussion on the subject, in which the most high profile discussants were Professor Hart and Lord Devlin. The former believed that law and morality had nothing to do with each other, while the latter believed that law should reinforce morality. Aided by the diminishing relationship between church and state, Hart's view has increasingly come to predominate in both Britain and New Zealand:

In the more than 100 years between John Stuart Mill's essay *On Liberty*, in 1859, and the report of the Wolfenden committee in 1954, there has been a strong tradition that the criminal law should not punish conduct simply because it offends against the accepted moral code. The conduct punishable should be either directly harmful to individuals or to their liberty, or it should jeopardise the collective interest society has in maintaining its organisation. Maintaining a code of morals is not the province of law but should be left to the churches, or education, or to the outcome of free discussion among people. John Stuart Mill said, "The only purpose for which power can rightfully be exercised over any member of a civilised society against his will is to prevent harm to others."²

Nevertheless, for MPs who must vote on legislation with moral implications, the relationship between law and morality is by no means settled. During the Crimes Amendment Bill of 1974-5, which proposed to legalise homosexual acts between consenting males, regular mention was made of both the Wolfenden Report and the debate it spurred.³ Henry May described the dilemma succinctly to the House:

...the question I have to resolve in my own mind is one of conscience. It is well known that any law introduced by any Government of any nation must have some regard to what is commonly known as the moral law. ... I have come back to this question all the time: do we make something that is immoral, and has always been maintained to be morally wrong, suddenly legally right? By doing that, do we reduce the practice of what is commonly regarded as a perversion? Everyone must make up his own mind about this.⁴

In New Zealand, the Homosexual Law Reform Bill of 1985-6 addressed this issue in similar terms, and a range of views were expressed:

John Stuart Mill asserted the view, reasserted much later by the British Wolfenden report on homosexuality, that legal coercion—the weight of the criminal law—can be justified only for the purpose of preventing harm to others. ... Law and morality are overlapping circles. Morality condemns murder, as does the law. Morality may condemn adultery; the law does not. As lawmakers,⁵ we have the responsibility to decide not where morality lies but where the law should lie.

¹ Committee on Homosexual Offences and Prostitution, "Report of the Committee on Homosexual Offences and Prostitution," (London: H.M.S.O., 1957).

² *NZPD*, Vol. 399, 3 July 1975, 2766. Crimes Amendment Bill, Venn Young

³ *NZPD*, Vol. 392, 24 July 1974, 3170, George Gair. *NZPD*, Vol. 399, 3 July 1975, 2765, Venn Young

⁴ *NZPD*, Vol. 392, 24 July 1974, 3174. Crimes Amendment Bill, Henry May

⁵ *NZPD*, Vol. 466, 23 October 1985, 7601. Homosexual Law Reform Bill, Ann Hercus

...is [it] the purpose of the House to be concerned with the nation's morals[?] The answer must be yes. Parliament does not allow me to go home and have intercourse with my daughter, for the very good reason that the product of that connection would be a mutation. It is the job of the House to consider the morals of the nation when it comes to censorship. The House is concerned with morals, moral standards, and moral guidelines.⁶

Fundamentally, the question to be answered by the House is whether personal morality can or should be imposed by law and the threat of criminal sanctions. I do not believe that that is the proper role of the law.⁷

...I take up the argument that it is not the function of the law to enter the field of morals. This is a statement which has been widely coined in the course of this and other recent major moral controversies in this country, but in fact there is no country, no society, without its moral code, its taboos, and its own values backed by legal as well as moral sanctions. There is no country in the world that does not recognise that at a certain stage the State must step in with legal sanctions to regulate sexual behaviour, and the difference between the so-called conservative and the so-called liberal countries is merely one of degree. This is well illustrated by the fact that this Bill itself does not hesitate to impose legal sanctions in the case of indecent acts performed on minors and mental defectives, acts performed under threat of violence, and the like. So let us disabuse ourselves of the idea that it is not a proper role of the law to proscribe sexual behaviour to a greater or lesser degree.⁸

If the law does concern itself with morality, whose morality is to be legislated? In a pluralistic society, moral values are not held universally, and disagreement is inevitable when fundamental social change is proposed. This is how the then Canadian Justice Minister, Mr Turner, described this problem in 1975:

The problem of trying to render synonymous law and morality is that we then come down to the question: Whose morality? Whose standards of behaviour? Whose sense of morality? Who is to determine the standard? Who is to attribute the blame? Who is to say what is moral and immoral? Who is to decide when moral responsibility exists in terms of freedom of will, and when it is best diluted in human terms because of environmental or physical causes? In a pluralistic society there may be different standards and differing attitudes, and the law cannot reflect them all.⁹

One of the implications of the Wolfenden Report's conclusions is that, when detached from a moral code, the legislative code is not static but evolving. The law tends to reflect the social, rather than religious, values a society holds and, as such, not only can but must change to accommodate social conditions as they emerge. In this manner, the purpose of the law is to serve society, not be its master.¹⁰ This theme of legislative evolution accounts for a degree of the change observable in the subjects of conscience votes in New Zealand since the late nineteenth century. What were moral issues at one time have largely been emptied of moral content e.g. censorship legislation, to be replaced by other issues which have emerged as morally contentious e.g. civil unions.¹¹

Politicians are divided, even confused, over the extent to which the state has a role in codifying a particular moral principle or set of principles, or whether the only legitimate moral principle in legislation is freedom of the individual to choose for themselves the moral code they will live by.¹² The ability of some issues to touch questions of meaning, purpose and right and wrong, and uncertainty over the role of the law in promoting this, make them candidates for conscience voting.

⁶ *NZPD*, Vol. 461, 8 March 1985, 3530-31. Homosexual Law Reform Bill, Neil Morrison

⁷ *NZPD*, Vol. 466, 16 October 1985, 7432. Homosexual Law Reform Bill, Phil Goff

⁸ *NZPD*, Vol. 399, 4 July 1975, 2809. Crimes Amendment Bill, Peter Wilkinson

⁹ Quoted in *NZPD*, Vol. 399, 3 July 1975, 2769. Crimes Amendment Bill, Michael Bassett

¹⁰ Simon Rae, "The Enforcement of Morals: A Debate Reviewed," *Landfall* December 1969, no. 92 (1969).

¹¹ Another common view is that every law entails a moral judgement, so the invoking of moral values is unavoidable, whether made by a party or an individual MP. See *NZPD*, Vol. 618, 29 June 2004, 13983, Relationships (Statutory References) Bill, Larry Baldock. *NZPD*, Vol. 607, 26 March 2003, 4481, Prostitution Reform Bill, Gordon Copeland

¹² See, for example, *NZPD*, Vol. 453, 10 October 1983, 3174-5, Status of Unborn Children Bill, Phillip Burdon.

NZPD, Vol. 472, 2 July 1986, 2590, Homosexual Law Reform Bill, Michael Cullen

Conscience voting is therefore sometimes invoked in an effort to permit each MP to make their own decisions about the extent to which society's moral code should be codified in legislation, and which code this should be. This may help to explain the surge in conscience voting since the 1960s, which coincides with the retreat from the public sphere of traditional morality, the increasing number and range of social issues coming before parliament, and the predominance of the view that the law's purpose is not to reinforce a moral viewpoint.

Party Cohesion and Discipline

Party unity, cohesion and discipline are related but distinct concepts, though their conflation is a common indiscretion in the literature.¹³ Unity describes the degree to which members of a party act in unison, cohesion focuses upon the extent of unity a party experiences, and discipline describes the process by which parties attempt to ensure cohesion.¹⁴

Membership of a party involves a trade-off. The power of collective action as well as institutional benefits such as membership of the executive and greater access to resources are on offer, but these can be gained only at the expense of individual autonomy, responsiveness to local, as opposed to party, loyalties, and the freedom to follow personal principles.¹⁵ There is, therefore, a constant tension between the needs and interests of the individual legislator and their constituents on the one hand, and the party's requirement for unity in order to govern on the other. At times, members of parliament may be more responsive to electorate demands than to pressure from their party leaders. The candidate selection process, the degree of centralisation of the party's decision making, the size of the party's parliamentary majority, and regionalism and federalism have all been demonstrated to be influential at times in fostering dissent.¹⁶ This tension means that, at times, voluntary unity is insufficient to produce party cohesion, and party discipline is required. Even so, party discipline is only likely to be effective when party leaders possess instruments, such as the promise of future patronage, that are sufficiently influential to achieve this.¹⁷ Thus, party discipline is not absolute, becoming necessary if cohesion is lower than required for governing, but is only possible if it is already sufficiently high that co-partisans allow their party such powers over them.¹⁸

Maintaining party unity in parliamentary systems is paramount because the executive and legislative branches of government are combined, there being no second arm of government to maintain the continuity of governance in the event of a legislative defeat. Without the assurance that the government can win every vote in the House, therefore, confidence in the government is effectively lost and, by convention, that government must resign. Even for opposition parties, maintaining unity enables them to present themselves as organised and orderly, and, potentially, a government in waiting.

¹³ Bowler, Farrell, and Katz, "Party Cohesion, Party Discipline, and Parliaments."

¹⁴ E. Ozbudun, *Party Cohesion in Western Democracies: A Causal Analysis* (Beverly Hills, CA: Sage, 1970).

¹⁵ Bowler, Farrell, and Katz, "Party Cohesion, Party Discipline, and Parliaments."

¹⁶ Ibid, David M. Olson, "Cohesion and Discipline Revisited: Contingent Unity in the Parliamentary Party Group," *Journal of Legislative Studies* 9, no. 4 (2003), John E. Owens, "Explaining Party Cohesion and Discipline in Democratic Legislatures: Purposiveness and Contexts," *Journal of Legislative Studies* 9, no. 4 (2003), Samuel C. Patterson, "Understanding the British Parliament," *Political Studies* 37 (1989), Sieberer, "Party Unity in Parliamentary Democracies.", Asbjorn Skjaeveland, "Party Cohesion in the Danish Parliament," *The Journal of Legislative Studies* 7, no. 2 (2001).

¹⁷ Giacomo Benedetto and Simon Hix, "The Rejected, the Ejected, and the Dejected: Explaining Government Rebels in the 2001-2005 British House of Commons," *Comparative Political Studies* 40, no. 7 (2007).

¹⁸ Bowler, Farrell, and Katz, "Party Cohesion, Party Discipline, and Parliaments.", Hazan, "Does Cohesion Equal Discipline?.", Owens, "Explaining Party Cohesion and Discipline," 13.

A focus upon party unity immediately implicates its opposite as an equally important subject for investigation.¹⁹ Party disunity is here understood as the unauthorised departure – either observed or threatened – by individual legislators from party positions at any stage of the parliamentary process.²⁰ Such disunity may merely involve intra-party disagreement, or it may actually manifest in crossing the floor in a House vote. Either way, party leaders in most political systems have available to them a number of sticks (e.g. ostracism, denial of reselection, expulsion) and carrots (cabinet and committee posts, post-parliamentary positions, resources) to encourage members to vote with their party.²¹ In almost all cases, however, discussion and negotiation prior to a vote is preferable to a public dispute that could be damaging to both party and MP.²²

Even if a party denies a request for a conscience vote, their denial may not be simply point blank. Political pragmatism encourages party managers to continually manage intra-party disagreement, and the imposition of party discipline isn't necessarily always their first recourse. The Labour party, for example, often asks members who disagree with aspects of the party position on a particular matter how their dissatisfaction can be assuaged.²³ Thus, the House may never see any evidence of intra-party disagreement, even as a conscience vote, because the party, as part of its internal management, will negotiate agreed policy positions obviating the need for voting splits of any form.²⁴

Assuming both parties in the dispute – the party and the member – have an interest in maintaining party unity if at all possible, a number of compromise positions are available, such as the member not voting and/or abstaining from the vote,²⁵ the delaying or removal of the issue from the parliamentary agenda, the granting of a split-party vote (if available),²⁶ or the use of a conscience vote.

Under this view, therefore, the subjects, policies and processes that do not warrant strict party cohesion are therefore the cracks through which conscience voting may emerge. The preference to remove the whip rather than risk a display of public disunity is a choice party leaders make to maintain general party

¹⁹ Olson, "Cohesion and Discipline Revisited," 165.

²⁰ Disunity may not necessarily only involve legislative division. Disputes in the caucus room and in the select committee may be both an outlet for disagreement and its cockpit. See David Arter, "Committee Cohesion and the 'Corporate Dimension' of Parliamentary Committees: A Comparative Analysis," *Legislative Studies* 9, no. 4 (2003).

²¹ Norton, "Cohesion without Discipline." Norton provides an interesting example of a House where (and why) party sanctions are extremely limited, though party unity remains high.

²² Olson, "Cohesion and Discipline Revisited," 174.

²³ Maryan Street, Personal interview, 30 August 2007

²⁴ This is a particularly common mode of operation in some European parliaments, such as Italy, that are characterised by complex coalition arrangements. Disagreement over contentious issues is routinely kept behind closed doors, making conscience voting a rare event in the House. The effect is to manufacture a type of cohesion that is more apparent than real, however. Because this final option does not result in a House vote, it is noted here as a political strategy but is not discussed further in this thesis. See V. Della Sala, "The Italian Parliament: Chambers in a Crumbling House," in *Parliaments and Governments in Western Europe*, ed. Philip Norton, *Parliaments in Contemporary Western Europe* (London and Portland, OR: Frank Cass, 1998).

²⁵ In many empirical studies that attempt to calculate observed party unity through the use of measures such as the Rice Index, the decision of legislators to not vote is often ignored. Thus, only votes cast for the 'Ayes' or the 'Noes' are recognised – abstentions and absences are excluded for the calculation. Some authors have argued, however, that both abstentions and non-votes are milder forms of dissent and should not be ignored. Given the limited range of options available to party leaders and legislators when disagreement is irreconcilable, there is no doubt a certain validity to this argument. By no means, however, can all abstentions be considered in this light. Abstentions may be cast for a number of valid reasons such as conflicts of interest, and non-votes may arise due to unavoidable circumstances. See John Carey, "Competing Principals, Political Institutions, and Party Unity in Legislative Voting," *American Journal of Political Science* 51, no. 1, Cowley, "Unbridled Passions?," Simon Hix, Abdul Moury, and Gerard Roland, "Power to the Parties: Cohesion and Competition in the European Parliament, 1979-2001," *British Journal of Political Science* 35, no. 2 (2005).

²⁶ See discussion in Chapter Seven.

cohesion. From this perspective, it is the particular conditions that give rise to party discipline, and those that restrain it, that define the role of conscience voting.

A party's decision to remove the party whip may take two basic forms. First, the party may remove the whip for just the dissenting member or members, permitting them to vote as they please even if it means them crossing the floor. Under this scenario the party maintains as much unity as it can and the free vote effectively becomes officially sanctioned dissent. Second, the party may decide to not only remove the whip for its members, but also distance itself from the issue altogether by adopting no position on the matter. The withdrawal of a party position removes the possibility of dissent completely as there is then no party position from which to dissent.

Individual legislators are not only agents acting in response to party structures but are often purposeful in their own right,²⁷ making decisions that reflect their own needs and desires and responding to their own particular political context.²⁸ Parliamentary parties are not merely "single unified actors[s]" but are "complex and variegated sets of persons and structures, each of which are, or could be, independent actors within the party."²⁹ Such a perspective permits a view of MPs as acting from motivations that are not necessarily distinct from the interests of the party itself, but are a combination of party, electoral and personal concerns. Members may be incentivised to act in unison (or not) by factors such as their own career paths, the benefits of power, a sense of loyalty and camaraderie, or shared beliefs. These same factors may lead them to support those ideologically close to themselves, especially when the ideological distance between the parties is considerable.³⁰

Thus, the interests of purposive parties must be balanced with those of purposive actors – party cohesion being a dance between the two that involves, at various times, ideological convergence, pragmatic conformity, party discipline, and, at other times, the removal of the party's demands for cohesion altogether. Under such circumstances, complete unity may be impractical, especially for a "party which takes seriously the objective of obtaining a sizeable share of the vote [because it] will almost necessarily – given the diversity of condition and attitude within the society – begin a parliamentary term with a heterogeneous set of deputies."³¹ Cohesion cannot, therefore, be taken for granted, and, particularly in large parties, there will inevitably be cracks in the unity of a party that give rise to the need for both discipline and disunity-avoiding mechanisms such as conscience voting.

Morality Theory

Elaborating the political implications of conscience voting's involvement in matters that are both 'private' and 'moral' is helpfully assisted by some of the scholarship emanating from the United States. Although party cohesion in that country is relatively weak and questions can be raised about whether the subject of investigation is still conscience voting if party discipline is no longer the *raison d'être* for the study, a considerable amount can be learned from considering why conscience issues are treated the way they

²⁷ Owens, "Explaining Party Cohesion and Discipline," 12-13.

²⁸ Hazan, "Does Cohesion Equal Discipline?."

²⁹ Olson, "Cohesion and Discipline Revisited," 165.

³⁰ Kitschelt has argued that the subfield of party discipline has been too dominated by the institutionalist approach, such as is employed here, to the detriment of understanding dynamic political change and innovation. Herbert Kitschelt, "Party Cohesion, Accountability, and Responsiveness: Democratic Institutions and Political-Economic Change," (Duke University, 2000).

³¹ Olson, "Cohesion and Discipline Revisited," 172.

are by political institutions when party cohesion is not a consideration. The U.S. context provides such an opportunity.

In the United States, thinking about public issues with high moral content has crystallised in what has come to be called 'morality theory' – the conceptualisation of how issues with high moral content make it on to the political agenda, and how they are treated when they get there. Although sometimes used interchangeably, the term 'morality policy' refers to the specific policies that are the focus of morality theory. Thus, a morality policy is any policy that attempts to influence, impose or legitimise a particular set of fundamental social values through the apparatus of the state.³² These fundamental social values, or first principles, stem from core beliefs: matters of right and wrong, good and bad, righteousness and sin. In turn, these beliefs rest upon worldviews or belief systems, so are at the very heart of how people, and society generally, see life, define themselves and interpret the world.³³ By contrast, secondary values and identities may be important to daily life but are not about basic identities. Morality theory is therefore a framework for conceptualising the treatment of morality policies, firstly on to the political agenda, and subsequently through the political process.³⁴

It is not simply the moral nature of the issue that makes it a morality policy, but the perceptions of the actors involved as to its potential to impact upon these core values or first principles. It is only necessary for at least one 'side' of the debate to perceive it this way for it to be a morality policy, although it is possible for both 'sides' of a debate to define it as an issue involving first principles.³⁵ The gay-rights debate in the United States, for example, is a matter of morality for those supporting the Christian Right, but for the pro-gay lobby it is centred firmly in identity politics.³⁶ Understanding the way in which 'framing' the debate through the careful selection of terminology and presentation of ideas may manipulate discussions and social movements is helpful in understanding how this may happen. The primary battleground of the debate not infrequently shifts to the framing process itself as the protagonists struggle for control of the terms of the debate.³⁷ The abortion debate is a good example. One study reported that many feminists in the Netherlands, for example, supported the legalisation of prostitution by removing the coercive element from the issue; they distinguished between forced and voluntary prostitution, considering the former 'sexual domination' but the latter merely 'sex work'.³⁸ Because it is perceptions that are determinative in their identification as a morality policy, the gamut of issues involved does not derive from the intrinsic substance of the issues but from the exogenous assessments placed upon them. Thus, some moral issues, such as certain sexual practices like bestiality, may not receive specific institutional treatment as a morality policy issue, while, conversely, some conventional issues, such as gambling, may be so treated.

³² Stephanie Slocum-Schaffer, "Morality Policy," in *Federalism in America: An Encyclopedia*, ed. Joseph Marbach, Ellis Katz, and Troy E. Smith (Westport, Conn.: Greenwood Press, 2006).

³³ Raymond Tatalovich, T. Alexander Smith, and Michael P. Bobic, "Moral Conflict and the Policy Process," *Policy Currents* 4 (1994).

³⁴ The 'political process' will vary with country. In the U.S., for example, this includes the judiciary in a formative role, but in New Zealand it is more exclusively legislative. The relative roles of lobbyists, state legislatures, public opinion and other key influencers will also vary.

³⁵ Mooney, "The Public Clash of Private Values."

³⁶ Melinda S. Miceli, "Morality Politics Vs. Identity Politics: Framing Processes and Competition among Christian Right and Gay Social Movement Organizations," *Sociological Forum* 20, no. 4 (2005).

³⁷ Robert D. Benford and David A. Snow, "Framing Processes and Social Movements: An Overview and Assessment," *Annual Review of Sociology* 26 (2000).

³⁸ Joyce Outshoorn, "Debating Prostitution in Parliament," *European Journal of Women's Studies* 8, no. 4 (2001).

Morality theory sits over against many traditional public policy models because most alternative theoretical frameworks developed to explain non-morality issues do not easily accommodate questions of moral conflict.³⁹ Traditional theoretical models generally adopt a market metaphor to account for social and political behaviour, being in turn the result of the economic focus of much public policy theory.⁴⁰ Rational actor theory, for example, is prevalent amongst political theorists but struggles to accommodate disputes over social values, in particular the actors' seeming immunity to rational argument.⁴¹ The threat to basic values that often motivates citizens to become engaged with the morality policy-making process is not materially oriented, however, and nor is self-interest at stake when interest groups advocate on behalf of such groups as the unborn child or those on death row. Although self-interest will be a motivating factor for some sectors of society over some morality issues, morality policy interest groups are generally more altruistic than is common for non-morality policy issues, being motivated by a belief in higher principles or a greater good that they believe will be of benefit to society generally rather than themselves.⁴² This regard for principles greater than their own interest often provides a more intense motivation than does material gain for their commercial equivalents. For example, anti-abortion activists often go to extreme lengths to effect the desired change in policy, despite not being in danger of being aborted themselves. This realm of 'irrationality' that so much of morality policy seemingly inhabits requires theoretical tools that account for the non-economic dimensions of value and its accompanying behaviour. This may be becoming increasingly so as western society moves away from its traditional class-based divisions towards postmaterialist concerns.⁴³ Thus, understanding society at the beginning of the twenty first century requires theoretical frameworks to account for soft values, morality, altruism, and emotion.

There are a number of public policy aspects largely unique to morality policy. Together, these contribute to an equally unique public policy process that demarcates morality policies as genuinely distinct, though not necessarily discrete.⁴⁴

1. Unique content. Whereas conventional policy debates involve two (or more) protagonists who perceive the issue to be essentially about secondary issues – trade, business, tax, defence, etc. – morality policy involves issues that at least some of the relevant actors perceive to involve first principles or core values.
2. Unique purpose. Rather than allocating economic resources, morality policies seek to regulate social relationships and/or redistribute the values of society.
3. High salience. Morality policy debates are often immediately relevant, meaningful and emotive to a large proportion of the citizenry.⁴⁵ As a result, they are issues which the general public,

³⁹ Tatalovich, Smith, and Bobic, "Moral Conflict and the Policy Process," 2.

⁴⁰ Given morality policies' theme of struggles over first principles, a war metaphor seems more appropriate to base its theoretical models on. This metaphor is not explicitly part of the literature as yet, however.

⁴¹ Tatalovich, Smith, and Bobic, "Moral Conflict and the Policy Process," 2.

⁴² Studlar, "The Public Clash of Private Values."

⁴³ For example, an entire school of thought has been spawned by works like Ronald Inglehart, *The Silent Revolution: Changing Values and Political Styles among Western Publics* (Princeton, N.J.: Princeton University Press, 1977).

⁴⁴ Christopher Z. Mooney and Richard Schuldt, "Does Morality Policy Exist? Testing a Basic Assumption," in *American Political Science Association* (Philadelphia, PA: 2006), Kenneth D. Wald, James W. Button, and Barbara A. Rienzo, "Morality Politics Vs. Political Economy: The Case of School-Based Health Centers," *Social Science Quarterly* 82, no. 2 (2001).

⁴⁵ Mooney, "The Public Clash of Private Values," 8.

interest groups and the media are more likely to have an awareness of and an unusually high level of engagement. Citizen engagement can begin early when the idea is mooted, and frequently includes a high level of participation in the public debate that usually accompanies the passage of morality policies through the policy making process. The potential for their basic values to be affronted by contrary legislation is often enough to motivate citizens who would otherwise not be actively involved in the political process.

4. Technical simplicity. The nature of morality policies is such that many people can and do have both an interest in the outcome and an opinion on the subject. Issues of core values are matters that almost everyone can have an opinion on, and it requires little skill, education or even thought to do so, despite opinions often being based on hearsay or error.
5. Absence of consensus. Morality issues are largely immune from argument and, hence, are difficult for the conventional political process to resolve.⁴⁶ This is partly because they address core beliefs, but also because of the tendency towards bifurcation of the debate. The common strategy of protagonists rhetorically establishing the terms of the debate according to a 'master frame' favourable to their argument encourages a certain reaction from the public, but only from those who are already favourably disposed to their point of view.⁴⁷ This tends to lead the opposing camps to talk past each other. When both parties do this, they fail to address each others' issues head on, thus ensuring a limited engagement with the 'opposition' and guaranteeing their inability to ultimately prevail.⁴⁸ For the political process, the need to reconcile such polarised and polarising viewpoints leads frequently to the use of non-conventional policy processes such as the ballot (in the U.S.) and conscience voting (in parliamentary systems), leading to public opinion being generally more highly regarded during morality policy debates.⁴⁹
6. Lack of compromise. The close relationship between morality policies and fundamental beliefs mean that policy positions are often absolute, and any form of compromise is often tantamount to defeat. The centrality of most of these issues to people's identity explains much about why so few people change their minds about these issues, and the kind of argument that occurs during a legislative debate is not usually sufficient to alter people's core values. The involvement of core beliefs also explains why debates on moral issues are so often heated – disagreements over morality issues are keenly felt and positions are fiercely defended. Even non-religious citizens have beliefs about the 'good society' and an accompanying ethical framework that they wish to see either enshrined in legislation or defended from change. To have this legal-ethical framework threatened as a result of proposed law change is very disconcerting, and can even be perceived as a revolutionary act by those who feel threatened. Further, morality conflicts are usually seen as part of an ongoing struggle, the 'losers' in a particular battle often redoubling

⁴⁶ Donley Studlar, "U.S. Tobacco Control: Public Health, Political Economy, or Morality Policy?," *Review of Policy Research* 25 (2008).

⁴⁷ Miceli, "Morality Politics Vs. Identity Politics.", D.A. Snow and R.D. Benford, "Master Frames and Cycles of Protest," in *Frontiers in Social Movement Theory*, ed. A. Morris and C. McClurg Mueller (New Haven, CT: Yale University Press, 1992).

⁴⁸ Miceli, "Morality Politics Vs. Identity Politics."

⁴⁹ Donald P. Haider-Markel and Kenneth Meier, "The Politics of Gay and Lesbian Rights: Expanding the Scope of Conflict," *The Journal of Politics* 58, no. 2 (1996), Christopher Z. Mooney and Mei-Hsien Lee, "The Influence of Values on Consensus and Contentious Morality Policy: U.S. Death Penalty Reform, 1956-82," *The Journal of Politics* 62, no. 1 (2000), Christopher Z. Mooney and Mei-Hsien Lee, "Legislating Morality in the American States: The Case of Pre-Roe Abortion Regulation Reform," *American Journal of Political Science* 39 (1995).

their efforts to have the new policy overturned. This makes equilibrium in the political realm on these issues extremely difficult,⁵⁰ with outcomes tending towards extremes and the same issues often being subsequently readdressed, often triggering a repeat of the initial debate. The initial abortion debates in New Zealand, for example, “developed an emotional intensity that became difficult to deal with by the normal powers of reason”, resulting in little progress on the matter.⁵¹

7. Resource equivalence. Protagonists in morality policy debates constitute at least a significant minority of the population. Morality policies are, therefore, almost always characterised by two (or more) sides that are sufficiently resourced to conduct a sustained public debate.

While conscience voting clearly has much in common with morality theory, it would be incorrect to assume they are equivalent. For the theorists of morality theory, it is the content of these issues *per se* that defines them as morality policies, and the distinctive treatment they receive in the public policy arena is derivative. Thus, morality theory is essentially about public policy – why certain issues with moral content come on to the public agenda, and how they are treated when they get there. Because there are institutional differences, however, scholars working in parliamentary systems trying to conceptualise conscience votes are forced to work in reverse, beginning with a set of issues that have been defined by their institutional treatment and then seeking to establish a thematic commonality between them. Thus, U.S. morality theorists begin with a thematically defined set of issues and work towards their institutional treatment, while scholars studying conscience votes are presented with an institutionally defined set of issues and must explain the themes they contain.⁵²

The U.S. flavour of morality theory, however, is not the only restraint on its use in developing a theory of conscience voting. It is a relatively young field of enquiry that is still-emerging⁵³ – the beginnings of morality theory stem from the work of American scholars such as Gusfield in the 1960s⁵⁴ and Smith in the 1970s.⁵⁵ As a consequence, serious conceptual attention has only been paid to morality policies in the last few decades, and most of the work has been done in a single country, the United States. Further, there are still limited numbers of political scientists directly addressing moral issues in public policy, and even fewer making original contributions to the conceptualisation of their treatment. Nevertheless, morality theory promises to make a useful contribution to the conceptualisation of conscience voting.

⁵⁰ Kenneth J. Meier, "Drugs, Sex, and Rock and Roll: A Theory of Morality Politics," in *The Public Clash of Private Values: The Politics of Morality Policy*, ed. Christopher Mooney (New York: Chatham House Publishers, 2001).

⁵¹ Michael Bassett, *The Third Labour Government: A Personal History* (Palmerston North: Dunmore Press, 1976), 179.

⁵² Notable examples of authors who have been caught in this conundrum by authoring research articles from parliamentary systems in American books on morality theory include Philip Cowley, "Morality Policy without Politics? The Case of Britain," in *The Public Clash of Private Values: The Politics of Morality Policy*, ed. Christopher Z. Mooney (New York: Chatham House Publishers, 2001), Ian Mylchreest, "Avoiding the Issue Down Under: The Politics of Legalizing Abortion in Australia," in *The Public Clash of Private Values: The Politics of Morality Policy*, ed. Christopher Z. Mooney (New York: Chatham House Publishers, 2001). A more successful attempt to configure a study of morality politics within a parliamentary system is Ronald Weitzer, "Legalizing Prostitution: Morality Politics in Western Australia," *British Journal of Criminology* 49 (2009).

⁵³ Christopher Z. Mooney, "The Decline of Federalism and the Rise of Morality-Policy Conflict in the United States," *Publius* 30, no. 1 (2000).

⁵⁴ Joseph R. Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement* (Urbana: University of Illinois Press, 1963).

⁵⁵ T. Alexander Smith, *The Comparative Policy Process* (Santa Barbara: Clio Press, 1975).

Public Policy

One of the reasons morality theory is captive to the United States' institutional arrangement is that its roots as a sub-field are in American public policy. Much of morality theory as conceptualised to date has drawn its inspiration from Theodore Lowi's work, especially his maxim that policy determines politics and not the reverse. This maxim, proffered in the 1960s,⁵⁶ argued against the prevailing view of the day that the institutions of the political arena, their particular relationships with the electorate and with each other determined the policies that arrived on the political agenda and how they were treated. Lowi's work was a deliberate attempt to turn this on its head or, as he later put it, "back on its feet,"⁵⁷ by building a theoretical schema that recognised that a policy's institutional treatment was at least as dependent upon the nature of the policy. Lowi's contribution was attractive to morality theorists because it did, indeed, seem as if issues with high moral content determined their political treatment. To this extent, morality theory can be seen as a subfield of public policy, for the latter has had more than a passing influence on morality theory. Given the high degree of control that the executive exercises over public policy in parliamentary systems, however, Lowi's maxim has less relevance in those countries. Consequently, morality theory, influenced as it is by Lowi's contribution to public policy, thrives in the United States but has failed to gain much ground in parliamentary countries.

Lowi's schema originally incorporated a three-fold typology of public policy – distribution, regulation and redistribution – that he felt provided the appropriate distinctions requisite to identifying various political treatments.⁵⁸ For Lowi, *distribution* was the act of allocating resources to various groups in society, *regulation* was the prohibiting of various behaviour within society, and *redistribution* was the attempt to alter the values by which society operated. He later added a fourth class: *constituent policy*, that incorporated issues of administration.⁵⁹

For some morality theorists, morality policy is essentially a type of *redistribution policy*, an effort by one or more groups to have their values enshrined in law.⁶⁰ To this extent, these theorists see morality policy as equivalent, in the realm of values, to the redistribution of wealth that occurs through economic policy. Other theorists, however, view morality policy as a form of *regulation*, with the state seeking to influence the nature of relationships in society by altering the regulatory context within which they are conducted. Smith and Tatalovich, for example, argue that "while governments can redistribute wealth by compulsion, they most assuredly cannot redistribute personal values. The imposition of government edicts by no means guarantees that citizens have changed their attitudes..."⁶¹ Thus, for these latter authors, morality policy is an effort to regulate social relationships in a manner quite unlike economic policy. Yet other theorists see morality theory as a separate and distinct policy group, adding a fifth category to Lowi's original four.⁶² Rather than limiting salient and contentious issues in a 'moral' category, Smith, for example, broadened their conceptualisation by focusing upon their emotiveness and

⁵⁶ Theodore J. Lowi, "American Business, Public Policy, Case Studies, and Political Theory," *World Politics* 16 (1964).

⁵⁷ Theodore J. Lowi, "Foreword: New Dimensions in Policy and Politics," in *Moral Controversies in American Politics*, ed. Raymond Tatalovich and Byron W. Daynes (New York: M.E. Sharpe, 2005), xii.

⁵⁸ Lowi, "American Business, Public Policy, Case Studies, and Political Theory."

⁵⁹ Theodore J. Lowi, "Four Systems of Policy, Politics and Choice," *Public Administration Review* 32 (1972).

⁶⁰ See Haider-Markel and Meier, "The Politics of Gay and Lesbian Rights.", Kenneth Meier, *The Politics of Sin: Drugs, Alcohol, and Public Policy*, ed. Kenneth Meier, *Bureaucracies, Public Administration, and Public Policy* (New York: M.E. Sharpe, 1994), Meier, "Drugs, Sex, and Rock and Roll."

⁶¹ Smith and Tatalovich, *Cultures at War*, 15.

⁶² Smith, *The Comparative Policy Process*.

use of identity-related symbols in a category he called *emotive-symbolic*. This approach enabled his typology to more comfortably accommodate conscience issues such as Canada's flag debate without stretching the definition of first principles.

Lowi himself has expressed his view that morality policy is a radical form of all four of his policy types, the emotive result of the infusion of moral conflict into policy debates.⁶³ The mainstream of politics involves consensus and compromise – traits that are at odds with morality policies' radical tendencies. The process of radicalisation transforms both the issue and the debate by polarising it, framing it in absolutist terms, emotionally charging the terminology, intensifying the feelings, nationalising the issue, and, in politics such as the United States, judicialising the process. For example, what is described as an 'entitlement' in redistributive policies becomes claimed as a 'right' by (moral) radicals, and what may ordinarily be an 'error' in regulatory policies becomes framed as 'sin' when radicalised. Consequently, instead of morality politics being simply another policy category, for Lowi it is a particular interpretation of the policies, politics and structures associated with each of the original categories in his typology. The resulting politics becomes "more ideological, more moral, more directly derived from fundamental values, more intense, less utilitarian, more polarized, and less prone to compromise"⁶⁴ – all traits that make morality policies political hot potatoes within mainstream politics, designed as it is for conventional policies.

Cultural Change

Besides its ethnocentrism, the greatest weakness of morality theory is possibly its limited explanatory power. Describing moral conflict as being about core values and salient issues fails to account for why these disputes occur in the first place. Addressing this question requires an even more fully developed framework than morality theory currently provides – one that links the issue-focused insights of morality theory with the structural dynamics within society. Smith and Tatalovich's conclusion that "no list can include all possible examples [of morality policy], nor can a summary of their policy attributes provide enough theoretical power to explain the emergence of morality politics or to account for their future manifestations"⁶⁵ led them to posit the fusion of morality theory with culture theory.

Culture theory draws from some of the original insights contributed by Mary Douglas. Douglas essentially sought to conceptualise the influence of culture on social (and, by implication, on political) behaviour by developing a typology of cultures. At the most basic level, she used two axes: 'grid', which described the degree of regulation exerted by the community on an individual, and 'group', by which was meant the degree to which "the individual's life is absorbed in and sustained by group membership".⁶⁶ The combination of these two axes resulted in four cultural types: hierarchy (high group, high grid), egalitarian collectivism (high group, low grid), entrepreneurial individualism (low group, low grid), and fatalism (low group, high grid), each of which had a distinct set of characteristic social relationships. Relating individual experience to these structural themes gave Douglas and her followers a framework from which to understand culture and cultures. Subsequent work from Douglas has advanced this framework in a number of areas, such as refining the understanding of the role of power and authority in

⁶³ Lowi, "Foreword: New Dimensions in Policy and Politics."

⁶⁴ *Ibid.*, xiii.

⁶⁵ Smith and Tatalovich, *Cultures at War*, 240.

⁶⁶ Mary Douglas, "Cultural Bias," in *In the Active Voice*, ed. Mary Douglas (London: Routledge & Kegan Paul, 1982).

how these categories are derived, identifying the attitude to power and authority as being important in the maintenance of these classes rather than the social relations themselves, and identifying the importance of cultural bias as a political motivator.⁶⁷ Followers of Douglas have also addressed culture theory's detractors in attempting to advance it from an elaborate classification scheme into an explanatory theory. Some authors, for example, view the grid-group scheme less as an orthogonal grid and more as a self-organising system which is inherently dynamic, with change and surprise as its essential feature.⁶⁸ Each sector of the grid is a 'social solidarity' or a 'singularity', where each of the five points in the grid-group (the four corners and the centre) are the points at which the values and beliefs supporting that way of life is most strongly held, as well as defining themselves in contradistinction to the other points. Thus, on this formulation, the grid-group schema becomes a system of competing ways of life, and is the basis of what some have come to call the culture war.⁶⁹ The natural competition between these ways of life has its limits, however, for ultimately each way of life needs the attributes of the others:

The hierarchists, for instance, enforce the law of contract for the individualists, the egalitarian excesses of the individualists and hierarchist give the egalitarians something to criticise, and the fatalists give the hierarchists someone to set on top of and the individualists someone to take work from. For all their contradictions and contentions, each way of life ultimately needs the others. ... That is why none of them can ever go into permanent extinction.⁷⁰

In advancing the anthropological understanding of cultural theory in these ways, culture theory has made itself more relevant to political scientists who seek to explain the origins of policy conflict, especially those that are contentious yet beyond the explanation of traditional rational actor models.⁷¹ For Smith and Tatalovich, culture theory is useful in accounting for morality policies as expressed variously throughout the western world. They see culture theory's role as supplementing the explanatory power of morality theory, anchoring morality conflicts in structural forces.

Smith and Tatalovich, in further elaborating this approach, argue that "moral conflicts are fundamentally disputes between the forces of *status-differentiation* and *status-equalization*."⁷²

We have tried to fill this theoretical vacuum [between description and explanation] with culture theory. ... The logic of culture theory is that moral conflicts are struggles between the forces of *status-differentiation* and the forces of *status-egalitarianism*. The first reflects the hierarchical bias that looks fondly upon traditional societies in which individuals and groups know their place. The latter includes other elites of many stripes on the Left who believe in universal principles of human dignity and human rights.⁷³

Those who favour retaining the traditional social differences and cultural forms struggle towards status-differentiation because these differences and forms are encapsulated in traditional social structures. These structures provide certainty for social roles, give meaning to life and supply an identity, even if

⁶⁷ Mary Douglas, "The Depoliticization of Risk," in *Culture Matters: Essays in Honor of Aaron Wildavsky*, ed. Richard J. Ellis and Michael Thompson (Boulder, CO: Westview Press, 1997).

⁶⁸ Michael Thompson, "The Dynamics of Cultural Theory and Their Implications for the Enterprise Culture," in *Understanding the Enterprise Culture: Themes in the Work of Mary Douglas*, ed. Shaun Hargreaves Heap and Angus Ross (Edinburgh: Edinburgh University Press, 1992), Michael Thompson and Richard J. Ellis, "Introduction," in *Culture Matters: Essays in Honor of Aaron Wildavsky*, ed. Richard J. Ellis and Michael Thompson (Boulder, CO: Westview Press, 1997).

⁶⁹ Thompson and Ellis, "Introduction."

⁷⁰ Thompson, "The Dynamics of Cultural Theory."

⁷¹ Shaun Hargreaves Heap and Angus Ross, "Introduction: Mary Douglas and the Enterprise Culture," in *Understanding the Enterprise Culture: Themes in the Work of Mary Douglas*, ed. Shaun Hargreaves Heap and Angus Ross (Edinburgh: Edinburgh University Press, 1992), 4.

⁷² Smith and Tatalovich, *Cultures at War*, 19.

⁷³ *Ibid.*, 240.

different categories of people have varying social roles. Order and stability are the aims of the hierarchical system, and the group one belongs to provides status, expectations and support.

Those who work towards status-equalisation do so because some groups are perceived as being disadvantaged under traditional social arrangements. The forces of status-equalisation arise from the trend towards seeing individuals as individuals, deriving their identity from self-defining lifestyle choices rather than social group membership. Individuals have characteristics – such as sex, race and religion – that link them with other individuals, but these characteristics are commonly considered to be lifestyle choices rather than external impositions. For status-equalisers, status, in the Weberian sense, describes the groups thus constituted by individual choice, but they are groups constructed for the purpose of equalising rather than differentiating. Oppression is the enemy of status-equalisers, and, to this end, traditional classifications are viewed negatively and targeted for dismantling.⁷⁴ Smith and Tatalovich claim that “especially tempting targets – because they are so hierarchical – are established churches, the military, government agencies, and multinational corporations.”⁷⁵ These institutions’ defence necessarily revolves around the maintenance of classifications and definite boundaries in the face of efforts by status-equalisers to label them as “judgmental, old-fashioned, and out-of-date – who obstruct the course of human history, democracy, and economic progress.”⁷⁶ Thus, for Smith and Tatalovich, the tension over morality policies is really a battle over the values that define society’s members and structures.

The conflict between status-differentiators and status-equalisers has arisen, in many western countries, because of *status frustrations*. These frustrations have emerged because of a number of historical and structural catalysts, including postmaterialism, postmodernism, individualisation, consumerism, increasing wealth and diversity of lifestyle, all of which have served to loosen traditional bonds and provide opportunities for focusing on personal and group identities other than class. These forces have also provided the opportunity to break down the traditional structures by calling into question their role in modern society, and by providing the opportunity for alternative identities and realities to emerge and compete. Together with the dissipation of the traditional social structures, these status frustrations have contributed to the emergence of the politics of identity and an interest in the regulation of moral values. The result has been a kind of social vortex created as identities, values, roles and structures have all been in flux. Morality politics has been the political manifestation of this social struggle.⁷⁷

In a similar vein, Tatalovich and Daynes have also elaborated a sociological approach to morality policy, depicting the struggle over social values and cultural dominance as a struggle over *status*. For Tatalovich and Daynes, morality policy, while about values and first principles, manifests in a clash of social classes with the winners being those who receive esteem, positions of power and the advantages of cultural control.⁷⁸

Approaches to morality politics like those described above generally adopt a war paradigm upon which to conceptualise public policy – talk of conflict, battles, contests, struggle, tension, threats, survival,

⁷⁴ Mary Douglas, *Cultural Bias* (London: Royal Anthropological Institute, 1978), 46.

⁷⁵ Smith and Tatalovich, *Cultures at War*, 59.

⁷⁶ *Ibid.*, 52.

⁷⁷ *Ibid.*, 25-46.

⁷⁸ Raymond Tatalovich and Byron W. Daynes, "Introduction: Social Regulations and the Policy Process," in *Moral Controversies in American Politics*, ed. Raymond Tatalovich and Byron W. Daynes (New York: M.E. Sharpe, 2005).

fighting and victory pepper the relevant literature. For example, James Davison Hunter, a sociologist, called his seminal analysis of recent cultural change *Culture Wars*,⁷⁹ a reference to his view that battles over issues like abortion, affirmative action, gay rights, and educational secularism are fundamental disagreements over the sources of moral authority. While one side of the struggle are cultural conservatives attempting to preserve the status quo, the other side are cultural progressives and liberals who wish to reinvent the social order for the purpose of enabling a redefinition of identity and value. For Hunter, the culture war is essentially a battle for domination of the values of society, and “a struggle to achieve or maintain the power to define reality.”⁸⁰ Smith and Tatalovich make explicit reference to Hunter’s thesis, stressing, in concert with others,⁸¹ however, that, rather than there being a single monolithic cultural cleavage causing the conflict, there are in fact multiple cultures at war. These wars are often cross-cutting, producing effects that are sometimes attenuating, sometimes magnifying, to the issues in question, but usually acting to bring into tension policy issues that were previously part of an established social consensus.⁸²

Legitimacy, the Naked Public Square and the New Political Culture

The arena where values contend, worldviews engage each other, and where a group’s way of life is defended by promoting core values is the realm of politics widely defined. In such an arena, there is a need for an arbitrator to either reconcile diverse positions or act as a gatekeeper for policy proposals. Ultimately, this institution must pass judgment on which set of values is to prevail – this is one of the functions of the state, again widely defined.

Since the 1960s, a number of issues have created a social and political flux in western societies, making the state’s value-arbitrating role a more complex affair than it might otherwise have been. Two socio-political factors are especially relevant here. First, a postmodern shift has meant that socially unifying standards, principles, and social contracts have been abandoned in favour of individual rights and personal truth. Second, a postmaterialist trend has contributed to a reorientation of dominant social cleavages, forcing traditional political institutions to adapt in order to remain relevant. Together, these elements of socio-political change have contributed markedly to both policy and procedural change for parliamentary institutions. They have also acted to create new arenas of disagreement between elements at all levels of western polities including citizens, MPs and political parties. It is inevitable that parties have found themselves, at times, without established policy positions on the various issues that have arisen and this, in turn, has provided a challenge to party cohesion, creating the need for a safety valve to accommodate intra-party disagreement and uncertainty. It seems reasonable to suggest that conscience voting has been utilised for at least some issues because of its capacity to ensure decisions are made even when parties have no policy on a matter or simply wish to avoid controversy.

Traditionally, both the church and the secular state had major roles to play throughout the western world in performing a unifying function within society. In New Zealand, although it is easy to exaggerate the degree of unity that existed, there was a general consensus, or at least a tacit acceptance, up until the

⁷⁹ Hunter, *Culture Wars*.

⁸⁰ *Ibid.*, 52.

⁸¹ For example, Rhys H. Williams, "Introduction," in *Cultural Wars in American Politics: Critical Reviews of a Popular Myth*, ed. Rhys H. Williams (New York: Aldine De Gruyter, 1997).

⁸² Smith and Tatalovich, *Cultures at War*.

1960s that it was appropriate to base both social behaviour and the institutions of government upon the Judeo-Christian tradition and, in particular, the tenets of the Bible.⁸³

The church and the secular state maintained this relationship for many decades because it was mutually reinforcing. The largely Christian basis for New Zealand state and society was the result of a mutual desire for stability as much as anything else, a desire that stemmed from New Zealand's youth and distance from the established European civilisation. For the state, Western materialism and the notion of progress was reinforced by a church that was happy to promote the values of thrift, effort, wealth and commitment. For the church, the state legislated the Christian moral code and promoted Christian ethics in public policy at all levels of its influence. Both parties to this 'Christian consensus' thus implicitly promoted the authority of the other within their respective spheres, an arrangement that endured until internal and external shocks forced a reconsideration of the values upon which society was based.⁸⁴

These shocks included:

Britain's entry into the Common Market and withdrawal east of Suez, [which] had consequences for guaranteed markets, and the credibility of a monocultural belief system which defined New Zealand as an outpost of British civilization in the South Pacific. The oil price rises of the early seventies compounded the economic problems. Internally the consequences of post-war industrialization and urbanization fundamentally changed the material conditions of existence of most segments of the population and transformed a predominantly rural Maori population into an urban proletariat, and a European population of small independent businessmen, farmers and shopkeepers into a salaried strata of employees ... Increased immigration from the Pacific Islands and, to a lesser extent from Asia, in the sixties and seventies, although still outnumbered by migration from Britain, was perceived as threatening the ethnic homogeneity of the population and the monocultural social order. The growth of unemployment in the seventies ... and rediscovery of poverty ... led to a questioning of assumptions of economic equality and the effectiveness of the welfare state.⁸⁵

In addition to the above, other, more global, forces were also acting such as globalism's unleashing of the free exchange of new ideas and science's ever-growing hegemony over how truth is to be discerned.

From the 1960s, New Zealand's identification with pragmatic equality that had been a powerful force for social conformity and created an illusion of homogeneity began to break down. Individualisation began to assert itself, manifesting in the 'politics of differentiation'. The rhetoric of consensus was replaced by a focus upon 'class', 'inequality' and 'discrimination'.⁸⁶

These changes rent New Zealand's church-state relations out of its comfortable co-existence. The consequent retreat of the church, the preserver of affairs spiritual, from the public square created a void of values into which other perspectives and institutions were able to assert themselves. Reacting to the twin forces of liberation from the traditional moral code and empowerment to arbitrate competing viewpoints, the state, the traditional arbitrator of affairs temporal, not unnaturally began to occupy this

⁸³ Ivanica Vodanovich, "Religion and Legitimation in New Zealand: Redefining the Relationship between Church and State," *British Review of New Zealand Studies*, no. 3 (1990).

⁸⁴ Ibid.

⁸⁵ Ibid.: 58.

⁸⁶ Peter Lineham, "Evangelicals and Social Issues in the 1950s," *Stimulus: the New Zealand journal of Christian thought and practice* 13, no. 4 (2005). For an example of the shift in ideologies in the context of women's liberation, see Ruth Low, "The Debate on the United Nations Convention for the Elimination of All Forms of Discrimination against Women: Motivated by Fear or a Clash of Ideologies?," *Stimulus: the New Zealand journal of Christian thought and practice* 13, no. 4 (2005).

void.⁸⁷ At first, occupying this values-void meant continuing the status quo, but, over time, due to both wider social trends and the policy of specific actors,⁸⁸ the state came to adopt a normative perspective of its own that contributed to value formation on the one hand and a role in arbitrating competing perspectives on the other. The result included an increase in both the regularity and the qualitative depth of parliament's involvement in moral issues. The state's objective in regulating values has become self-determination, not social cohesion; the state's role now involves arbitration between competing interests, not the maintenance of normative standards. Conversely, society has witnessed an "increased dependence on the state, as agent for the collective, and an extension of its activities and powers as it attempts to mediate, equally, between conflicting demands and competing expectations from different social groups and sectors of society."⁸⁹

However traumatic it was for the Christian church to observe its public influence dissipating, the concomitant rejection of transcendent authority created a crisis of legitimacy for the state.⁹⁰ The state's emergence as the dominant arbiter of values in many western polities did not automatically provide authoritative, self-justifying or socially unifying values.⁹¹ On the contrary, the 'public square' in many western countries became devoid of values precisely because it had been at the expense of the church. Without transcendent values, the determination of ethics became a technical matter that demanded the application of scientific rationality. As a determiner of normative values, however, the use of rationality provides its own justification, is therefore not open to critique and, as such, is self-defeating.⁹²

This renewed focus upon the individual, engendered by the postmodern shift in values, is mirrored in the second major factor shaping the state's role in value arbitration. From the 1960s, a splintering of primary social concerns occurred that constituted a postmaterialist turn, paralleling the postmodern shift outlined above.⁹³

Political parties had been long used to representing the economic interests of their constituents and using class concerns to stake their territory on the political spectrum to the point where some commentators had described social cleavages and their political manifestations as 'frozen.'⁹⁴ Since the

⁸⁷ An interesting analysis of the relationship between the church and the state in this context is Rex Ahdar, "Endorsement, Neutrality or Suppression: What Is the Best Government Policy for Christianity?," in *The Future of Christianity: Historical, Sociological, Political and Theological Perspectives from New Zealand*, ed. John Stenhouse and Brett Knowles, *Atf Series* (Adelaide: ATF Press, 2004). Ahdar believes the church's "main competitor will remain the state itself." (p.130.)

⁸⁸ The secularisation of the New Zealand public sphere has received little scholarly attention, but the experience of the United States may have relevance here, or at least influence. Christian Smith, ed., *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life* (Berkeley: University of California Press, 2003).

⁸⁹ Vodanovich, "Religion and Legitimation in New Zealand," 53.

⁹⁰ Hill and Zwaga discuss whether Durkheim's concept of 'civil religion' has replaced traditional religion as the unifying source of social values. They suggest that 'secular religionists' have attempted to take the values presented by e.g. ANZAC day, given them to the Civil State in place of traditional Christianity. The 'New Christian Right' (if such a group exists) may have reengineered a consensus from an increasingly marginalised set of traditional values, as witnessed by the 1986 Homosexual Law Reform Bill petition. Hill and Zwager call this 'engineered patriotism masquerading as civil religion.' Michael Hill and Wiebe Zwaga, "Civil and Civic: Engineering a National Religious Consensus," *New Zealand Sociology* 2, no. 1 (1987).

⁹¹ Richard John Neuhaus, *The Naked Public Square: Religion and Democracy in America*, Second ed. (Grand Rapids, MI: William B. Eerdmans, 1984).

⁹² Jurgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy (London: Heinemann, 1976).

⁹³ Ronald Inglehart, *Modernization and Postmodernization: Cultural, Economic, and Political Change in 43 Societies* (Princeton, NJ: Princeton University Press, 1997).

⁹⁴ Seymour M. Lipset and Stein Rokkan, eds., *Party Systems and Voter Alignments: Cross-National Perspectives, International Yearbook of Political Behavior Research* (New York: The Free Press, 1967). The term 'frozen cleavages' is not Lipset and Rokkan's, although they do talk of "the freezing of the major party alternatives in the

1960s, and for a variety of reasons, political parties found the social basis of their political representation shifting.⁹⁵ Whereas class had traditionally been the dominant social cleavage determining political representation until the mid twentieth century, since then there has been a lessening of primacy for concerns of economics, wealth distribution and class, and a coming to prominence of 'lifestyle' issues such as environmental protection, gender and racial equality, and social inclusion.⁹⁶ Inglehart described this as a silent revolution, relating these changes to a more generalised 'postmaterialist' progression throughout the western world.⁹⁷

At about the same time and for some of the same reasons, the nature of political culture also began to change. The postmaterialist interests making their impact upon political representation and party policies were also giving rise to a reoriented political culture more responsive to postmaterialist concerns. In addition to new political representation, this new political culture (NPC) included new styles of leadership and political organisation, fresh approaches to old problems, a greater emphasis on efficient delivery of services, inclusive decision making, a more transparent bureaucracy, fluid leadership structures, and the creation of issue-based coalitions that went beyond political parties to also embrace diverse non-parliamentary groups such as interest groups, the business sector and ethnic groups.⁹⁸ Some advocates have further claimed that the new political culture is an indication that a new social paradigm is emerging, displacing the goal-oriented structure of Western industrial societies with a more consensual model.⁹⁹ In support of this view, Clark and Inglehart cite such evidence as the emergence of environmental groups and political movements such as Green parties around the world, the rise of political candidates such as Bill Clinton and Tony Blair who seek to range beyond traditional party lines, the increasing political belligerence of religious groups in some countries, strong ethnic allegiances in many emerging democracies, and new social movements for individual freedom and decentralisation.¹⁰⁰

New Political Culture (NPC) advocates do not argue that class-based political divisions are irrelevant. Instead, they argue that the political structure of modern democracies are more complicated than

wake of the extension of the suffrage and the mobilization of major sections of the new reservoirs of potential supporters." (p.50)

See also Erik Allardt, "Party Systems and Voter Alignments in the Tradition of Political Sociology," in *Party Systems and Voter Alignments Revisited*, ed. Lauri Karvonen and Stein Kuhnle, *Advances in International Relations and Politics* (London & New York: Routledge, 2001), Giovanni Sartori, "From the Sociology of Politics to Political Sociology," *Government and Opposition* 4, no. 2 (1969).

⁹⁵ Mildred A. Schwartz and Kay Lawson, "Political Parties: Social Bases, Organization, and Environment," in *The Handbook of Political Sociology: States, Civil Societies, and Globalization*, ed. Thomas Janoski, et al. (New York: Cambridge University Press, 2005).

⁹⁶ Mattei Dogan, "Class, Religion, Party: Triple Decline of Electoral Cleavages in Western Europe," in *Party Systems and Voter Alignments Revisited*, ed. Lauri Karvonen and Stein Kuhnle, *Advances in International Relations and Politics* (London & New York: Routledge, 2001).

⁹⁷ Inglehart, *Silent Revolution*.

⁹⁸ Terry Nichols Clark, "Overview of the Book," in *The New Political Culture*, ed. Terry Nichols Clark and Vincent Hoffmann-Martinot, *Urban Policy Challenges* (Boulder, CO: Westview Press, 1998).

⁹⁹ For example, R. Dunlap and Karl van Liere, "The 'New Environmental Paradigm'," *Journal of Environmental Education* 9 (1978).

¹⁰⁰ Terry Nichols Clark and Ronald Inglehart, "The New Political Culture: Changing Dynamics of Support for the Welfare State and Other Policies in Postindustrial Societies," in *The New Political Culture*, ed. Terry Nichols Clark and Ronald Inglehart, *Urban Policy Challenges* (Boulder, CO: Westview Press, 1998), 9-10.

traditional models assume.¹⁰¹ Economic interests are combining with new sociological concerns such as religion, gender and race to produce new and, at times, unpredictable political expressions.¹⁰²

Whether expressed as a decline in the relevance of cleavages *per se* or merely a shift in their relative prominence,¹⁰³ these changes have forced traditional parties to accommodate, in one way or another, both new policy interests and a new type of politics. According to advocates, they have encouraged many western states to revise the values around which political parties coalesce, how values are represented, the role of the state generally and the nature of modern (or postmodern) politics, particularly with respect to non-economic decisions.

That new social cleavages are emerging in many western societies seems incontrovertible. What is of doubtful certainty is the extent of the new cleavages, their precise impact upon political structure, and the relevance of other factors such as institutional effects in moderating these changes. It may be incorrect to assume, for example, that the changing social bases of political representation will spell the end of traditional political parties. A number of scholars have argued that parties have demonstrated a remarkable capacity to adapt to changing circumstances.¹⁰⁴ The traditional rhetoric of class-based ideology has receded from public view to be replaced by talk of, for example, diversity, tolerance, and inclusiveness. Parties' political response has also been to incorporate, subsume, and neutralise the political impact of postmaterialist concerns, whilst at the same time promoting visions of society that are designed to both fulfil a normative vision that accords with the party's roots and also resonate with voters. This has, in turn, made it difficult for new parties to gain a foothold in the political spectrum.

Some authors have also expressed concern about the basic concept of cleavage.¹⁰⁵ Pointing out that the term 'cleavage' is used rather loosely by NPC advocates, Franklin, Mackie and Valen argue that its tightening is conceptually necessary because cleavage types are not unidimensional – those stemming from the ideological basis of their content being distinct from those that are integrally linked with social groups.¹⁰⁶ Social cleavages may also be examined with respect to either voters or parties; if the latter, it is not clear in what way a party can be said to represent a social group.¹⁰⁷ Other works have noted that

¹⁰¹ Seymour Martin Lipset, "Cleavages, Parties and Democracy," in *Party Systems and Voter Alignments Revisited*, ed. Lauri Karvonen and Stein Kuhnle, *Advances in International Relations and Politics* (London & New York: Routledge, 2001).

¹⁰² Clem Brooks, Paul Nieuwbeerta, and Jeff Manza, "Cleavage-Based Voting Behavior in Cross-National Perspective: Evidence from Six Postwar Democracies," *Social Science Research* 35 (2006), Jeff Manza and Clem Brooks, *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions* (New York: Oxford University Press, 1999).

¹⁰³ Manza and Brooks, *Social Cleavages and Political Change*, Schwartz and Lawson, "Political Parties."

¹⁰⁴ Clive Bean, "Class and Party in the Anglo-American Democracies: The Case of New Zealand in Perspective," *British Journal of Political Science* 18, no. 3 (1988), Clive Bean, "New Zealand," in *Electoral Change: Responses to Evolving Social and Attitudinal Structures in Western Countries*, ed. Mark N. Franklin, Thomas T. Mackie, and Henry Valen (Cambridge: Cambridge University Press, 1992), 305-06, Jonathan Kelley, Ian McAllister, and Anthony Mughan, "The Decline of Class Revisited: Class and Party in England, 1964-79," *American Political Science Review* 79, no. 3 (1985), Peter Mair, "Adaptation and Control: Towards an Understanding of Party and Party System Change," in *Western European Party Systems: Continuity and Change*, ed. H. Daalder and Peter Mair (Beverly Hills, CA & London: Sage, 1983), Sartori, "Sociology of Politics to Political Sociology."

¹⁰⁵ Stefano Bartolini and Peter Mair, *Identity, Competition, and Electoral Availability: The Stabilisation of European Electorates 1885-1985* (Cambridge: Cambridge University Press, 1990), Mark N. Franklin, Thomas T. Mackie, and Henry Valen, "Introduction," in *Electoral Change: Responses to Evolving Social and Attitudinal Structures in Western Countries*, ed. Mark N. Franklin, Thomas T. Mackie, and Henry Valen (Cambridge: Cambridge University Press, 1992), 4.

¹⁰⁶ Franklin, Mackie, and Valen, "Introduction," 4.

¹⁰⁷ Richard S. Katz, "Are Cleavages Frozen in the English-Speaking Democracies?," in *Party Systems and Voter Alignments Revisited*, ed. Lauri Karvonen and Stein Kuhnle, *Advances in International Relations and Politics* (London & New York: Routledge, 2001), 67.

political representation of social cleavages is not direct but mediated, and additional factors will inevitably be at play shaping the response of political parties.¹⁰⁸ This raises questions about the nature of these new social cleavages and their relationship to political divisions.¹⁰⁹ Brooks and Manza, for example, have argued that lifestyle concerns are not the obverse of class interests, but are unrelated trends dependent upon a range of social and cultural factors.¹¹⁰ It has even been suggested that the evolution of social cleavages may no longer be relevant to changes in political representation, the basis of electoral choice and political conflict being related to new, as yet undefined, factors.¹¹¹

Although the historic extent of class-based voting should not be overstated,¹¹² the role of New Zealand political parties in this arrangement has inevitably been transformed – traditional parties have had to adapt to these new expectations, and party policies have been reconstituted to accommodate their new focus and accommodate the individuality required in the implementation of individualised values. In addition, these changes have not only transformed the parties themselves, but also altered the principal cleavage lines both between and within parties.

The role of the state itself in New Zealand has also altered radically over the last century, and illustrates the way in which the above forces have provided a catalyst for change. Long considered an “experiment’ station of advanced legislation”¹¹³ and a “social engineer’s dream”,¹¹⁴ the involvement of the state in the country’s social and economic affairs grew steadily from its inception, such that by 1984 nearly half of the economy was controlled by the state.¹¹⁵ It seems clear that the basis of this involvement was pragmatic rather than ideological,¹¹⁶ being encouraged initially by the simplicity of New Zealand social structures,¹¹⁷ the absence of reactionary forces,¹¹⁸ the country’s direct form of democracy,¹¹⁹ and the generally egalitarian purposes of New Zealand’s politicians.¹²⁰ Bipartisan support for state involvement was further engendered by the colonists’ tendency towards ‘idealisation of the state’.¹²¹ By the 1980s, the growing weight of such state involvement had created severe imbalances in the economy and was acting as a disincentive to private activity. The combination of such imbalances with the postmodern and postmaterialist trends discussed above led to the reforms in New Zealand during the 1980s and 1990s – the state was drastically downsized with an extensive program of privatisation and deregulation, such that by the end of the 1990s the state was considerably smaller than

¹⁰⁸ Allardt, "Party Systems and Voter Alignments in the Tradition of Political Sociology," 19.

¹⁰⁹ Katz, "Are Cleavages Frozen in the English-Speaking Democracies?."

¹¹⁰ Clem Brooks and Jeff Manza, "Class Politics and Political Change in the United States, 1952-1992," *Social Forces* 76, no. 2 (1997).

¹¹¹ Russell J. Dalton, Scott C. Flanagan, and Paul Allen Beck, *Electoral Change in Advanced Industrial Democracies* (Princeton, N.J.: Princeton University Press, 1984). See also Zuckerman in this regard, who argues that the characteristics of the political elites are a greater influence on political conflict. Alan Zuckerman, "New Approaches to Political Cleavage: A Theoretical Introduction," *Comparative Political Studies* 15, no. 2 (1982), Alan Zuckerman, "Political Cleavage: A Conceptual and Theoretical Analysis," *British Journal of Political Science* 5, no. 2 (1975).

¹¹² Bean, "Class and Party in the Anglo-American Democracies."

¹¹³ Henry Demarest Lloyd, in *Verdict on New Zealand*, ed. Desmond Stone (Wellington: 1959), 64.

¹¹⁴ Michael Bassett, *The State in New Zealand, 1880-1984: Socialism without Doctrines?* (Auckland: Auckland University Press, 1998), 10.

¹¹⁵ *Ibid.*, 14.

¹¹⁶ *Ibid.*

¹¹⁷ Andre Siegfried, in *Verdict on New Zealand*, ed. Desmond Stone (Wellington: 1959), 81.

¹¹⁸ *Ibid.*

¹¹⁹ James Bryce, in *Verdict on New Zealand*, ed. Desmond Stone (Wellington: 1959), 89.

¹²⁰ Keith Sinclair, *A History of New Zealand* (London: 1959), 161.

¹²¹ *Ibid.*, 173.

it had been two decades previously. The objective of the reforms was largely to re-emphasise personal initiative and responsibility.

Steve Maharey, a sociologist, former cabinet minister and now Vice Chancellor of Massey University, regularly argued, while an MP, that constitutional reform was required in New Zealand due to the postmodern and postmaterialist forces at work in society. New Zealand's electoral system, first past the post, came under particular pressure, being perceived as favouring a two-party system that was appropriate for a society divided by class interests but inadequate for the diversity of expression in the late twentieth century.¹²² Somewhat vindicating those who believed that a proportional electoral system would give parliamentary representation to minority viewpoints that reflect contemporary social cleavages, a number of new political parties were spawned when MMP was adopted in 1996, each purporting to represent a particular set of interests and promising to conduct themselves according to new and more enlightened principles than the traditional parties they purported to be displacing.¹²³ On the face of it, these parties, such as the Greens (ecology), United (family issues), NZ First (New Zealand nationalism), Christian Coalition (traditional standards) and Act (personal freedom) closely resemble what would be expected according to the new political culture hypothesis. Equally, however, it is true that some of these new parties did not survive even the first MMP election, and others have since struggled to maintain their political presence.¹²⁴ Even if valid, the logic of the new political culture does not guarantee success for every, or even any, party, although, equally, the presence of electoral defeat does not necessarily invalidate its claims.

The emergence of new social concerns, the desire for a more responsive kind of politics and the abandonment of normative conceptions of truth and social standards have combined to unsettle the traditional arrangements between political parties in several ways. First, a policy deficit for traditional parties is created as new social cleavages emerge and change. This gap between social interests and

¹²² For example, Steve Maharey, former MP and Cabinet Minister, made some erudite and insightful comments during the Proportional Representation Indicative Referendum Bill 1991. Maharey was an academic sociologist before entering parliament, and is now Vice-Chancellor of Massey University in New Zealand. "The two-party system...reflected the interests of two key groups within our emerging economy – people who worked for their living and people who either owned land or represented those who had capital. ... Those were the two key groups, but that is not the position today. In the post-war period, society has become much more diverse. In relation to work, traditional groups have had to give way to a burgeoning number of other groups. We have traditional working-class groups, traditional owners, and people who manage, but we also have a developing number of white-collar workers. A large number of women are entering the work-force. We also have technicians and professional people. Those groups are all important, not just because they have emerged in the work-force but because they tend to want different things out of politics. As women have entered the work-force issues such as child-care have gone on to the political agenda. They have changed the kinds of things that people have aspired to and aspired to get from politics. ... In addition to those groups within the economy, many other people have begun to form what might be called new social movements, and have gone out and looked for their political agenda to be achieved, as well. So we find feminists; we find the Maori renaissance throwing up new Maori aspirations; we find people concerned about environmental issues; and we find the peace movement. ... [As a result] there is an emerging agenda that has not been adequately addressed by the traditional political parties, although they are trying to address it. ... I do not think that parties can respond to that diversity in our political system all on their own. ...the very structure of politics must change to reflect the way that our society is structured at present. ... I believe that it [the political response to these pressures] will divide members along the lines of whether they are looking for a more democratic future or not. In many ways a division of that kind will perhaps run across both parties." *NZPD*, Vol. 513, 27 March 1991, 1103-4. See also *NZPD*, Vol. 537, 3 August 1993, 17142, Electoral Reform Bill, Steve Maharey

¹²³ Jonathan Boston, "Experimenting with Coalition Government: Preparing to Manage under Proportional Representation," *Journal of Commonwealth and Comparative Politics* 35, no. 1 (1997), Jonathan Boston, *New Zealand under MMP: A New Politics?* (Auckland: Bridget Williams/Auckland University Press, 1996), J. Nagel, "How Many Parties Will New Zealand Have under MMP?," *Political Science* 46, no. 2 (1994).

¹²⁴ Boston, for example, discusses the challenges faced by New Zealand's Christian parties after 1996. Jonathan Boston, "Christian Political Parties and MMP," in *God and Government: The New Zealand Experience*, ed. Rex Ahdar and John Stenhouse (Dunedin: University of Otago Press, 2000).

political representation means that inevitably some votes are conducted on issues for which parties have no policy. Second, new battle lines are created over issues that are disrespectful of traditional party divisions, often running across rather than between parties. Third, the fragmented nature of many western societies makes it difficult for even large parties to represent all interests adequately. The tendency for these parties is to generalise and compromise on issues in order to seek a common position internally, or a resolution externally. Fourth, self-expression often demands inclusion, and smaller parties find it easier to build a sense of community than do large parties in the absence of a socially unifying force such as class-interest.¹²⁵

In this milieu, decision making has become more challenging for political parties. The individualisation of society, the removal of established values, the delegitimation of traditional value-giving institutions, the diversification of primary social concerns, the realignment of the social bases of political representation and the centring of value-arbitration on the state has deprived parliament of many procedural conventions. These macro social changes have provided the conditions for which conscience voting has been increasingly utilised. It is possible that the flexibility inherent in conscience voting makes it an attractive decision making mechanism for political parties who wish to accommodate social change within a traditional party structure, respond to the demand for greater responsiveness in the political system, or merely assist them cope with issues that are not traditionally part of their gambit.

Institutionalism

In some branches of social science, especially politics and sociology, the decline of structures such as class as an organising principle has been recognised and mirrored by a shift in how institutions themselves are viewed. Although the nature of the shift is disputed, the traditional perspective, which tended to view political institutions such as the state and parties as independent organising factors, has declined in favour of viewing institutions contextually – that is, as a multi-layered set of informal structures grounded in culture and influencing, if not governing, behaviour.¹²⁶ Reacting against atomistic or 'under-socialised' approaches to political behaviour, theorists of this persuasion are concerned less with describing formal structures than with recognising the 'rules of the game' that lie deeply embedded within the surrounding culture.¹²⁷ Although a multi-faceted movement that incorporates a number of perspectives,¹²⁸ this 'new institutionalism' may enable a fresh approach to considering how authority, rights, obligations, interaction, attention, experience, memory and resources such as are invoked during conscience voting are organised, beyond formal structures and hierarchies.

¹²⁵ Although this summary is believed to be valid, the reality of the relationship between parties and the changing social cleaves in society may be more complex than is here suggested, however. Maryan Street, Labour party MP and former party president, for example, believes that the Labour party has always been concerned with both social and economic issues, because they manifested as injustice in various forms. The same issues are now merely manifesting in different ways. Street believes, therefore, that the Labour party is well-equipped to handle postmaterialist themes as they arise.

¹²⁶ Philip J. Ethington and Eileen L. McDonagh, "The Common Space of Social Science Inquiry," *Polity* 28, no. 1 (1995), James G. March and Johan P. Olsen, "The New Institutionalism: Organizational Factors in Political Life," *The American Political Science Review* 78, no. 3 (1984): 735.

¹²⁷ Viven Lowndes, "Varieties of New Institutionalism: A Critical Appraisal," *Public Administration* 74 (1996): 183.

¹²⁸ Thomas A. Koelble, "The New Institutionalism in Political Science and Sociology," *Comparative Politics* 27, no. 2 (1995), Lowndes, "Varieties of New Institutionalism."

Institutions have come to be viewed essentially as relatively enduring collections of rules and organised practices that exist in such socio-cultural motifs as conventions, symbols, memories and habits.¹²⁹ While these may include formal institutions such as the law or the state, this definition broadens our conception of institutions to also include cultural practices very widely defined. Families, habit, social etiquette and meal manners are all examples of social institutions, while parliamentary standing orders, debating conventions, deference to the Speaker and expectations surrounding the treatment of conscience issues may be counted as political institutions. Manifestations of social, political and organisational culture will act upon the individuals within them in forceful ways, at least as powerfully as formal institutions like the law. Institutions conceived in this way possess the structure and agency social science has always acknowledged, but are also conceived of as having a partly autonomous role in political life as opposed to being a collection of contracts between self-seeking, calculating individual actors, or merely arenas for contending social forces.

Institutions influence behaviour by providing prescriptions for conduct based on a logic of appropriateness and a sense of rights and obligations.¹³⁰ These in turn are derived from an identity and membership in a political community and the ethos, practices and expectations of its institutions. Institutions also provide codes of appropriate behaviour, affective ties, and a belief in a legitimate order. Members of an institution are expected to obey, and be the guardians of, its constitutive principles and standards. These rules and practices are socially constructed, publicly known, anticipated and accepted. In this way, it is not possible to make contrary decisions without facing considerable disapprobation. Consequently, they proscribe and enable individual behaviour, creating a bias in political action and governance. The detail of outcomes are nevertheless not predetermined but open. This openness provides legitimacy for democratic institutions without which outcomes would become deterministic.

Institutions engender historical continuity because they are semi-autonomous political actors in their own right. Outcomes are less depend upon single events or individual choices when framed within an institutional context. If conscience voting is viewed as an institution in its own right, the political culture that has developed around its practice provides both structure and agency for future voting decisions on conscience issues. In the terms of institutionalism, prior events, created either through deliberate agency or circumstances, result in feedback mechanisms that increase the likelihood of the recurrence of a pattern in the future,¹³¹ thus initiating a chain of subsequent actions that are constrained along a particular 'path'. Reversing this 'path dependency' or initiating alternative outcomes becomes very difficult, thus explaining why certain issues, for example votes on alcohol regulation, that are initially treated with a conscience vote continue to be so treated long after the original motivation for doing so has passed. Thus, such a perspective views conscience voting as a continuous process rather than isolated cases of parliamentary decision making. Tracing the paths that have led to the present use of conscience voting becomes the central focus rather than the piecemeal studies of individual cases that is characteristic of the current literature on the subject.

¹²⁹ James G. March and Johan P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: The Free Press, 1989).

¹³⁰ *Ibid.*, see chapter 2.

¹³¹ Paul Pierson and Theda Skocpol, "Historical Institutionalism in Contemporary Political Science," in *Political Science: State of the Discipline*, ed. Ira Katznelson and Helen V. Milner (New York: W.W. Norton, 2002).

Not all theorists are enthusiastic about institutionalism however. Some have defended traditional paradigms, arguing that new institutionalism misunderstands the nature and value of reductionistic approaches to social science, belittling their contribution in the process. Others have described institutionalism as a mechanical and intellectually sterile perspective that fails to account for the dynamism of the political system.¹³² Further, it is argued, reductionism as exemplified by public choice theory is not incompatible with institutionalism and does, in fact, enhance the study of institutions.¹³³

The most perennial debate about new institutionalism, however, revolves around whether it is new at all and, if so, exactly what it contributes to our understanding. Is it, in fact, simply an expression of long extant intellectual traditions that have evolved in response to a changing world?¹³⁴ Were not those who worked under the 'old' institutionalism simply reflecting the research and organisational priorities of society as it was then?¹³⁵ After all, the 'new institutionalists' of the 1960s held the 'old institutionalists' from the 1920s in a similar disregard to that which exists today towards those of the 1980s era.¹³⁶ And does not the insistence that it is 'new' merely reflect an excessive focus upon the search for new paradigms at the expense of real social science?¹³⁷

The new institutionalist perspective is an approach that brings into focus conscience voting's historical roots, cultural placement and the context-specific paths through which it has emerged. Yet traditional, formal institutions are also important – the coalition nature of New Zealand's contemporary parliament, for example, has influenced the range, nature, degree and political ramifications of disagreement over conscience issues, this country's strong party system and high degree of cohesion have meant that unwhipped votes have at times been necessary, and New Zealand's lack of formal religious establishment has been influential in the reluctance of traditional political parties to have formal policies on many conscience issues. Hill and Zwaga, for example, have argued that the nature of a country's 'civil religion' – that set of belief, motifs and icons valued and held collectively by the country's citizens – is influential in shaping its present actions.¹³⁸ Despite, even because of, the secularisation of symbols that has occurred in New Zealand in recent decades, parliament's response to moral issues is both a product of such institutional forces, and itself an institutional force in constraining future responses.

Historical Institutionalism

Once conscience legislation is enacted, it is not uncommon for it to influence how subsequent legislation on the same or similar issues is treated. Over time, such precedent can become institutionalised such that it becomes very difficult to revert to a 'normal' institutional treatment, even for issues that have lost some their emotional or political sensitivity.¹³⁹ Their continued treatment with conscience votes could be regarded as a relic of the politics of a previous era, a type of museum of social conflict.

¹³² Jonas Pontusson, "From Comparative Public Policy to Political Economy: Putting Political Institutions in Their Place and Taking Interests Seriously," *Comparative Political Studies* 28, no. 1 (1995).

¹³³ Martin Van Hees, "Explaining Institutions: A Defence of Reductionism," *European Journal of Political Research* 32 (1997). See also James M. Ferris and Shui-Yan Tang, "The New Institutionalism and Public Administration: An Overview," *Journal of Public Administration Research and Theory* 3, no. 1 (1993). and the other articles in that edition of the journal.

¹³⁴ Morris Fiorina, "Rational Choice and the New(?) Institutionalism," *Polity* 28, no. 1 (1995).

¹³⁵ Philip Selznick, "Institutionalism "Old" And "New", " *Administrative Studies Quarterly* 41 (1996).

¹³⁶ Fiorina, "Rational Choice and the New(?) Institutionalism," 108.

¹³⁷ Selznick, "Institutionalism "Old" And "New"."

¹³⁸ Hill and Zwaga, "Civil and Civic."

¹³⁹ *NZPD*, Vol. 325, 25 October 1960, 3245. Licensing Amendment Bill, Rex Mason

Scholarly literature refers to this general phenomenon as 'historical institutionalism', a form of institutionalism in which patterns of events or processes recur in response to historical factors.¹⁴⁰ These 'causes' become institutionalised, such that they may recur long after the original trigger has been extinguished. This form of institutionalism has been observed to occur within a wide range of empirical contexts including social revolutions, state building, regime formation, and the development of the welfare state.¹⁴¹ It also occurs within parliament. Thus, alcohol votes, for example, first received a conscience vote because of intra-party disagreement over alcohol-policy as well as the appropriateness of a governmental response. Such disputes are much less pertinent than they once were, however, and historical institutionalism largely accounts for the continued application of conscience votes to such legislation. As such, the historicism here described is a form of what Stinchcombe described as "historical causation"¹⁴² in which dynamics triggered at one point in time subsequently reproduce themselves even in the absence of the original trigger.¹⁴³

From the historicist perspective, conscience votes become, at least partially, a mechanism of parliamentary habit, not entirely determined by current purposive decision making but predetermined by patterns established many years previous, based, in turn, upon policies from a past era. Thus, conscience votes can have as much to do with politics from a previous era as they do about the current political environment. Parliament, in the words of Sir Courtenay Ilbert, is "not only a busy workshop; it is also a museum of antiquities."¹⁴⁴ The past century of conscience voting can thus be conceived of as a course with many tracks, with various conscience issues in differing stages of structural entrenchment. For those that are well entrenched – votes on alcohol, gambling, and Sunday trading among them – the challenge of altering the prevailing culture of expectation is probably greater than any benefits to be gained from whatever success may be achieved.

That some contemporary conscience issues can be considered anomalous fails to demonstrate that its continued application does any harm, and there are those who would argue that retaining, or even increasing the use of conscience voting is beneficial to legislative activity. From a political perspective, the expectation of a conscience vote makes things easy for party leaders, as the legislative procedure for such an issue requires little further consideration. In addition, working against such a long standing convention may in fact do more harm than good, as it may alienate politicians and party workers or, worse, the public. Justifying a change in precedent to both the public and MPs once expectations have been entrenched has a high political cost.¹⁴⁵ Even when the conscience issue in question is no longer contentious, is so complex as to demand greater resources than an individual MP can possibly muster,

¹⁴⁰ Good overviews of historical institutionalism can be found in Pierson and Skocpol, "Historical Institutionalism.", Kathleen Thelen, "Historical Institutionalism in Comparative Politics," *The Annual Review of Political Science* 2 (1999).

¹⁴¹ Kathleen Thelen, "The Explanatory Power of Historical Institutionalism," in *Akteure–Mechanismen–Modelle*, ed. Renate Mayntz (Frankfurt/New York: Campus Verlag, 2002).

¹⁴² Arthur Stinchcombe, *Constructing Social Theories*. (New York: Harcourt, Brace and World, 1968).

¹⁴³ Pierson and Skocpol, "Historical Institutionalism."

¹⁴⁴ Quoted in Wolf-Phillips, "Parliamentary Divisions and Proxy Voting," 416.

¹⁴⁵ Pothier, cites the example of the four capital punishment debates during the 1970s in the Canadian House of Commons. Pothier, "Parties and Free Votes in the Canadian House of Commons," 82. reports that "the most compelling reason for avoiding a whip vote in 1976 was the difficulty of explaining a change in precedent." According to Warren Allmand, Liberal MP and Solicitor General at the time, a proposal to whip a vote in the 1976 bill "was rejected because people [i.e. MPs] felt too strongly about it. ... They said they could not explain how they were allowed to vote freely in one direction in two previous votes and then they would be forced by the whips to vote in another direction." Pothier concludes that "In order to maintain an appearance of fair play, a free vote was almost unavoidable."

or when the clause is purely administrative in nature, holding a conscience vote often seems unavoidable. While MPs regularly complain about the virtue of conducting a conscience vote on issues such as liquor, the conscience vote convention persists despite all efforts to stop it.

In 1989, one MP noted to his colleagues who were complaining that most of the liquor bill under consideration was administrative in nature and not suitable for the expected conscience vote, that this was not possible because of the historicism inherent in conscience votes:

The member for Waitotara said that perhaps two-thirds of the Bill are [sic] non-controversial and should be introduced as Government policy. He suggested that all of those matters dealing with administration of liquor licensing could fall into that category. Unfortunately, that cannot happen, because of the very strong tradition in New Zealand, in both major parties, that votes on all matters relating to liquor are conscience matters. ...a majority of Government members determined that everything in it should be subject to a conscience vote. That would be true even if one-third of the present contents were removed. Government members would still want to have a conscience vote on matters relating to the sale of liquor, and I am certain that that would be equally true for the Opposition.¹⁴⁶

One recent attempt to sort out liquor legislation and the 'problem' of conscience voting was conducted by the New Zealand Law Commission. A series of comprehensive reports was delivered to parliament, the first being a 44 page monologue arguing that liquor legislation should be treated as a party vote to avoid problems of inconsistency and lack of cohesion, and the final of which outlined a package of changes to liquor laws and which repeated the plea to avoid the conscience vote.¹⁴⁷ The Law Commission's conclusions were also supported by a number of other organisations.¹⁴⁸ Nevertheless, the government was reluctant or unable to act on the central conclusions of both reports, despite widespread criticism from commentators. With respect to conscience voting, the Prime Minister stated that liquor issues are "deeply felt by parliamentarians and I don't propose to change that."¹⁴⁹

There are, in fact, few New Zealand examples of issues ceasing to be treated with conscience votes once the procedural precedent has been established, except when the issue itself ceases to exist.¹⁵⁰ One of the few examples is the introduction of summer time which was particularly contentious, and was consequently a conscience vote, when first proposed in the early 20th century but barely created a ripple, and was a party vote, when daylight saving was extended later in the century.

Conversely, there are examples of issues previously treated with party voting becoming conscience votes due to a changed socio-cultural environment. For example, early legislation restricting indecent

¹⁴⁶ NZPD, Vol. 498, 30 May 1989, 10984. Sale of Liquor Bill, Bill Sutton

¹⁴⁷ Law Commission, "Alcohol in Our Lives: Curbing the Harm," in *Review of Regulatory Framework for the Sale and Supply of Liquor* (Wellington: Law Commission, 2010), Law Commission, "Alcohol Legislation and the Conscience Vote," in *Review of Regulatory Framework for the Sale and Supply of Liquor* (Wellington: Law Commission, 2009).

¹⁴⁸ For example, the NZ Drug Foundation, the Hospitality Association, and Alcohol and Drug Assessment and Counselling. Roger Brooking, "Time to Abolish Conscience Votes on Alcohol," in http://grassroots.labour.org.nz/forum/topics/time-to-abolish-conscience?commentId=2758067%3AComment%3A37439&xg_source=activity, accessed 9 May 2010, ed. Alcohol and Drug Assessment and Counselling (2009), NZ Drug Foundation, "Drug Foundation Supports End to Alcohol Conscience Voting," in www.nzdf.org.nz/media/end-conscience-voting, accessed 9 May 2010 (Wellington: NZ Drug Foundation, 2009), Radio New Zealand, "Dunne Wants Conscience Vote Limited to Drinking Age," Radio New Zealand News, 7 May 2010. Even a government MP is on record as stating that "tradition alone is not a satisfactory reason for continuing with the premise that the sale and supply of alcohol liquor laws should be based on a conscience vote." NZPD, 17 June 2009, 4400. Sale Of Liquor (Youth Alcohol Harm Reduction) Amendment Bill, Sandra Goudie

¹⁴⁹ Editorial and Comment, "Failure of Nerve on Liquor Law," *Herald on Sunday*, 2 May 2010, 57, "Liquor Law Reforms Loom," *The Press*, 28 April 2010, A1, "Liquor Tax Rise Fails to Win Support," *NZ Herald*, 28 April 2010, A2, "Nats Lose Their Political Nerve over Booze Law," *NZ Herald*, 28 April 2010, A2.

¹⁵⁰ Capital punishment ceased to be granted a conscience vote because it became a non-issue after 1989 when it was abolished completely.

publications, such as the Indecent Publications Bill (1910), failed to split the House because a unanimity existed over its harmful impacts upon New Zealand society, but by the 1963 equivalent such agreement had disappeared and parties were forced to remove the whip.

In summary, the presence of socio-political structures both within and without parliament mean it would be a mistake to assume that parties and/or politicians have a fully free hand when determining their use of conscience voting. Social and political structures mediate actions, both facilitating and inhibiting as the case may be. The use of conscience voting has, over time, attracted to it a number of expectations, some of which pertain to its perceived benefits or disadvantages, others of which apply to its procedural aspects, and still others of which powerfully influence the subjects to which it is applied.

Political Pragmatism

The quest for the principles underpinning the use of conscience voting must also include the high degree of pragmatism involved in political decision making. The need for acceptable solutions to immediate issues often demands that strict principle be sacrificed to realism with the result, over time, being a collection of pragmatic responses without a meta-narrative or “overriding conviction”.¹⁵¹ Principles, promises and intentions are sometimes the casualty of necessity, with circumstances sometimes forcing upon political masters the need to create solutions for unforeseen problems. The attaining or maintaining of policy influence is the primary purpose of political parties and, indeed, individual MPs, and this in itself is often enough to override the purist ambitions parties and politicians are fond of claiming for themselves. In achieving political ends, a dose of political pragmatism is often a prerogative claimed by politicians regardless of the tidy rationality of the foregoing approaches.

Thus, in contradistinction to the perspectives discussed above, the role of conscience voting may be viewed from the perspective of sheer pragmatism – as a useful mechanism for parties and politicians when faced with a difficult political situation, the details of which may be unique in every circumstance. In this context, conscience voting is part of a set of techniques that also includes referenda, Royal Commissions, polling and public consultation that are used from time to time to remove issues from the political arena and permit other voices to have greater influence in decision making.¹⁵²

When studied in this light, the use of conscience voting may follow no higher principle than the achievement of political ends that may be known only to the participants at the time. Searching for ideologically-inspired explanations may therefore be to impose order where none, or at least little, exists. Such was the conclusion Pothier came to when considering the use of conscience voting during a series of capital punishment debates in the Canadian House of Commons:

In summary, in all four debates the reasons for there having been a free vote were essentially pragmatic. There was no overriding conviction that, for a fundamental moral issue such as capital punishment, the matter ought to be decided by individual MPs without party influences.¹⁵³

At the same time, however, the use of mechanisms of survival such as conscience voting has a certain logic of its own, and may be a very rational action despite defying ready explanation by the use of conventional theories. Further, the pragmatic approach to running government is integral to some

¹⁵¹ Pothier, "Parties and Free Votes in the Canadian House of Commons," 82-3.

¹⁵² Keith Jackson, *The Dilemma of Parliament* (Wellington: Allen & Unwin, 1987), 45.

¹⁵³ Pothier, "Parties and Free Votes in the Canadian House of Commons," 82-3.

schools of political thought which present it as a position which is both reasonable and rational.¹⁵⁴ Hence, a consideration of 'conscience voting as pragmatism' brings into focus the rationalising that abounds in parliamentary politics even when ideology does not.

Conclusion

The theoretical literature that can be brought to bear on the conceptualisation of conscience voting is essentially borrowed from literatures at the subject's boundaries. This situation brings its own challenges. Significant cultural, social, political and institutional differences exist between the United States, where some of the theoretical work to date has been developed, and parliamentary systems such as New Zealand, Australia, Britain and Canada, which have tended to focus on institutional explanations for the subject.¹⁵⁵ Morality policy, for example, has much to commend itself towards a theory of conscience voting, but it is U.S.-developed and based, and many of its suppositions and, therefore, conclusions simply do not apply *in toto* to parliamentary systems.¹⁵⁶ While this thesis utilises the concepts of morality policy selectively, overcoming these challenges entirely will require further thinking about the quintessential differences between these systems of government, and rethinking how the basic concepts relevant to conscience issues and government differ in their manifestations.

Another significant challenge to the formulation of an effective working conceptual framework for conscience voting has been overcoming the tendency to seek a single factor to account for all the incidents of conscience voting. A range of factors account for the various conscience issues coming on to the political agenda that are, at various times, cross-cutting, sometimes countering of each other and at other times amplifying of their respective effects. The procedural path of legislation will vary depending upon the issue being addressed, the political context, the institutional arrangements, and a host of other contextual factors.¹⁵⁷ It will almost certainly also vary across time. In short, a multivariate approach to accounting for conscience votes remains the most viable option for explaining their incidence, and it is suggested that the conceptual frameworks discussed in this chapter will go a long way towards this goal.

¹⁵⁴ Conservatism, for example, has traditionally eschewed strong ideology in favour of a blend of common sense and traditionalism. David Orwin, "Conservatism in New Zealand" (University of Auckland, 1999).

¹⁵⁵ Michael L. Mezey, "Legislatures: Individual Purpose and Institutional Performance," in *Political Science: The State of the Discipline II*, ed. Ada W. Finifter (Washington DC: American Political Science Association, 1993).

¹⁵⁶ A good example are the two parliamentary case studies in Christopher Z. Mooney, ed., *The Public Clash of Private Values* (New York: Chatham House Publishers, 2001). Both of these case studies make valiant efforts to be genuine case studies of the morality theory principles expounded in the rest of the book, but are inevitably forced to stand on their own because morality theory as currently developed does not apply to parliamentary systems.

¹⁵⁷ Elaine B. Sharp, *Morality Politics in American Cities, Studies in Government and Public Policy* (Lawrence, KS: University Press of Kansas, 2005).

CHAPTER FOUR: THE ROLE OF CONSCIENCE VOTING IN A PARLIAMENTARY DEMOCRACY

"...in our Legislature, what ought we to have? Ought not we to have our Legislature, each member of it, free to give his vote on every measure which comes up according to his conscience, according to his pledges? Surely that ought to be the aim, that ought to be the object; that ought to be the ideal Legislature. Can we call a Legislature a free Legislature when the members are not allowed to vote according to their consciences or according to their speeches? Is that a free Legislature? And do we hope to get any beneficial laws if the Legislature is not free?"¹

"...I find it one of the most pleasing aspects of the Chamber that on a debate on a social conscience matter the quality of debate usually rises...and members can fulfil the democratic and constitutional process that Parliament was originally designed for—that is, the individual expression of a democratic opinion on matters pertaining to the people whom we seek to govern."²

Although conscience votes comprise a small minority of votes held, their usefulness to parties, as discussed in the conscience voting literature, naturally leads to another question: What contribution does conscience voting make to the production of public policy and law in New Zealand, and is this contribution positive or negative? Considerable diversity of opinion exists on these questions, but the merits of conscience voting tend to revolve around five basic themes: representation, accountability, decision making, civic function, and personal conscience. These are discussed in turn below.

Representation

At the heart of the assertion that conscience voting is good for political representation is the relationship between the voter and their representative. Democracy demands that citizens should have a significant influence over decisions that affect them, and it is asserted that a strong link between constituent and MP is necessary to achieve this. Good representation flows from the twin principles of members' freedom from pressures external to the electorate and their servanthood to those who elected them.³ According to this view, parties, being political entities in their own right with their own interests and prejudices, have a tendency to distort representative democracy. Policy initiatives become indistinguishable from political expedience, and representatives "vote against their conscience to safeguard their election."⁴ Being unencumbered from party discipline, therefore, MPs could reasonably be expected to seek the predominant view of those they represent and vote accordingly.⁵ A greater use of conscience voting, together with other aspects of direct democracy such as referenda, may thus place the electorate closer to the centre of the decision-making process, giving constituents more influence over the people they elected to represent them.

Despite its intuitive appeal, it is rare to find academic proponents in support of delegatory democracy in its pure form because of its somewhat unrealistic nature. Political advocates are common, however, with some politicians frequently marrying conscience voting, representation and parliamentary reform.

National MP Wayne Mapp, for example, argued that citizens deserved the right to have a direct input

¹ NZPD, Vol. 85, 22 August 1894, 138. Elective Executive Bill, Robert Stout

² NZPD, Vol. 466, 16 October 1985, 7425. Homosexual Law Reform Bill, Trevor de Cleene

³ Jack Stilborn, "The Roles of the Member of Parliament in Canada: Are They Changing?," (Political and Social Affairs Division, Library of Parliament, Canada, 2002).

⁴ Leslie Lipson, *The Politics of Equality: New Zealand's Adventures in Democracy* (Chicago: University of Chicago Press, 1948), 345.

⁵ NZPD, Vol. 531, 19 November 1992, 12252. Transport Safety Bill, Ross Robertson

into decisions that affected them, especially during conscience issues.⁶ Similarly, Labour MP Ann Hercus stated in 1985 that she “had in 1978, and still have equally, a strong sense of being a representative of my electorate. I wanted to ensure that the voters of Lyttelton had an opportunity to express their views, and so to guide me. ... I do not give up my own views; I choose to share my conscience vote in Parliament with those who sent me here to be their representative.”⁷ Frank Grover, an MP who resigned from the New Zealand Alliance party to become an independent in the late 1990s, considered his parliamentary contribution to have been enhanced when freed from the dictates of his former party. In his valedictory speech he stated that “I have been able to give expression to my conscience and convictions rather than to be bound by the dictates of a party. I realise that in this Chamber, party discipline is essential ... but ultimately the individual is almost as important. In my view it is even more important.”⁸

New Zealand’s short-lived Country Party, which enjoyed parliamentary representation from 1928 to 1938, made freedom of the MP from party discipline a policy platform. The Country Party, which operated ostensibly as a collection of independent MPs, believed that parties corrupted the relationship between elector and electee. In particular, the party detested the practice of requiring loyalty pledges from candidates before policy had even been announced, likening it to requiring a blank-cheque from candidates to do with as they pleased.⁹ The party maintained that freedom from party solidarity would promote a purer form of democracy by enabling MPs to better represent their constituents, resulting in “better legislation and better government – government of a type nearer that desired by the people.”¹⁰

Such sentiments exist in other countries, too. The former Canadian Alliance party, for example, made allowing more regular use of free voting one of their key policies, specifying the restoration of delegatory democracy in the Canadian House of Commons as the reason.¹¹ The leader of the Canadian Conservative Party, Joe Clark, “promised that a conservative government under his leadership would allow ‘free votes’ on all but the most major points of policy... [because] such an approach would lead to a more honest and open review of policy proposals and proposed amendments.”¹² And one Canadian MP introduced into the British Columbian Legislative Assembly a bill that would have made free voting mandatory in that province for voting on all except some money bills and matters of fundamental government policy.¹³

The former Canadian Prime Minister, John Turner, has argued that issues of representation are the touchstone of problems with Canadian democracy, and loosening party discipline by allowing more conscience votes is the solution. By doing so, the Member of Parliament “will be better equipped to use his judgment and, in doing so, he will be representing us better.”¹⁴ Shortly after taking office in 2003, another former Canadian Prime Minister, Paul Martin, promised that democratic reform would be a top

⁶ NZPD, Vol. 622, 2 December 2004, 17404-5. Civil Unions Bill

⁷ NZPD, Vol. 466, 23 October 1985, 7599. Homosexual Law Reform Bill

⁸ NZPD, Vol. 580, 5 October 1999, 19770

⁹ NZPD, Vol. 251, 8 July 1938, 373

¹⁰ NZPD, Vol. 251, 8 July 1938, 369-373. See also Captain H.M. Rushworth, “Political Action to Save the Farming Industry,” *Progress*, 27 March 1939.

¹¹ David Reevely, “Free Votes Would Undermine Democracy, Critics Say,” *Capital News Online*, 17 November 2000.

¹² Lemco, “The Fusion of Powers, Party Discipline, and the Canadian Parliament,” 295-6.

¹³ *Free Votes Enabling Act*.

¹⁴ Right Honourable John Turner, “Does Your Vote Really Count?,” (Unpublished Speech, Ottawa, 7 October 2003).

priority of his government, undertaking to table an action plan for constitutional reform that would ensure that "Parliament is an effective forum for expressing Canadians' interests."¹⁵ The Prime Minister's announcement went on to promise that "government MPs will be freer to express their own views and those of their constituents", including increased freedom for "all government MPs, including Cabinet Ministers, to vote as they see fit" on "one-line free votes." By March 2004, Prime Minister Martin was boasting to voters that "free votes in the House of Commons are now a matter of course. Why is this important? It's important because it means MPs' voices are being heard. And that in turn means your voice is being heard."¹⁶

Such purported advantages motivated one Canadian man to establish the Association of Conscience Voters, with freedom from the restraints of party politics, the direct link between constituents and politicians, and a pledge from both parliamentarians and members of the public to vote according to personal conscience and not party considerations as foundational principles. Members of the Association committed themselves to voting only for candidates who would, in all circumstances, use their vote in parliament for good and not evil, no matter what their party wished them to do. By so doing, such conscience voters would force parliament to re-establish participatory democracy. The Association had a network spanning a number of countries, and even held a conference in Melbourne.¹⁷

Underpinning all these views is that the public can and should be trusted. To treat citizens as unworthy of respect on all occasions except during a general election is to undermine the very principles upon which democracy is built, and establishes a new tension between power in the hands of the electors and the untrammelled power of political parties.¹⁸ Taken to extremes, however, such a view can undermine even the role of conscience voting. Edward Isbey, a former Labour MP and an enthusiastic supporter of direct democracy, once argued that representation demanded a close affinity with those being represented and, precisely because of this, MPs were entirely unqualified to make a judgement on issues of morality where representing a range of views, such as inevitably exist in an electorate, was not possible.¹⁹ This logic resulted in Isbey labelling the conscience vote mechanism 'tyrannical' for permitting MPs to vote on issues that would affect the lives of electors.

Isbey's position stems from a view that on some issues, especially those that impinge upon the private rights of citizens, a conscience vote may be 'free' for parliamentarians but their freely exercised opinions nevertheless impose constraints upon those who are affected by the legislation. This has led some to the conclusion that the freedom bestowed by conscience voting is misplaced, even wasted, on parliamentarians, and those who need it most – the citizens – effectively have it denied to them.²⁰ The logical extension of this is that MPs should give consideration to exercising their conscience vote in the

¹⁵ Office of the [Canadian] Prime Minister, *Democratic Reform*.

¹⁶ Office of the [Canadian] Prime Minister, "Address by Prime Minister Paul Martin on the Occasion of His Visit to Winnipeg, Manitoba," (Ottawa: Office of the [Canadian] Prime Minister, 26 March 2004).

¹⁷ Jeremy Lee, *Conscience Voting* (Morley, W.A.: Veritas Publishing Company, 1981).

¹⁸ For a forceful and entertaining discussion of these issues, see Michael Laws, *The Demon Profession* (Auckland: HarperCollins Publishers, 1998), 266-71.

¹⁹ *NZPD*, Vol. 405, 1 September 1976, 2224-5. Health Amendment Bill, Edward Isbey

²⁰ "How fortunate we are to be able to vote freely! How unfortunate are the people outside this Chamber! They have no say, they have no free vote. I do not believe that we can legislate on a conscience issue like this. If it is a matter of conscience it must be up to the individual conscience of every woman to decide whether or not she will have an abortion. It is all very well to say it is a conscience issue. For God's sake, Mr Speaker, let us give women themselves a chance to use their consciences!" *NZPD*, Vol. 396, 23 April 1975, 828-9, Hospitals Amendment Bill, Mary Batchelor. See also *NZPD*, Vol. 405, 1 September 1976, 2203. Health Amendment Bill, Mary Batchelor

interests of either those who have no voice in the matter or those whose voice would be silenced by the exercise of the MPs' conscience. For those that hold this view, conscience votes are an opportunity to exercise the conscience of the citizens, not the MPs.²¹ Some New Zealand abortion proponents in the 1970s, for example, asked whether "anyone, ...even an elected somebody, ha[s] the right to decide that there shall be a national policy, when he listens only to his own conscience and not to the consciences of those in the nation who elected him?" For the abortion activists, not only was parliament abandoning its responsibility in accepting the will of the majority to liberalise abortion, but their abandonment of 'normal' parliamentary procedure in giving MPs a conscience vote permitted members to exercise their conscience without extending the privilege to citizens.²²

Richard Prebble, when still a Labour member, believed that conscience voting broke the contract parliamentarians had with citizens because individual MPs lacked a mandate to make such decisions. Arguing from first principles, Prebble stated that he believed laws only had legitimacy when they had been submitted to a democratic process that either had a mandate in an election manifesto or gave citizens an opportunity to participate. Conscience voting cannot, he believed, be justified because "Parliament consists of 87 men and women who were selected, not because of their views on abortion [for example], but because the political parties concerned thought they would make good members of Parliament. We have no mandate to make a decision." Accordingly, Prebble's preferred solution was that important, value-changing issues such as the question of the legalisation of abortion should be submitted to the people in a referendum.²³

Views such as Prebble's have been adopted as party policy by some of the smaller post-MMP parties such as United Future, which has a policy of mandating referenda when parliamentary support for a conscience issue is not decisive.

Changes are needed so that citizens can be confident that the views of the majority are reflected in the laws enacted by Parliament. Any conscience issue passed by Parliament by less than a 60% majority will automatically go to a public referendum. The result will be binding only if the turnout is at least 60% of all eligible voters, and the motion passes by a 60% majority of those voters.²⁴

The practicalities of voting according to constituents' wishes are not as easy as they sound, however. Exactly how does an MP decide what their electorate thinks? Is a simple majority sufficient, and is a poll an appropriate mechanism to determine this? And is the member's view of no consequence, or should he or she give their own convictions some weight?²⁵ The Hon. Phil Goff, the now leader of the New Zealand Labour Party, described his use of a sliding scale of responsiveness to constituents depending upon how fundamental the issue that was being debated was. For issues that he considered to be not very important, constituency views may be given heed to, but for issues that were, in his opinion, fundamentally important social concerns, the views of those he represented were less important even to the point where "even if 100% of my constituents expressed a view one way, I would still vote against them because it was a matter I felt strongly about." Mr Goff also queried whether "my view, formed after

²¹ This view was expressed by Mary Batchelor: "According to my personal conscience, abortion is wrong, but somebody has to speak on behalf of the thousands of women who would not agree with my conscience." *NZPD*, Vol. 393, 30 August 1974, 4176. Hospitals Amendment Bill

²² Christine Dann, "Rights to Life or Rights for Life? The Morality of Abortion," *Broadsheet* 33 (1975).

²³ *NZPD*, Vol. 417, 31 May 1978, 490-2. Contraception, Sterilisation, and Abortion Bill, Richard Prebble

²⁴ United Future, "Constitution," (accessed from www.unitedfuture.org.nz: 7 May 2007).

²⁵ See *NZPD*, Vol. 466, 9 October 1985, 7265-7. Homosexual Law Reform Bill, Jim Anderton

studying the issue for months and having all the information to hand should have less weight than the views of constituents who hadn't thought about the issue until the moment they were asked the question in a poll."²⁶

Like Mr Goff, Pansy Wong, a current National party list MP and cabinet minister, recognised the need to consider the views of her constituents but also reserved the final decision for herself.²⁷ Pansy Wong's status as a list MP raises a further question: who, exactly, is an MP's constituency? Is it people in their electorate, all those who voted for the party they belong to, everyone who agrees with his or her views irrespective of electorate, or even the entire country? List MPs represent no geographic electorate, and many either 'adopt' an electorate or they resort to sectoral representation e.g. advocating for the needs of Asians. The list member's ability to represent both everybody and nobody at the same time gives rise to the charge that New Zealand's efforts to improve electoral representation through its adoption of MMP may have paradoxically exacerbated the distance between voters and those who represent them.

The challenges of effective representation have, arguably, been lessened in the modern era by the availability of technology to increase the amount of information at the disposal of decision makers and improve the level and timeliness of reporting on conscience vote divisions. Conceivably, media such as the internet could be used by politicians to poll their constituents, provide a forum for members of the public to participate in the decision of their representative, and enable the reporting back of the MP on the decision made. Thus, technology may have removed some of the impediments to MPs acting as representatives of their constituents.²⁸

Some critics further allege, however, that there is a danger of confusing representation with independence.²⁹ There is no guarantee that MPs would consult their electorate merely because they were independent, and casting MPs adrift from the supportive influence of parties and their policy positions may, in fact, provide less representation rather than more – conscience votes may actually present an opportunity for MPs to serve either their own interests or those of a select group of constituents rather than the interests of their electorate. Franks, for example, cites the case of Canadian MPs voting to abolish capital punishment in a series of votes from 1967 to 1987 despite 70-80% public opinion in favour of retention.³⁰

For their part, political parties are not necessarily a distortion of representative democracy, but make tangible contributions to constituency representation through clear policy, research, personnel and financial resources. In addition, there is sometimes a tendency for electorate MPs to consider local interests above national ones, and parties can represent nationally-based constituencies such as Federated Farmers and the Royal Forest and Bird Society in a way that locally-based MPs cannot.

²⁶ Phil Goff, Personal Interview, 10 June 2005

²⁷ Pansy Wong, Personal communication, 17 June 2005

²⁸ In concert with improved technology and the convergence of the media, Hallin and Mancini suggest that "group solidarity and the centrality of organized social groups is giving way to greater individualism", resulting in opportunities for mass participation. Daniel C. Hallin and Paolo Mancini, "Americanization, Globalization and Secularization: Understanding the Convergence of Media Systems and Political Communication," in *Comparing Political Communication: Theories, Cases, and Challenges*, ed. Frank Esser and Barbara Pfetsch, *Communication, Society and Politics* (Cambridge: Cambridge University Press, 2004).

²⁹ See, for example, Nelson Wiseman, quoted in Reevely, "Free Votes Would Undermine Democracy, Critics Say.", and Cross, "Members of Parliament, Voters, and Democracy in the Canadian House of Commons," in *Parliamentary Perspectives* (Occasional Paper of the Canadian Study of Parliament Group, 2000).

³⁰ C Franks, "Free Votes in the House of Commons: A Problematic Reform," in *Policy Options* (Institute for Research on Public Policy, 1997), 34.

Moreover, it is through clear, binding and comprehensive policy positions announced in advance of elections that voters can be confident about what they can expect from their representatives, and elected representatives can act with confidence once elected. Such comprehensive policies can only be developed consistently by parties. Further, the position a party takes on a particular issue is usually adopted after a caucus meeting, where each MP has an opportunity to present their views and argue their case. Thus, the member has a better opportunity to influence policy and represent their constituents in the caucus room than on the floor of the House – blaming parties for a lack of representativeness is therefore specious if the MP is ineffective during caucus meetings.

Accountability

By shrouding the individual member in a veil of corporate solidarity, party cohesion can have the effect of shielding MPs from direct accountability to their electorate. Party voting, for example, allows MPs to vote according to party policy, thus passing some of the responsibility for their decision-making from themselves to their party. By contrast, conscience voting enables voting patterns to be linked to individual MPs, allowing voters to place responsibility for their decision at the MP's feet.³¹ As a result, voters who don't agree with the member's vote or justification have an opportunity to either lobby the member in advance of the vote, make their disagreement (or agreement) known to them after the vote, or, if all else fails, attempt to remove them at the ballot box.³² In the words of one MP, conscience votes make it "very hard to run and hide from these decisions."³³

While in theory this assessment has validity, some commentators point out that holding individuals to account for parliamentary decisions is not necessarily in voters' interests.³⁴ Laying the blame (or praise) at an individual's feet fails to recognise the complexities of modern policy-making and the reality of politics. A party has a longevity that few individuals possess and it is only parties, not individuals, that have the ability to implement decisions. Numerous votes on multiple bills are often required for an integrated programme to be put in place – individuals would struggle to provide the continuity required to achieve this – and with the inevitable shifting of allegiances if parties were not cohesive, it would be difficult to clearly ascertain exactly who is responsible for what outcome. In addition, MPs have obligations towards a variety groups and interests, the views of constituents being just one. As a result, conscience voting can effectively result in decisions that no-one is accountable for. This motivated one liquor industry representative to state that conscience votes lessen, rather than increase, MPs' accountability on such issues.³⁵ Conscience voting may, therefore, be best viewed as a mechanism to be used when party votes are inappropriate, rather than expecting it to deliver benefits as a matter of course.

³¹ This is true in New Zealand because of the public availability of voting records, but not all countries provide easy access to such records. In countries that do not publish the voting behaviour of individual legislators, conscience votes (or their equivalent) do not necessarily deliver accountability benefits, even in theory. See John Carey, *Legislative Voting and Accountability* (New York: Cambridge University Press, 2008).

³² *NZPD*, Vol. 414, 11 October 1977, 3562. Contraception, Sterilisation, and Abortion Bill, Trevor Young. "I approach this subject on a conscience level and, if my electors in the Hutt do not like the way I exercise my conscience, they have the right every 3 years to determine whether I am fit to be their representative in this House."

³³ *NZPD*, Vol. 549, 16 August 1995, 8705. Death with Dignity Bill, Annette King

³⁴ See for example, Cowley, "Unbridled Passions?"; Franks, "Free Votes in the House of Commons," 33-36.

³⁵ Michael Stace, *A History of the Liquor Legislation in New Zealand* (Wellington: Institute of Criminology, Victoria University of Wellington, 1988), 465. In the Australian context, see Reevely, "Free Votes Would Undermine Democracy, Critics Say."

From an institutional perspective, responsible government under the Westminster model dictates that the executive has both the ability and inclination to exercise strong leadership – on most if not all public issues, final responsibility for acting in society's best interests rests with them. Conscience voting, by introducing the possibility that governments may be forced to facilitate the passage of legislation neither they nor the majority of the public desire, may be seen as undermining responsible government.³⁶ On this view, conscience voting makes little sense in terms of the principles by which modern Westminster governments are conducted.³⁷ The Westminster model is not static, however, and discouraging the use of conscience voting on the grounds that it will interfere with the power of the executive is to hold to an antiquated version of the Westminster model that may have been appropriate once but is no longer so. The freedom of decision making under conscience voting is therefore not necessarily inconsistent with strong executive government.

The submitting of an issue to a conscience vote may weaken the contract between elector and the government, however. Parties that are elected on the basis of a policy platform announced before the election ostensibly have a responsibility to those who elected them to enact such policies. Manifestos operationalise representative democracy by giving it a programmatic structure,³⁸ and pre-announced party policies are the predominant information electors use to give their mandate during their voting choice.³⁹ While there is no constitutional ability to prevent a government from changing their policy platform or even ignoring it altogether once in office, there is an implied obligation to the electors that they were elected on the basis that these are the policies they would follow. There is also substantive empirical evidence from many countries that a high degree of correlation exists between what is stated in party manifestos and what governments actually do.⁴⁰ Conscience issues, many of which touch upon deeply held beliefs and impact the lives of most or all citizens, may be introduced mid-term and are often not included in parties' policy documents. The passage of such policies through parliament and into the legislative canon may come as a surprise to many citizens, most of whom would not have had access to information that would have allowed them to incorporate such knowledge into their voting decision. Further, the removal of party whips during conscience votes leaves list MPs completely free to make their own decision without reference to anyone in particular. It may therefore be argued that conscience votes distort the electoral contract by permitting parliament to make decisions without seeking an electoral mandate.

³⁶ Christoph, *Capital Punishment and British Politics*, 176-78, Laski, *Parliamentary Government in England*, 135.

³⁷ James B. Christoph, "Capital Punishment and British Party Responsibility," *Political Science Quarterly* 77, no. 1 (1962).

³⁸ Colin Rallings, "The Influence of Election Programmes: Britain and Canada 1945-1979," in *Ideology, Strategy and Party Change: Spatial Analyses of Post-War Election Programmes in 19 Democracies*, ed. Ian Budge, David Robertson, and Derek Hearl (Cambridge: Cambridge University Press, 1987), 14.

³⁹ Ian Budge et al., *Mapping Policy Preferences: Estimates for Parties, Electors, and Governments 1945-1998* (Oxford: Oxford University Press, 2001), 8-9.

⁴⁰ Hans-Dieter Klingemann, Richard I. Hofferbert, and Ian Budge, *Parties, Policies, and Democracy* (Boulder, CO: Westview Press, 1994), Hans-Dieter Klingemann et al., *Mapping Policy Preferences II: Estimates for Parties, Electors, and Governments in Eastern Europe, European Union, and Oecd 1990-2003* (New York: Oxford University Press, 2006), Nathan McCluskey, "A Policy of Honesty : Election Manifesto Pledge Fulfilment in New Zealand 1972-2005" (University of Canterbury, 2008), 443. McCluskey reports that, in New Zealand between 1972 and 1996, approximately 75% of manifesto pledges were kept, although this figure dropped to 62% in the period since 1996. A high correlation also exists between political promise keeping and re-election, and conversely, New Zealand governments who have ignored their policy platforms have at times paid for it in subsequent elections. McCluskey believes the New Zealand figures are consistent with comparable figures throughout the western world.

There is little evidence to suggest that the majority of voters are even aware of the stance of the MP that represents them and, as a result, in practice the electoral consequences of members' voting behaviour are relatively minor.⁴¹ Research is conclusive that the candidate's party is uppermost in voters' minds when they are in the ballot box – the personal vote received by candidates is discernible but negligible.⁴² Furthermore, if every vote was potentially punishable by electoral defeat, individual members may be too nervous to see unpopular, though necessary, programmes through to completion. Such a scenario would lead to inferior decision-making, the reverse of what was intended. Given these considerations, voters could, therefore, pay a high price for individual accountability.

Concerns about conscience voting that rest upon the political mandate argument as expressed above are essentially rooted in a view of representation as a delegation of authority from the elector to the elected. Under such a view, the MP, once elected, remains responsible to the citizen for their actions, and the citizen has reason to expect their parliamentary representative to remain sensitive to their wishes on all issues. The sting of the political mandate argument is lessened if MPs are considered trustees of the public good, however. As a trustee, MPs' political mandate comes not from continual reference to the electors but the exercise of individual judgement on the basis of members' personal integrity. On this view, a policy issue, announced mid-term without inclusion in the manifesto and whether submitted to a conscience vote or not, raises no accountability issues because the mandate granted by electors was for both the individual MPs and the parties to which they belong to exercise their own judgment for the duration of the parliamentary term.

Decision Making

The impact of conscience voting on the quality of legislative decision-making addresses a variety of themes which are discussed in turn below.

Non-Partisanship

What underlies many of the arguments for conscience voting is a concept of non-partisanship – the view that parties interfere in some way with good parliamentary governance and that, at least for some issues, a better outcome would result if parliament operated in a less partisan and more consensual manner. Conscience voting is seen by some as a mechanism that can help achieve this.⁴³

The negative view of political parties vis-à-vis independent members has a long history. One nineteenth century commentator described parties as “frequently dishonest, not unfrequently [sic] corrupt, sometimes disastrous, and always objectionable.”⁴⁴ The Edinburgh Review in 1890 wrote in dismay that “The sixteen cleverest men in Parliament are set to govern the country, whilst the sixteen next cleverest men are employed in hindering the work of government; the talents which should be enlisted in the

⁴¹ Pattie, Fieldhouse, and Johnston, "The Price of Conscience."

⁴² Baughman, "Party, Constituency, and Representation.", B. Cain, J. Ferejohn, and M. Fiorina, *The Personal Vote: Constituency Service and Electoral Independence* (Cambridge, MA and London: Harvard University Press, 1987), Cowley, "Unbridled Passions?.", Cross, "Members of Parliament, Voters, and Democracy in the Canadian House of Commons.", Gaines, "The Impersonal Vote?."

⁴³ Ironically, the development of party government was responsible for the emergence of conscience voting itself. Right Honourable John Turner, "Does Your Vote Really Count?," (Unpublished Speech, Ottawa, 2003). For an unofficial investigation into parliamentary and electoral reform, see underground royal commission, *Underground Royal Commission Report* (underground royal commission, 200? [cited 23 March 2005]).

⁴⁴ Joseph Cowen's "Speeches," p.145 in Constitutional Reform Committee, "Report of the Constitutional Reform Committee," (Appendix to the Journals of the New Zealand Parliament, 1891).

service of the nation neutralise each other, and are rendered almost useless.” Pope, more than a century previously, had described party politics as “the madness of the many for the gain of the few.”⁴⁵

It is not surprising that people with a similarly negative view of political parties see in conscience voting an opportunity to rediscover parliament as it was supposedly designed to be. One aspect of this is the contribution conscience voting purportedly makes in countering parties’ propensity to promote division by instead fostering a sense of camaraderie. One MP expressed his gratitude for the “collegiate atmosphere given to members by the opportunity to have individual votes.”⁴⁶ This heightened sense of collegiality provided “a wonderful opportunity for parties to vote together and for old friends and colleagues to vote against each other without, one hopes, giving offence to them”,⁴⁷ leading to MPs “agreeing and disagreeing with bits of each speaker’s speech” in a respectful manner.⁴⁸ Sometimes conscience voting has even been credited with being responsible for acts of magnanimity, as was the case for the leader of the Australian Labor Party who stated that “[Conscience votes] speak well of all of us. ...I am proud of my colleagues. On this occasion I am not only proud of my colleagues on this side of the chamber; I am actually quite proud of my colleagues on the other side of the chamber as well.”⁴⁹ This generosity may be due to the involvement of the heart, rather than just the head, which the removal of party whipping permits, a purportedly rare event in parliament that one MP equated with taking “off the party gloves, and [doing] the right thing.”⁵⁰

In many ways, the use of conscience voting mimics local government’s approach to decision-making. For the vast majority of local government in New Zealand, political parties are weak and ‘independents’ predominate. Although parties, caucusing and block voting do exist at local government level, they are much more fluid and informal, and usually the result of mutual agreement rather than strict allegiances – in 1998 it was estimated that only 16% of local government candidates had an affiliation to any group. In this regard, many local councils in New Zealand resemble parliament pre-1890 where political parties were loose and informal, and voting patterns depended upon the issue at hand.⁵¹ On the face of it, if a similar situation were to prevail at central government level there would seem no necessary reason why conscience voting couldn’t be extended beyond moral issues. On the other hand, in the absence of strong party politics, local government decision-making is often dominated by personality rather than policies, and successful initiatives often owe as much to opportunism as to intelligent argument.⁵² A similar fate could befall central government if conscience votes were held as a matter of course.

⁴⁵ *Edinburgh Review*, 1890. Quoted in *Ibid*.

⁴⁶ *NZPD*, Vol. 588, 10 October 2000, 6001. Casino Control (Moratorium Extension) Bill, Gavan Herlihy

⁴⁷ *NZPD*, Vol. 579, 25 August 1999, 18805. Sale of Liquor Amendment Bill (No.2), Ian Revell

⁴⁸ *NZPD*, Vol. 579, 26 August 1999, 18852. Sale of Liquor Amendment Bill (No.2), Bob Simcock

The issue of respect was commented upon by the Speaker on one occasion, implying that conscience votes change, at least in theory, the normally adversarial tenor of debate in the House to one of respect: “It is in the nature of conscience votes that people express their own views on issues that they personally feel strongly about. It does not assist debate when people start attacking other people’s consciences. I think I have a duty to uphold people’s right to their consciences, whatever my view or the view of other members.” *NZPD*, Vol. 565, 9 December 1997, 6421, Casino Control (Moratorium) Amendment Bill. See also comments about the loosening the power of party whips enhancing the reputation of parliament by Murray McCully in *NZPD*, Vol. 511, 12 December 1990, 292, Proportional Representation Indicative Referendum Bill

⁴⁹ Warhurst, “Conscience Voting,” 581.

⁵⁰ *NZPD*, Vol. 515, 4 June 1991, 2052. Smoke-free Environments Amendment Bill, Christine Fletcher

⁵¹ Graham Bush, “Local Government,” in *New Zealand Government and Politics*, ed. Raymond Miller (Melbourne: Oxford University Press, 2003).

⁵² *Ibid*.

Policy Coordination

Parties have a role to play, some believe, in ensuring legislation is more than merely the sum of its constituent parts. Good legislation can only be reliably passed when it is assessed within the context of a wider government program, and a controlling body, such as a governing party, is required to coordinate legislation to achieve legislative coherence. The basic issue, according to former MP Philip Woollaston, is that:

it is very easy for the House to import inconsistencies into legislation under the conditions that prevail when the House is having a free vote. I do not question the fact that a free vote is exercised. I am merely saying that it removes the coherent policy framework under which the House normally debates legislation, and makes it easy to consider clauses in isolation from each other, and, more important perhaps, to consider proposals for amendment to clauses without necessarily bearing in mind their relationship to other clauses and to other amendments that crop up.⁵³

A lack of coordination, particularly during very complex conscience issues such as abortion law reform or some liquor issues, means that decision making can become scattergun. The propensity of “conscience votes [to go] all over the place” was described by one MP as the risk of the legislative horse becoming a camel.⁵⁴ Another MP expressed his belief that conscience voting enables “bright ideas dreamed up on the spur of the moment, [to be] drafted on the back of an envelope, and submitted as amendments” that “invariably get us into trouble.”⁵⁵ Such action has been labelled “instant legislation”⁵⁶ that more often than not lacks consistency and logic.⁵⁷ These thoughts prompted Winston Churchill to once express a view that such a process merely allowed all sorts of “happy thoughts” to be placed upon the statute book.⁵⁸

The role of parties in providing a coordinated policy response and well drafted legislation underlay David Lange’s view that conscience voting engendered debate that was very substandard, “an appalling ragbag of bigotry and sentimentality”⁵⁹ that was unlikely to lead to good decision-making. For Lange, the failure of leadership in the House that characterised conscience votes meant that parliament could not “conduct itself even remotely sensibly” on such occasions.⁶⁰ In particular, change is difficult, even when necessary, because consensus is difficult to achieve with so many individuals involved.⁶¹

In like manner, former MP Sandra Goudie expressed concern that “conscience votes pose a problem to the quality and coherence of legislation.”⁶² Peter Dunne has been even more scathing, complaining about “the potential to replace the present shambles with a new shambles, particularly when the House gets to the Committee stage.”⁶³ And Robert Chapman, an academic voice, described most law that

⁵³ *NZPD*, Vol. 490, 13 July 1988, 5066, Sale of Liquor Bill. See also *NZPD*, Vol. 416, 15 December 1977, 5390, Contraception, Sterilisation, and Abortion Bill, Bill Birch

⁵⁴ *NZPD*, Vol. 531, 12 November 1992, 12249. Transport Safety Bill, Graham Thorne

⁵⁵ *NZPD*, Vol. 583, 4 May 2000, 1950. Matrimonial Property Amendment Bill, Peter Dunne

⁵⁶ *NZPD*, Vol. 373, 16 July 1971, 1932. Sale of Liquor Amendment Bill (No.2), Allan Finlay

⁵⁷ *NZPD*, Vol. 490, 13 July 1988, 5071. Sale of Liquor Bill, Venn Young

⁵⁸ See House of Commons, “The Special Report of the Select Committee on Procedure on Public Business, Minutes of Evidence,” (1930-1), p.142 (q.1530).

⁵⁹ David Lange, *My Life* (Auckland: Penguin Group, 2005), 113.

⁶⁰ *NZPD*, Vol. 518, 22 August 1991, 4351, Gaming and Lotteries Amendment Bill, David Lange. The procedural chaos that sometimes occurs during conscience votes led the Chair on one occasion to complain that “I am now utterly convinced of the need for whips. I am absolutely convinced of it. It seems that when there are no whips this Chamber does not know how to conduct itself.” *NZPD*, Vol. 579, 25 August 1999, 18814, Sale of Liquor Amendment Bill (No.2)

⁶¹ *NZPD*, Vol. 447, 13 October 1982, 3975. Sale of Liquor Amendment Bill (No.2), Jim McLay

⁶² *NZPD*, Vol. 655, 17 June 2009, 4400. Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill

⁶³ *NZPD*, Vol. 490, 13 July 1988, 5074. Sale of Liquor Bill

resulted from conscience voting as in a “confused and patchwork state” that “provided scant recommendation for the method.”⁶⁴

The tendency of individuals to seek private outcomes within larger legislation can create a situation where legislative revision is necessary to make a workable law from a mishmash of jumbled provisions.⁶⁵ Often, amendments are made in the committee stage at the instigation of individual MPs that take no account of well-considered recommendations of commissions and committees set up to investigate the matter. Pressure groups may also be active in seeking such outcomes through sympathetic MPs. Lack of comprehensive and workable law is often the result, causing one MP to express concern that New Zealand was “moving away from government by democracy to government by decibels, a system under which the loudest voice gets the biggest vote...”⁶⁶

Liquor legislation is often the focus of such problems, and conscience voting carried a heavy responsibility for one MP who felt that “the conscience vote is the epitome of what is wrong with the liquor industry.”⁶⁷ Jim Bolger was more circumspect with his comments, noting that conscience votes engendered a “less precise understanding of the implications of successive amendments and changes that are promoted. ... [They are] not a very efficient or sensible way in which to write law to control one of the most widespread drugs in society.”⁶⁸

Voices in support of conscience voting on the grounds of its contribution to consistent outcomes are in the minority. One MP, however, spoke against those who believe:

conscience votes in some way lead to a less coherent conclusion than do the standard range of party votes within the House. I have to say that my experience of this debate would lead me to the absolutely contrary conclusion. It is rather sad to suggest that the sum of the consciences of individuals in this House is somehow less coherent than for the sum of four or five parties taking political positions where everybody says what they are supposed to say, along party lines. In my view that does not lead to very coherent conclusions a helluva lot of the time. I take quite a contrary view. I think this debate has been a very healthy process. It has not led to all of the outcomes that I would have chosen to have come through but it has been well organised and well run.⁶⁹

And a senior civil servant during the liquor legislation debates of the 1970s believed that the shambolic nature of conscience votes were overstated due to the operation of partisan groupings and “informal whips” operating within parliament to provide some measure of co-ordination of voting and policy outcomes.⁷⁰

Adequacy of Parliamentary Procedures

Complex legislation on difficult subjects requires mechanisms to allow sufficient intellectual rigour to be brought to bear on the issue. During party votes, parliamentary groupings are known in advance and understood, with lines of authority, communication and policy positions well-established. When such party structures are removed, individual members may have insufficient time to develop adequate alternatives. This is a symptom of both the dominance of parties on all but just a few occasions, and the

⁶⁴ Chapman, "Political Culture," 18.

⁶⁵ NZPD, Vol. 414, 11 October 1977, 3574. Russell Marshall

⁶⁶ NZPD, Vol. 414, 10 October 1977, 3552. Ben Couch

⁶⁷ NZPD, Vol. 447, 8 October 1982, 3917. Sale of Liquor Amendment Bill (No.2), Geoff Thompson

⁶⁸ NZPD, Vol. 498, 30 May 1989, 10967. Sale of Liquor Bill, Jim Bolger

⁶⁹ NZPD, Vol. 579, 26 August 1999, 18851-2. Sale of Liquor Amendment Bill (No.2), Bob Simcock

⁷⁰ Stace, *A History of the Liquor Legislation in New Zealand*, 465.

absence of parliamentary systems to handle fluid alliances.⁷¹ Not only have modern MPs become so accustomed to being 'team members' that making decisions as individuals has become an alien experience, but parliamentary processes that might assist them are absent or inadequate.⁷²

Addressing the problem of achieving quality decision-making during conscience voting would require, among other things, a parliamentary research capacity that currently doesn't exist. The allocation of research and policy resources is currently along party lines, and providing this level of resourcing during conscience votes would probably be prohibitively expensive.

One convention that has emerged to improve the quality of legislation is the provision of the services of the Parliamentary Counsel Office during conscience votes.⁷³ Members are often actively encouraged to take advantage of this in advance of proposing amendments rather than undertake the exacting task themselves.⁷⁴ This is not a perfect solution, however, for consequential amendments are often of necessity proposed on the fly due to amendments proposed by others and decided upon by the House.⁷⁵

Complexity of Modern Government

The complexity of modern government means that legislation is not only too frequent for individual members to comprehensively evaluate, but also often too technical to understand. Individual parliamentarians do not necessarily possess the requisite skills to deal with such complex matters on their own, particularly within a parliamentary system dominated by a tradition of collective organisation. As one MP put it during a particularly complex conscience issue bill, "I cannot seriously consider a supplementary order paper of 14 pages and determine whether, for example, in clause 14, at page 16, line 34, the word "may" should be omitted and the word "shall" be substituted."⁷⁶ In this situation, members "who are unable to make up their minds, on the evidence before them, not unnaturally accept the advice of their leaders."⁷⁷ Their leaders, in turn, are informed by their party's policy positions, which are in turn developed using a combination of ideology, pragmatism and electoral acceptability. Thus, it can be asserted that political parties not only rescue the individual member from a practical and technical quagmire, but also provide the resources to develop policy that matches the needs of the electorate. Far from being an indication of political self-interest, the practice of parties seeking to adopt policy positions to both maximise their appeal and appear distinctive from political opponents is a sign of parties searching for solutions that both are popular and practical.⁷⁸

Further, complexity is an ill-defined concept, and the argument rests upon a subjective assessment of how much complexity can be handled by individual MPs. If parties are indeed necessary for the effective functioning of modern government, how much conscience voting could be accommodated without compromising its effectiveness? Further, the way things are isn't necessarily with the way things must

⁷¹ Geoffrey Palmer and Matthew Palmer, *Unbridled Power: An Interpretation of New Zealand's Constitution & Government*, Fourth ed. (Melbourne: Oxford University Press, 2004), 161. For a Canadian example, see Pothier, "Parties and Free Votes in the Canadian House of Commons."

⁷² Keith Jackson, "Caucus - the Anti-Parliament System?," *The Parliamentarian* 59, no. 3 (1978): 163.

⁷³ McGee, *Parliamentary Practice*, 100.

⁷⁴ *NZPD*, Vol. 436, 9 December 1980, 5771. *NZPD*, Vol. 412, 19 August 1977, 2358 (David Thomson) and 2359 (Robert Muldoon)

⁷⁵ *NZPD*, Vol. 412, 19 August 1977, 2362. George Gair

⁷⁶ *NZPD*, Vol. 498, 30 May 1989, 10978. Sale of Liquor Bill, Ralph Maxwell

⁷⁷ Berrington, "Partisanship and Dissidence," 369.

⁷⁸ *NZPD*, Vol. 537, 3 August 1993, 17175. Lockwood Smith, Electoral Reform Bill

be; that collectivity is the basis for decision making currently does not preclude an alternative arrangement that incorporates an individualist approach. Every age considers their politics to be complex, but this in itself has not prevented an open style government in the past. The politicians of the early and mid-nineteenth century Britain considered their age to be complex too, yet beyond the executive, MPs' voting decisions were relatively free.

Confusion

In an associated vein, legislation itself can be complex. Bills can sometimes contain hundreds of clauses, and multiple amendments may be introduced during the Committee stage that MPs have not had a chance to study or understand. Voting on such legislation is inevitably confusing. The Civil Union Bill (2004), for example, had a total of 55 votes, 51 of them conscience divisions. Members voted 131 times on the Sale of Liquor Bill (1988), and while just 21 of these were unwhipped, all 21 were on contentious liquor issues, and many of these were on amendments submitted on the day of the vote. Consequently, an element of confusion can exist for members when voting occurs to the point where it is necessary during some conscience votes for colleagues to "stand at the lobby doors to try to tell members what the vote is about."⁷⁹

In this milieu it is not surprising that mistakes are sometimes made. One MP related a story about how he listened "to a member...move an amendment to a clause then before the House. Because he did not have the guidance of a Whip, he misunderstood the way in which the question was put and voted against his own amendment."⁸⁰ Another MP was fond of relating the story of a National party MP who, during the Sale of Liquor Amendment Bill (1960), voted to have dancing in bars and then, on a subsequent clause, voted to exclude women.⁸¹ Tizard felt these problems justified reconsidering the whole use of the conscience vote:

If the debate has ever proved anything in the 11 times I have gone through [a conscience vote on a liquor bill], or we have thought about going through it, it proves the total impossibility of an independent system in Parliament, because once the Whips are withdrawn, unless a member is here for the whole of the debate – and this is one of the more complicated debates we can get into, because of the absolute mass of legislation on licensing matters – no member is physically capable of carrying in his or her mind just which vote refers to what.⁸²

A study of New Zealand liquor legislation involving interviews with interest group representatives found widespread cynicism of the ability of conscience voting to achieve satisfactory policy outcomes. One industry representative was quoted as saying that "Sale of Liquor bills were passed with great hilarity 'but it's a bloody joke as they [MPs] don't know what they are voting for'." The procedure was described as "appalling" by another industry participant in the same debate.⁸³ Due to such problems, the New Zealand Law Commission has recently recommended that the Sale of Liquor Act 1989 be comprehensively revised, and that it be done without a conscience vote.⁸⁴

⁷⁹ *NZPD*, Vol. 537, 3 August 1993, 17175, Electoral Reform Bill, Lockwood Smith. Lockwood Smith, Personal communication, 14 December 2007. See also *NZPD*, Vol. 490, 13 July 1988, 5066, Sale of Liquor Bill, Philip Woollaston. *NZPD*, Vol. 436, 9 December 1980, 5777, Sale of Liquor Amendment Bill, Bob Tizard. *NZPD*, Vol. 343, 22 October 1965, 3761, Sale of Liquor Amendment Bill, Daniel Riddiford

⁸⁰ *NZPD*, Vol. 417, 31 May 1978, 483. Contraception, Sterilisation, and Abortion Amendment Bill, Warren Freer

⁸¹ *NZPD*, Vol. 415, 15 November 1977, 4462. *NZPD*, Vol. 498, 30 May 1989, 10964. Sale of Liquor Bill, Robert Tizard

⁸² *NZPD*, Vol. 498, 30 May 1989, 10964. Sale of Liquor Bill

⁸³ Stace, *A History of the Liquor Legislation in New Zealand*, 464.

⁸⁴ Law Commission, "Alcohol Legislation and the Conscience Vote."

Capture of Decision Making Process

It has been suggested that independence from the party whip could lead to the capture of the decision-making process by interest groups.⁸⁵ The argument is that a conscience vote invites pressure groups and organised partisan interests to exert potentially inordinate control over parliamentary decision-making. Individual members, while more numerous, are easier to influence than whole parties, whose positions on issues are stated months or years in advance of the vote and are formed on the basis of research and consultation. The lone MP, unprotected by his or her party whip, is a target for lobbyists, many of whom are professional, well-resourced and persuasive.

Speaking of the abortion debate in the Canadian House of Commons, Franks reflects that 'without the protection of party demands and discipline, MPs were vulnerable to interest group pressure, and opposition made more sense than support [for issues] against which there were strong opinions and pressure.'⁸⁶ While there may be merit in Franks' assertion, he possibly overlooks that fact that lobby groups are, and always have been, an essential part of the democratic process and that a passive lobby is not necessarily in the long term interests of society or democracy. In addition, interest groups provide a method of representing the views of constituents to those who represent them. It would be a short step from curtailing conscience votes because they may be captured by interest groups to curtailing all votes – finding a mechanism to effectively arbitrate the relative power of interest groups may be preferable to avoiding their influence altogether.

Matching Policy with Public Opinion

Decision-making quality during conscience voting can be an improvement over party voting because it provides a wider range of opinions potentially better matched to those of the public. Harry Duynhoven, a former Labour MP and cabinet minister, was of this view, considering that "conscience votes have a very worthwhile place in Parliament as they produce frank and open debate on issues and the ability for Members of Parliament to think carefully about society's viewpoints versus their own."⁸⁷ Jack Elder, another former Labour MP, also believed conscience votes were a very appropriate vehicle for representing the range of views held within society on issues like gambling.⁸⁸

Nevertheless, one MP saw conscience voting as encouraging MPs to take heroic, but ultimately unhelpful, positions in the lobbies that was simply not appropriate for the many important subjects treated as conscience votes.⁸⁹

Forcing MPs to Think

The absence of a party machine behind which MPs can hide during conscience votes encourages a level of cognitive activity to which most are unaccustomed.⁹⁰ The freedom that members have during conscience votes forces them to think more carefully about their stance, consider alternative perspectives, and generally be clearer about why they are casting their vote the way they are.

⁸⁵ Franks, "Free Votes in the House of Commons."

⁸⁶ *Ibid.*, 34.

⁸⁷ Harry Duynhoven, Personal communication, 11 July 2005

⁸⁸ *NZPD*, Vol. 565, 9 December 1997, 6406. Casino Control (Moratorium) Amendment Bill

⁸⁹ *NZPD*, Vol. 498, 30 May 1989, 10978. Sale of Liquor Bill, Ralph Maxwell

⁹⁰ Similar arguments have been advanced in Australia. See Senator Patterson's comments in Lincoln Wright, "Liberal Push for Free Vote on IVF," *Canberra Times*, 22 April 2002.

The prevalent view amongst MPs seems to be that “there is nothing like a conscience vote to set the debate, exercise the mind, and make one stop and consider the rationale for whatever position one decides to take.”⁹¹

When the whips are off, Parliament has a new vitality. Members are forced to think for themselves about the questions at issue. Legislation without party puts Parliament at the heart of the decision-making process. This is a healthy advance for democratic values. It is also good for society as it enables problems to be faced that would otherwise be avoided.⁹²

Jenny Shipley, a former prime minister, pronounced herself “a very committed party person,” yet was also prepared to recognise that “in the 14 and a bit years that I have been [an MP] I have often thought Parliament is at its best when people have to stand up and convince each other of the relative merits of an argument.” For Shipley, while parties were desirable for encouraging “tidy minds and tidy systems,” it was appropriate that “issues of conscience [should] depend on the quality of the debate” as often occurs during conscience vote debates.⁹³ These and associated benefits have been noted by other MPs, who have expressed their belief that not having to “toe the party line” engendered a greater rigour in debates,⁹⁴ encouraged MPs to express their own, rather than their party’s, thoughts and feelings on the issue,⁹⁵ crystallised thoughts,⁹⁶ promoted greater honesty and fairness,⁹⁷ encouraged sensible debate,⁹⁸ fostered sincerity,⁹⁹ and even increased their enjoyment of the debate.¹⁰⁰ Overall, those of this perspective believe that debate during conscience votes is “a very healthy process,”¹⁰¹ an outcome created by MPs being forced to “set the debate, exercise the mind, and...consider the rationale for whatever position one decides to take.”¹⁰²

Legislative Sabotage

The ability of small groups of MPs, or even single members, to alter, gerrymander, propose multiple and spurious amendments, and even stall the legislative process is greatest during conscience votes when the absence of party whipping creates the conditions that allow legislative sabotage, intentional or otherwise.

One liquor industry representative was reported as complaining about the ability of an influential and eloquent MP to unduly alter the outcome of a liquor vote.¹⁰³ And former MP Michael Bassett once described the committee stage of another conscience issue as “democracy run riot”, as “[m]any amendments were moved or foreshadowed: to delay the second reading for three months (Finlay); to refer it back to the Government for redrafting so as to permit registration and inspection of all hospitals

⁹¹ NZPD, Vol. 622, 7 December 2004, 17508. Civil Unions Bill, Sandra Goudie

⁹² Richards, *Parliament and Conscience*, 215.

⁹³ NZPD, Vol. 598, 20 February 2002, 14525. Shop Trading Hours (Abolition Of Restrictions) Bill

⁹⁴ NZPD, Vol. 573, 19 November 1998, 13379. Sale of Liquor Amendment Bill (No.2), George Hawkins

⁹⁵ NZPD, Vol. 574, 8 December 1998, 14455. Gaming Law Reform Bill, Wyatt Creech

⁹⁶ NZPD, Vol. 588, 21 November 2000, 6739. Property (Relationships) Amendment Bill, Katherine Rich

⁹⁷ NZPD, Vol. 565, 9 December 1997, 6419. Casino Control (Moratorium) Amendment Bill, Judy Keall. NZPD, Vol. 537, 3 August 1993, 17246. Electoral Reform Bill, Peter Tapsell

⁹⁸ NZPD, Vol. 550, 4 October 1995, 9484. Sale Of Liquor (Off-Licence) Amendment Bill, Margaret Austin. NZPD, Vol. 550, 13 September 1995, 8916. Racing Amendment Bill, John Falloon

⁹⁹ NZPD, Vol. 467, 6 November 1985, 7805. Homosexual Law Reform Bill, Paul East. NZPD, Vol. 537, 3 August 1993, 17255. Electoral Reform Bill, Richard Prebble

¹⁰⁰ NZPD, Vol. 565, 9 December 1997, 6448. Casino Control (Moratorium) Amendment Bill, Katherine O'Regan.

NZPD, Vol. 565, 9 December 1997, 6419. Casino Control (Moratorium) Amendment Bill, Judy Keall

¹⁰¹ NZPD, Vol. 579, 26 August 1999, 18852. Sale of Liquor Amendment Bill (No.2), Bob Simcock

¹⁰² NZPD, Vol. 622, Vol. 622, 7 December 2004, 17508. Civil Union Bill, Sandra Goudie

¹⁰³ Stace, *A History of the Liquor Legislation in New Zealand*, 464.

and clinics (J. R. Marshall); to refer it to a Select Committee (V. S. Young)."¹⁰⁴ Although the bill in question did become law, the resulting legislation was inadequate to achieve its desired end and two further bills in the following two years were required on the same subject.

Civic Function

It is sometimes asserted that conscience voting helps to maintain a healthy level of interest in democracy in general and parliament in particular. This greater interest in parliamentary democracy is purportedly generated principally from the less certain outcomes engendered by conscience votes over party votes.¹⁰⁵ The logic of this argument is that the predictability of outcomes that results from strict party discipline lessens the role of parliament as a place of debate, thus suppressing interest in parliament itself in favour of the policies of the government. Conversely, the removal of party whips makes parliament itself, rather than the executive, the forum for decision making, and the outcome of legislation is, in theory, unknown until the final vote. The opportunity for real influence on legislative outcomes thus exists for citizens and interest groups who wish to participate in the legislative process, and democracy is healthier for the interest generated as a result. One MP believed the uncertainty of conscience vote outcomes gave them a "a particular beauty" that "strengthens our democracy and the reputation of this institution."¹⁰⁶ For another MP, a further civic function performed by conscience voting was improving the attendance of members in the House.¹⁰⁷ For yet another member, the perception that MPs were discussing how they really felt about an issue rather than just toeing the party line was a valuable contribution to democracy in itself.¹⁰⁸

The notion that conscience voting elevates the perception of parliament as a place where real democracy occurs may have some substance, but it is an exaggeration to argue that all conscience votes perform this service. The factors that influence voting decisions – many of which are discussed in more detail in later chapters – include the desire of MPs, for a range of reasons, to vote with colleagues even when the party whips are not operating, the operation of a 'collective conscience' during unwhipped votes, and the work of lobbyists, interest groups, and even vested interests within parliament to influence MPs' decisions in a certain direction. As a result, a conscience vote isn't necessary entirely free, the outcome of legislation isn't necessarily uncertain, and parliament doesn't necessarily hold a greater interest for the public on such occasions. In sum, conscience votes are not all of a type, but include a range of motivations, principles, influences and outcomes. Indeed, some have questioned whether conscience votes really exist at all when the outcome is not uncertain, despite the whips being ostensibly removed.¹⁰⁹

Further, some forms of uncertainty are arguably undesirable, such as the form Trevor Young was referring to when he pointed out that "When members have a free vote, as they have had on this Bill, the

¹⁰⁴ Bassett, *The Third Labour Government*, 233.

¹⁰⁵ Cowley, "Conscience and Parliament," 190.

¹⁰⁶ *NZPD*, Vol. 588, 8 November 2000, 6434. Prostitution Reform Bill, Tim Barnett

¹⁰⁷ *NZPD*, Vol. 498, 30 May 1989, 10950. Sale of Liquor Bill, Roger McClay

¹⁰⁸ *NZPD*, Vol. 597, 18 December 2001, 14027. Electoral (Integrity) Amendment Bill, Keith Locke: "...when MPs get up to speak and to vote in this Chamber the public thinks they believe what they say and that they vote according to their beliefs and are not there just to toe some party line. I think that is an important part of the integrity of this Parliament in the public mind."

¹⁰⁹ *NZPD*, Vol. 479, 7 April 1987, 8364-6, Gaming and Lotteries Amendment Bill, Warren Cooper: "A free vote is ridiculous when the matter is cut and dried." (p.8365)

voting can very often depend on which members are present when the vote is taken.¹¹⁰ Variations in legislative outcome based upon the vagaries of members' attendance is more likely to generate cynicism of the parliamentary process than respectful interest.

Personal Conscience and Integrity

In the face of divisions, parties are sometimes forced to accept that MPs' "conscience means more to them than their party interests or party politics."¹¹¹ From the point of view of parliamentarians, however, the exercise of conscience is sometimes considered a right, not just a privilege. It is fundamental to this view that moral decisions should be made by moral agents unmolested by political pressures. The antithetical concept of using 'whips' is ironic terminology and is, not surprisingly, anathema to those opposed to their function.

Political philosopher Peter Jones has argued from first principles that MPs should be granted the right to make decisions based on their consciences,¹¹² and a New Zealand MP once called the exercise of personal conscience "one of the greatest rights of individual members."¹¹³ In Australia, Senator John Hogg, now the President of the Australian Commonwealth Senate, has expressed a view that, while party unity was an important and useful tenet of Australian democracy, some issues, especially issues of life and death and those affecting the way in which we organise society including family, marriage, relationships, conception and aspects of medical science, touch the individual MP's fundamental belief structure to an extent that makes it immoral for parties to expect individuals to accept concepts that offended their personal convictions. Further, the provision for allowing individual MPs to express their personal consciences is a hallmark of a pluralistic and tolerant society and demands accommodation even within a Westminster parliamentary system. To act as merely a member of a party during such debates is to offend against the concept of conscience, and the conscience vote should be a positive concept, rather than merely the absence of party discipline. For Senator Hogg, this is the basis for a clear distinction between the ability to exercise a 'conscience vote' and merely receive a 'free vote.'¹¹⁴

Although examples of parties accommodating the consciences of their members are plentiful, occasions when MPs have had to remain flexible in their views to accommodate the party's position are even more numerous, especially in larger parties which must inevitably accommodate a broader range of views. Graeme Lee, for example, a cabinet minister in the National government of the early 1990s and openly religious person, wrote in his autobiography that sometimes people with strong religious convictions do have philosophic conflicts with their party. Lee cites the example of being forced to implement the legislation that legalised gambling in New Zealand, a move he deeply regretted but felt it was necessary to do to remain in a position to influence other decisions from within the party.¹¹⁵

It is important to not exaggerate the cleavage between personal and party views, however, for "these days, whips function more as a channel of communication than as disciplinarians. Rather, MPs tend to support the party line because in general they support party policy, or at least prefer it to the policy of

¹¹⁰ *NZPD*, Vol. 421, 5 July 1978, 1564. Contraception, Sterilisation, and Abortion Amendment Bill

¹¹¹ *NZPD*, Vol. 345, 22 October 1965, 3772. Sale of Liquor Amendment Bill, Ralph Hanan

¹¹² Jones, "Members of Parliament and Issues of Conscience."

¹¹³ *NZPD*, Vol. 479, 7 April 1987, 8378. Gaming and Lotteries Amendment Bill, Denis Marshall

¹¹⁴ John Hogg, Personal interview, 3 January 2009, Senator John Hogg, "My Conscience - My Vote," in *38th Presiding Officers and Clerks Conference* (Rarotonga: 2007).

¹¹⁵ Graeme Lee, *Faith, Politics and Servant Leadership* (Auckland: Castle Publishing, 2002), 38, 106-07.

other parties.”¹¹⁶ Nor are MPs like “so many heirs of Spartacus, groaning under the lash of the whips and yearning for a new dawn when the chains of party discipline will have been broken. Most MPs for most of the time are keen to support their party and happy to be given direction; if nothing else, the whip spares them the labour of individual decision and the burden of individual responsibility.”¹¹⁷ Further, parliamentarians – especially in post-MMP New Zealand – have the opportunity to exercise their personal conscience by choosing which political party they will join.¹¹⁸

The debating of conscience issues, especially very controversial ones, inevitably invites reflection upon the nature and role of conscience during conscience votes on the part of those both inside and outside parliament, and a range of views are held. First, some commentators believe that parliamentarians should rely upon their own conscience to make their decision. These people tend to view conscience votes as a purer form of democracy and the personal conscience of an MP to be sacrosanct; they are usually delighted that MPs are released from party strictures during conscience issues, but usually lament that such opportunities do not arise more often. Second, others declaim such sentimentality and assert that conscience issues are no different from any other issue. These people believe that either all issues involve conscience or that the state has no right to impose moral values on others in any issue. Instead, MPs should take cognisance of what is in the best interests of all. Behind such assertions usually lurk the shadows of various ideologies, whether they be an urge towards libertarianism or a conviction that the concerns of social justice are not limited to conscience voting.¹¹⁹ Third, still others decry the involvement of individual MPs at all, viewing the ‘public conscience’ as the central issue. Although this concept is almost always undefined by those who proffer it, the implication is that the views of the community should prevail over the opinion of any individual, whether parliamentarian or otherwise.¹²⁰ Fourth, yet others point to ‘the public good’ as all-important, whether it is a conscience vote or not.¹²¹ Fifth, it has also been argued that the spiritual bankruptcy of post-Christian liberalism has left

¹¹⁶ Read, Marsh, and Richards, "Why Did They Do It?," 375.

¹¹⁷ Jones, "Members of Parliament and Issues of Conscience," 141.

¹¹⁸ This view was articulated more than a century ago by Freeman, and was quoted in the Constitutional Reform Committee, "Report of the Constitutional Reform Committee." Freeman's view of the relationship between party and conscience was that "Under our present parliamentary system the average member is, in truth, seldom called on to exercise a perfectly independent judgment on particular questions of importance. He exercises his judgment once for all when he decides whether he will support or oppose the Ministry; by that division his subsequent votes are for the most part determined. Whether this is a high state of political morality may well be doubted."

¹¹⁹ The following excerpt illustrates this position well: "Time and again throughout this debate, and also during the introduction of this Bill, we were assured, and we assured each other, that there would be a free vote because this is an issue of conscience. Well, that is very laudable. How fortunate we are to be able to vote freely! How unfortunate are the people outside this Chamber! They have no say, they have no free vote. I do not believe that we can legislate on a conscience issue like this. If it is a matter of conscience it must be up to the individual conscience of every woman to decide whether or not she will have an abortion. It is all very well to say it is a conscience issue. For God's sake, ...let us give women themselves a chance to use their consciences!" *NZPD*, Vol. 396, 23 April 1975, 828-9. Hospitals Amendment Bill, Mary Batchelor

¹²⁰ "We have a duty to assess community conscience, and my conscience tells me I was elected to represent the people of my constituency. It is my duty to assess what they think about this issue." *NZPD*, Vol. 397, 29 April 1975, 921, Hospitals Amendment Bill, William Laney. See also *NZPD*, Vol. 549, 9 August 1995, 8581, Criminal Investigations (Blood Samples) Bill, Rick Barker

A negative expression of public conscience was used by another MP during the same, particularly contentious, abortion debate. "In essence, this Bill is the limitation of a personal freedom by a public conscience, and one cannot legislate to interpret that public conscience." *NZPD*, Vol. 397, 29 April 1975, 918. Hospitals Amendment Bill, Keith Allen

¹²¹ "...the ultimate question of morality is one to answer in the privacy of an individual conscience. ... This...obliges me to legislate on any issue so that people can make reasoned and intelligent moral judgments of their own, to recognise that as a member of Parliament I must also represent the public conscience of my electorate and legislate for the wider public good. I have no intention of abdicating that duty, as I feel some of us are doing under the guise of a free vote on the Bill before us tonight." *NZPD*, Vol. 414, 11 October 1977, 3565. Contraception, Sterilisation, and Abortion Bill, Richard Walls

MPs without any real conscience at all; as a result, conscience voting has now become a meaningless oxymoron.¹²²

Conclusion

A 1973 study on conscience and parliament in New Zealand reported that of nineteen MPs interviewed, eleven wanted less, rather than more, conscience votes on the basis that “well-organised and disciplined parties were essential for there to be any progress in Government.” One MP in particular felt that “Too many defeats in the House would lead to a public outcry.” The remaining seven MPs considered that conscience votes “could be given a wider application, for example, into areas where no political philosophy or doctrine should have a bearing on the result.”¹²³

A 1987 study on a similar theme found that of 41 New Zealand MPs surveyed, 32 believed that free voting was a necessary part of legislative decision making. Of the remaining nine, two expressed a preference for the use of referenda in making such decisions on conscience issues, while the remaining seven believed parties were best placed to do this. Nevertheless, just four of the 41 MPs wanted more conscience votes, fifteen wanted less, and the remainder preferred the status quo.¹²⁴

The variation in opinions on the merits of conscience voting and the challenge of reconciling them can be partly attributed to the view people hold of democracy. Those who take seriously the adage that democracy is essentially governance ‘of the people, by the people, for the people’ tend to support conscience voting because it seems to increase the directness with which ‘the people’ can participate in decision making. On the other hand, those who believe New Zealand possesses a style of democracy that is representative rather than participatory for good reason are more comfortable with members of parliament exercising their discretion on behalf of the citizens they represent. In place of direct participation, such a view relies upon the scrutiny of the media and regular general elections.

The relative perspectives of those with opinions on conscience voting also influences their perceptions. For those in government, for example, ensuring continuity of power (or the perception of it) will likely feature in the decision whether or not to allow a conscience vote. A government is likely to place a high premium on maintaining a perception that they are in control and able to govern with authority – losing votes, even conscience votes, is almost always seen by the government as undesirable, so the governing party may be wary of the removal of the party whip. Conversely, opposition parties may view conscience votes as a useful tool for pressuring the government to depart from their clear majority, opening up the attractive possibility that they could claim some political and legislative points. For politicians generally, ensuring parliamentary decisions and outcomes favour their policy platforms and are made with a minimum of disruption are likely to be pre-eminent. For interest groups, conscience votes may be seen as an opportunity to exert greater influence on legislative outcomes than is normally

“...No doubt many members will view the vote they make on this Bill in conscience terms. However, I feel that something more important than conscience is involved—although perhaps indirectly it involves conscience—and that is to decide where we, as members of Parliament, feel the overriding public good must lie.” *NZPD*, Vol. 466, 9 October 1985, 7271. Homosexual Law Reform Bill, George Gair

¹²² Cardinal Thomas Williams, “The Spiritual Bankruptcy of Liberalism, Aka Barbarians at the Gate Jib at Judaeo-Christian Ethic,” *New Zealand Herald*, as well as www.cardinalrating.com/cardinal_123_article_1449_print.htm, 28 April 2004.

¹²³ Cottrell, “Parliament and Conscience”.

¹²⁴ Hobby, “The Crack of the Whip?” 378-80.

possible. And for the public, issues of representativeness of, and responsiveness to, their views are likely to be key in their assessment of the merits of conscience voting.

CHAPTER FIVE: THE HISTORICAL ANTECEDENTS OF CONSCIENCE VOTING

Conscience voting does not exist in isolation. As a parliamentary institution it has been shaped by its historical evolution, and its past continues to shape its future. An examination of past parliamentary practice, therefore, illuminates both the present and the future of conscience voting.

The modern concept of conscience voting in New Zealand developed in response to four main factors: the emergence of party politics, an evolution in social patterns throughout the nineteenth and twentieth centuries, the changing role of the state, and a struggle for control over society's values. These factors, and some others that have emerged more recently, continue to exert a powerful influence on conscience voting in the twenty first century. It is therefore essential that these historical patterns be explored if modern conscience voting is to be fully understood.

Phase One: Pre-1891, Open, Or Non-Ministerial, Questions

The forerunner of conscience voting is the 'open question', a nineteenth century British concept in which certain legislative matters were treated as non-ministerial by the executive. On issues for which an open question applied, members of the executive were not bound by any form of collective responsibility. The reasons for declaring issues 'open questions,' the matters to which they were applied, their practical operation and their constitutional role all bear a close resemblance to modern conscience voting.

A 19th century government consisted of a small group of MPs who formed an Executive around a strong leader, supported by a wider circle of those who were ideologically like-minded or sympathetic to the basic policies and personalities of the Executive. Ministries were formed rather than governments elected, and maintaining the cohesion and effectiveness of the ministry came to sometimes entail agreeing to disagree on matters that did not threaten confidence in the government.

At this juncture in British history, little precedent existed as to what was classified as an 'open question.'¹ Prior to the 19th century, all questions were effectively open except those relating to "matters brought forward by the Government as a Government" and "motions brought forward with the purpose of casting a censure...on the Government ...all questions not falling under these heads, were considered open."² As cohesion and discipline within the Executive grew, however, open questions became an increasingly distinct concept.

The easy fluidity that characterised the British parliament throughout most of the nineteenth century delayed the development of strict party discipline and thus fostered the continuance of legislative questions being open by default. This was abetted by 1) the amateur nature of parliamentary life and the short parliamentary sessions which tended to militate against the formation of "a professional union, bound together with ties that transcend their nominal differences of opinion...";³ 2) the bills introduced being few, enabling each MP to study and understand the issues involved and form an independent opinion. It also enabled parliament to fully debate each issue without the need for truncating of

¹ Alpheus Todd, *On Parliamentary Government in England: Its Origin, Development, and Practical Operation*, First ed., 2 vols., vol. 2 (London: Longmans, 1867-9), 327.

² *Mirror of Parliament*, 18 June 1839, 3069a

³ Christopher Hollis, *Can Parliament Survive?* (London: Hollis & Carter, 1949), 33.

discussion or the planning of party strategies; 3) the preponderance of MPs who owed their position to their family name and not the patronage of a party, lessening the power of the leader and the whip.⁴

The use of open questions was for the respective ministries to decide upon when they formed, and it became common for the prospective members of respective ministries to discuss and agree this before formally declaring themselves the Executive.⁵ The character and shape of the ministry was therefore very influential in what issues would become open questions during that term of parliament.⁶ The lack of formal political parties meant that the corporate continuity of the executive body was much weaker than is now the case, and both the composition and the policies of each successive ministry could vary even when multiple ministries were led by the same person.

Not only did the classification of issues as 'open' and 'ministerial' vary from ministry to ministry but, to the extent political parties existed, each party decided for itself their collective response. There was no compulsion on the Whigs, for example, to follow the lead of the Tories, or vice versa.⁷

One 19th century political text on the British parliament describes how issues were 'open' or 'ministerial' at various times depending upon the nature of the policy specifics and politics involved. They were 'open' so long as they did not affect the practical working of Government; they became ministerial when their settlement became necessary for the proper administration of public affairs.⁸ For that observer, this accounted for the switching of some matters from being open to being ministerial questions and provided a reason as to why some matters were, otherwise inexplicably, treated as open and others not.⁹

Another commentator, writing two decades earlier, was less definite, however:

...questions will sometimes arise which, in the opinion of leading members of a government, are of too doubtful; delicate, or complex a nature to admit either of agreement or compromise, and yet which require an immediate settlement. Upon such questions, Cabinet ministers may agree to differ, and when brought before Parliament they are treated as 'open questions' to be advocated or opposed by individual ministers at their discretion.¹⁰

It is difficult to identify the first open question issue in Britain, as discipline within the Executive developed only slowly. However, collective responsibility was certainly removed for the impeachment of the Rt. Hon. Warren Hastings which occurred over an extended period between 1787-95.¹¹ Although there is no record of this episode being so called at the time, it came to be commonly referred to as an

⁴ See *Ibid.* for an excellent discussion of the conditions surrounding the loss of the British MP's independence and voting freedom.

⁵ Homersham Cox, *The British Commonwealth* (London: Longman, Brown, Green, and Longmans, 1854), 115.

⁶ "It is impossible to define, beforehand, what questions may properly be accounted 'open,' without detriment to the character of a ministry, or to its claims to the respect and confidence of Parliament." Todd, *On Parliamentary Government in England*, 327.

⁷ "It is the fashion with some politicians to assert, that there is little or no difference between the Whigs and the Tories. ... No difference...when the Corn Laws and the Ballot are open questions with the Whigs, and rigid adherence to the present systems the watchword of the Tories! ...the most popular of all constitutional reforms [the secret ballot] is an open question with the one, and the subject of the fiercest reprobation with the other." *Edinburgh Review*, "On the Speech of the Right Hon. Lord Lyndhurst, Delivered in the House of Lords, Aug. 23, 1839," *Edinburgh Review* 70, no. 141 (1839): 257, 58.

⁸ William Hearn, *The Government of England: Its Structure and Its Development*, Second ed. (Melbourne: George Robertson and Co., 1886), 255.

⁹ *Ibid.*

¹⁰ Todd, *On Parliamentary Government in England*, 327.

¹¹ W. Torrens McCullagh, *Memoirs of the Rt. Hon. Richard Lalor Sheil*, 2 vols., vol. 2 (London: Hurst and Blackett, 1855), 272.

'open question' in later years.¹² Hastings was a cabinet minister under William Pitt who was charged with various crimes purportedly committed during his tenure as the first Governor-General of India (1773-85).¹³ Although he was eventually acquitted by the House of Lords, the impeachment of a fellow member of the Executive not surprisingly created a tension within the ministry. For this reason Pitt removed any pretensions of collective responsibility over the matter, although not all were supportive of this decision.¹⁴

Open questions, *qua* open questions, first appeared around 1812 during the difficult negotiations surrounding Catholic emancipation. In a bid to create a religiously unified protestant Britain free from papal influence, a number of acts of parliament had been passed from the seventeenth century on restricting the religious and political freedom of Catholics and, later, other religious nonconformists. These laws remained in force until pressure for 'Catholic relief' brought the issue on to the political agenda in the early nineteenth century. A number of governments had faltered on this issue of emancipation, including that of William Pitt in 1801 and Lord Grenville in 1807. Conscious of the difficulties surrounding this issue, the Prince Regent, later King George IV, in attempting to put together a government of his own in 1812, announced that "he the P. [Prince Regent] had settled the Catholic question which was not any longer to form a Government question."¹⁵ The Prince Regent was conceding that progress on the matter could only be made if any decisions made by parliament were ascribed not to the government as such but only to the collection of individuals that made up the government. This permitted a majority to be drawn from both sides of the debate, thus enabling both stable government and political progress on the most controversial question of the day. From the perspective of posterity, it fell to Lord Castlereagh, the leader of the House of Commons, to announce the status of the issue in June 1812:

[I]t had been resolved upon as a principle, that the discussion of this question should be left free from all interference on the part of government, and that every member of that government should be left to the free and unbiassed [sic] suggestions of his own conscientious discretion.¹⁶

Successive ministries perpetuated this open question arrangement for the next seventeen years. Eventually, key political figures such as Lord Liverpool and the Duke of Wellington recognised the inevitability of Catholic emancipation and began to search for solutions that would settle the deadlock in its favour. The first great irony of open questions then presented itself: a decade and a half of granting open questions on the issue was more than long enough for the mechanism to establish a parliamentary precedent. The Duke of Wellington, upon becoming Prime Minister in 1828, perceived the need to foster peace throughout the realm by progressing the issue but discovered that one of the obstacles to achieving this was, ironically, the open question technique previously used to maintain the peace; although open questions had enabled the affairs of state to continue and prevented more than one ministry from splitting apart, it nevertheless had also perpetuated the dispute by effectively blocking the Prime Minister from exercising any authority over the matter. The Prime Minister was thus faced with a

¹² For example, Macaulay referred to it as such in *Mirror of Parliament*, 18 June 1839, 3069b

¹³ Ron Christenson, "Warren Hastings," in *Political Trials in History from Antiquity to the Present* (New Brunswick: Transaction Publishers, 1991).

¹⁴ *Edinburgh Review*, "On the Life and Correspondence of the Rt. Hon. Henry Addington, Viscount Sidmouth," *Edinburgh Review* 86, no. 173 (1847): 107.

¹⁵ Richard W. Davis, "Wellington and The 'Open Question': The Issue of Catholic Emancipation, 1821-1829," *Albion* 29, no. 1 (1997): 41. See also Richard W. Davis, "Wellington, the Constitution and Catholic Emancipation," *Parliamentary History* 15, no. 2 (1996).

¹⁶ *Parliamentary Debates*, 1st ser. 33: 395 in Davis, "Wellington and The 'Open Question'," 41.

dilemma – he would offend the King and some of his colleagues if he used his Prime Ministerial authority to force the change through, but he would offend both public opinion and the view of a large proportion of the House if he himself submitted to the expectation that Catholic emancipation should continue to be an open question. Sir Robert Peel wrote to the Duke outlining his view that “there would be less evil in making a decided effort to settle the Catholic Question, than in leaving it an open question”.¹⁷ Peel’s concern was that the open question left “the Government ... undecided with respect to it, and paralysed in consequence of that indecision upon many occasions peculiarly requiring promptitude and energy of action.”¹⁸ On the strength of such logic the Duke challenged the open question system by requesting the King permit his cabinet to deal with the issue as a cabinet. The King, with no other options himself, eventually, though reluctantly, agreed, and the issue was once again made a ministerial measure in 1829.¹⁹

Open questions became entrenched in the Westminster system of government with great rapidity during the protracted debate over Catholic emancipation. Once a precedent was set and the issue was established as an open question, it became very difficult to reverse.²⁰ While the use of the open question sometimes permitted governments to be formed and maintained, it often simultaneously prevented the matter that provoked its use to be settled.²¹ As a political mechanism, the open question achieved stability but not decisiveness. It enabled protagonists to co-exist in the same ministry but it did little to reconcile them. In fact, it not infrequently ensured the perpetuation of division by giving one side of the debate an effective majority in the executive despite the majority of the House of Commons opposing them. The perpetuation of contentious issues due to the use of unwhipped votes would be a theme running throughout modern political history in both Britain and New Zealand.

Subsequent to the Catholic question, a range of matters were treated as open questions throughout the nineteenth century, including:

- Libel laws – the incremental development during the nineteenth century of the English concept of defamation.²²
- Corn Laws – the controversial imposition and then repealing of import tariffs on grains between 1815 and 1846. Many saw these tariffs as undesirable mercantilism and the favouring of those who owned land at the expense of other forms of industry and foreign growers, some of which were British colonies.
- A series of debates, legislation and votes pertaining to the Secret Ballot – whether to make ballots secret or leave them open – from the 1830s to 1872.²³

¹⁷ *Edinburgh Review*, "On the Memoirs of the Court of George IV, 1820-30," *Edinburgh Review* 110, no. 223 (1859): 83.

¹⁸ Peel's *Memoir*, p.181, quoted in *Edinburgh Review*, "On the Memoirs by the Right Honourable Sir Robert Peel, Bart., M.P.," *Edinburgh Review* 104, no. 211 (1856): 259.

¹⁹ Hearn, *The Government of England*, 255.

²⁰ G.I.T. Machin, "Canning, Wellington, and the Catholic Question, 1827-1829," *English Historical Review* 99, no. 1 (1984): 96.

²¹ *Mirror of Parliament*, 31 January 1840, 603b

²² *Mirror of Parliament*, 18 June 1839, 3069b

²³ Joseph H. Park, "England's Controversy over the Secret Ballot," *Political Science Quarterly* 46, no. 1 (1931), Robert E. Zegger, *John Cam Hobhouse, a Political Life, 1819-1852* (Columbia: University of Missouri Press, 1973), 227-8.

- Several rounds of Parliamentary Reform in the nineteenth century, principally relating to widening the franchise to males of the non-property owning classes.
- Short parliaments – debate during the second half of the nineteenth century which eventually saw the parliamentary term shortened from seven to five years in 1911.
- Debarring British citizens and business from investing in Russian bonds so as to prevent Russia from waging war with Britain with British capital, in 1854.²⁴
- Oaths Bill (1854) – the permitting of Jews to hold senior political offices in the government.²⁵
- Free trade/Tariff Reform (1880s) – debate over the extent to which Britain should adopt the principles of free trade.²⁶
- Abolition of the Slave Trade, from 1807 to 1833.
- Home Rule (1880) – an inquiry into the question whether Ireland should have a parliament of its own.²⁷

The principle that all issues before parliament would be government questions except those expressly pronounced as open questions had become fairly well established by the middle of the nineteenth century.²⁸

As the nineteenth century progressed, numerous commentators and the media themselves became vocal about the desirability or otherwise of open questions. In the 1830s, *The Manchester Times and Gazette*, *The Morning Chronicle*, *The Examiner* and other newspapers expressed an opinion that open questions were the best parliamentary mechanism for ensuring the views of constituents were represented in the House, that they would enable the fairest and fullest discussion of the issue in question, and that it was the only way to fully take account of public opinion. The *Manchester Times and Gazette* agitated for Peerage Reform, Vote by Ballot and the Abolition of Church Rates to be added to the Corn Laws as subjects for open questions, although only with the Ballot did they avoid disappointment.²⁹

The public were by no means unanimous on this matter, however. One letter to the editor condemned the suggestion that a wholesale system of open questions should be adopted. Such a proposal, if instituted, would be “the height of quackery” involving “applying to ordinary maladies inordinate remedies” and resulting in the government standing by helplessly while “more resolute men virtually conducted the business of the nation”.³⁰

Views on its relative contribution to parliamentary decision making and democracy generally ranged as widely as they do today. Baron Thomas Macaulay, the well known author and politician of the mid-

²⁴ “An Open Question!,” *Freeman's Journal and Daily Commercial Advertiser*, 28 July 1854.

²⁵ “Lord Derby's Open Questions,” *Lloyd's Weekly Newspaper*, 2 May 1858. “...the admission of Jews into the House of Commons, was an open question in Lord Derby's cabinet.”

²⁶ Hollis, *Can Parliament Survive?*, 47.

²⁷ “Repeal an Open Question for Liberals,” *The Pall Mall Gazette*, 4 February 1880. “He [Lord Hartington, leader of the Liberal Opposition] regards it as a question upon which individual candidates are quite at liberty to form an independent decision. It is an open question for Opposition candidates...” Hollis, *Can Parliament Survive?*, 46-7.

²⁸ Todd, *On Parliamentary Government in England*, 164.

²⁹ Quoted in Editorial, *The Manchester Times and Gazette*, 26 November 1836. Editorial. “The Ballot an Open Question,” *The Bristol Mercury*, 15 June 1839.

³⁰ Letter to the Editor from ACCA, “Open Questions,” *The Morning Chronicle*, 22 May 1839.

nineteenth century, idealised the greater freedoms enjoyed by the generations preceding him. While accepting the need for cohesion on matters vital to government administration, to make party cohesion the rule rather than the exception was to violate both the trust of the elector and the conscience of the electee. Forcing members of ministries to support a matter they believed to be pernicious merely because it was promoted by his own party had, for Macaulay, no place in a modern democracy.³¹ Sir Robert Peel, in response to Macaulay, criticised open questions for being merely a “resource for an incompetent Administration” which desired an ingenious but “cunning scheme of adding to the strength of a weak Government by proclaiming its disunion.”³² Open questions encouraged self-serving politicians to profit from political alliances of convenience by “dividing of the spoils of office, discharging the mere executive duties of it, and evading the exhibition of disunion by alleging that Parliament was responsible for [the] legislation...”³³ In addition to being administratively irresponsible, Peel believed policy programmes developed by strong ministries were far superior to ad hoc policy development promoted by the open question mechanism. The use of the latter were “fatal exceptions from the general policy of Government. If...such exceptions are to constitute the future rule of Government, there [will be] an end to public confidence in the honour and integrity of great political parties, a severance of all ties which constitute party connections, and [a] premium upon the shabby and shuffling conduct of unprincipled politicians.”³⁴

Although Peel’s arguments are logical, he was the Leader of the Opposition at the time he wrote them. Once in government, however, politicians often found open questions to be a practical necessity.³⁵ The impossibility of even two of the closest friends agreeing on every matter they came across was sufficient evidence to proclaim the impossibility of a large group of cabinet ministers doing so.³⁶ A long line of British premiers had found such to be the case, and the continuance of the use of open questions on certain controversial issues could not, in truth, be said to be a reflection upon party government or the competence of a particular ministry.³⁷

For the most part, the majority of nineteenth century commentators resigned themselves to political reality and accepted the unavoidability of open questions on certain issues. In general, however, most believed that open questions had a valid role only under exceptional circumstances and that the use of non-party voting should not be multiplied. Alpheus Todd described how the first responsibility of members of the executive was to the Ministry, the multiplication of open questions therefore being “a great evil” which diminished “the sense of individual responsibility, which ought to be keenly felt by everyone who is admitted to share in the government of the country.”³⁸ Unified ministries were necessary to effect the responsibilities of government, without which the development of coherent policies would be frustrated and decisions would not be based on cogent principles. If ‘ministries’ were replaced by ‘parties’, this argument, as well as those of Macaulay and Peel, would not be out of place in the 21st century.

³¹ *Mirror of Parliament*, 18 June 1839, 3067-9. Thomas Macaulay

³² *Mirror of Parliament*, 31 January 1840, 602. Sir Robert Peel

³³ *Mirror of Parliament*, 31 January 1840, 603. Sir Robert Peel

³⁴ *Mirror of Parliament*, 31 January 1840, 603. Sir Robert Peel

³⁵ *Mirror of Parliament*, 31 January 1840, 620. Lord John Russell

³⁶ *Mirror of Parliament*, 18 June 1839, 3068. Thomas Macaulay

³⁷ *Mirror of Parliament*, 31 January 1840, 620. Lord John Russell

³⁸ Todd, *On Parliamentary Government in England*, 327.

Open questions became further entrenched in the British parliament as the nineteenth century progressed. As controversial issues arose that threatened to tear the Ministry asunder, the open question technique was invoked to preserve its unity. Habits formed relating to the use of the technique, the subjects it was applied to, and the procedures adopted when an open question was being held. These habits became protocols that were, eventually, exported to the colonies such as New Zealand.

In summary, open questions were used as a way of making political progress on issues that were both divisive and were embedded in wider public debates. Most if not all of the modern accoutrements associated with conscience voting had attached themselves to open questions early in the nineteenth century: that parties make their own decisions about the subjects of open questions, that the practice and details of open questions were often politically motivated, that they sometimes became an obstacle to the resolution of the issue they were used to progress, that their association with a particular issue quickly became entrenched, and that they attracted regular debates over the appropriateness of their use. Only in the subjects of open questions and the fact that they applied initially to only the executive did they differ from modern practice.

Phase Two: 1891-1936, Members Free To Vote As They Choose

The establishment of limited self-rule in New Zealand was, in part, a response to the challenges of governing a colony from the other side of the world. The New Zealand Constitution Act, passed by the British parliament in 1852, empowered New Zealand to form a national parliament of its own and elections were first held to this end in 1853. The form this parliament took was largely based upon the British model including many of the political principles, procedures and conventions developed during the previous centuries. Thus, attitudes to representation, parties, and open questions were all part of the political system that was imported into New Zealand from Britain during the nineteenth century.

The establishment of strong party government became the backdrop against which open questions took on their modern form in this country. Party cohesion developed earlier in Britain than it did in New Zealand. Britain's Conservative and Whig parties represented two sides of identifiable ideological approaches, and by the mid-nineteenth century these parties provided British parliamentarians with a strong lead as to how to vote. Although a form of party government had existed in New Zealand well before the 1890s,³⁹ these were limited to "numerous smaller groups of uncertain and shifting membership, each united loosely by ties largely personal."⁴⁰ It was the establishment of Ballance's first Liberal government from 1891 that led to a wider discussion over the virtues of strong party units and, therefore, the need for freedom from party discipline. The emergence of the Liberal party as a corporate entity, presenting a comprehensive policy manifesto during general elections and acting with an unprecedented degree of unity in the House, created a tension between those who believed party government led to better decision making and those who maintained the nostalgic view that the

³⁹ Leslie Lipson, "The Origins of the Caucus in New Zealand," *Australian Historical Studies* 2, no. 5 (1942), Lipson, *The Politics of Equality*, esp. p.62-72.

⁴⁰ B Dalton, *War and Politics in New Zealand: 1855-1870* (Sydney: Sydney University Press, 1967), 10. quoted in Ryan Malone, *Rebalancing the Constitution: The Challenge of Government Law-Making under MMP* (Wellington: Institute of Policy Studies, 2008), 21-22. An interesting indicator of the difference in party development between the two countries, and an early case study of MPs' experience when party whips are removed, is provided by the MP for Bay of Islands in 1854 who, coming from Britain and accustomed to their stronger party cohesion at the time, complained that "I really do not know myself what party I belong to, and wish I did – [I am] obliged to bear with a stray, haphazard sort of voting quite bewildering to those who are accustomed to the practice of the English Parliament". *NZPD*, 11 July 1854, 195. Hugh Carleton. Quoted in Malone, *Rebalancing the Constitution*, 22.

existence of independent MPs, responsible only to their constituents, was a purer form of government that led to better democracy.

New Zealand at the time had weathered years of recession, and the colony was badly in need of increased investment in both physical and social infrastructure. In this environment, Ballance first created, and Seddon developed, a political vehicle to both address the country's needs and advance their political aspirations. Seddon, in particular, was a strong leader who envisaged a Liberal party that was progressive and cohesive, enabling it to govern for many years. Seddon's force of character and his insistence that his party consistently support him in his endeavours often drew the charge that the Ministry was a one-man government, and in consequence the Premier eventually received the ambiguous epithet 'King Dick'.⁴¹ His detractors notwithstanding, his innovative instigation of the 'hallmark', a pledge of loyalty to the Liberal party in return for official recognition before elections, was very effective at promoting party unity from the loosely organised team it had previously been and was the beginning of modern party discipline.⁴²

The formalisation of political parties in New Zealand at this time created a serious debate over their propriety for good governance. Passionate voices were raised both inside and outside parliament against political parties from this time until well into the twentieth century. A strong anti-party sentiment viewed the looser, more dynamic, coalitions of individual MPs as likely to lead to better governance outcomes than those offered by rigid parties. Parties were, on this view, essentially corrupting influences that transferred MPs' allegiance from those they represented to their party masters – government of the people, by the people, and for the people became "government of the people by a party for the party".⁴³

Political parties were considered by some an evil of biblical proportions, and voting according to party instead of conscience was often referred to as 'bowing the knee to Baal'.⁴⁴ Opponents of the party system railed against members being forced to vote against their consciences,⁴⁵ complained about 'Seddonism' being imposed upon democracy,⁴⁶ bemoaned the loss of control it entailed for the electors generally,⁴⁷ and even claimed that it was a "murderous system, as it had killed not a few Premiers in New Zealand."⁴⁸ MPs who were prepared to obey their party whip were known derogatively as 'dumb dogs', 'slaves' and 'blind subservients' for many years after party government became the norm.⁴⁹ The *Evening Post* wrote of the absurdity of a system that regularly led to MPs being "found physically in one lobby, and mentally in another."⁵⁰ Others railed against the 'party spirit' which led to all sorts of political evil including corruption, cronyism and bad policy.⁵¹ And several new political parties and associations

⁴¹ Keith Sinclair, *The Liberal Government, 1891-1912: First Steps Towards a Welfare State*, ed. R.C.J. Stone, *New Zealand History Topic Books* (Auckland: Heinemann Educational Books, 1967), 21-22.

⁴² Len Richardson, "Parties and Political Change," in *The Oxford History of New Zealand*, ed. W.H. Oliver (Wellington: Oxford University Press, 1981), 202.

⁴³ *NZPD*, Vol. 158, 7 August 1912, 677. Elected Executives Bill, James Young

⁴⁴ *Gisborne Herald*, "What the Papers Say," *Observer*, 29 April 1905.

⁴⁵ "Editorial," *Timaru Herald*, 13 October 1893, Editorial, "Government by Party," *Marlborough Express*, 2 July 1894.

⁴⁶ Editorial, *Poverty Bay Herald*, 18 August 1896.

⁴⁷ Letter to the Editor, "Party and Principle," *Evening Post*, 23 September 1893.

⁴⁸ "Timaru Parliamentary Union," *Timaru Herald*, 29 May 1897.

⁴⁹ "Political Sphinx," *Evening Post*, 18 December 1914, "The Week," *Otago Witness*, 5 March 1896. Editorial, "Government by Party," *Observer*, "Party and Principles," *Evening Post*, 23 September 1893.

⁵⁰ *Evening Post*, "Voting against His Judgment," *Evening Post*, 31 July 1896, 4.

⁵¹ Melland, *The Case against Party Government*, Melland, *Party Government: Causes, Effects, Remedy*.

were even formed with the express intention of removing the strict party whip that Seddon was perceived as wielding.⁵²

The desire to be free of party connection was not universal, however. One objector pointed out that “non-party government and ‘keeping free from party strife’ are not one and the same thing.” While the objective of electing independents may sound noble, “the return of non-party men...will only result in inefficiency or obstruction, because non-party men are those who are impracticable, ‘sit on a rail’ or are accommodating in point of principle.” And, in the opinion of this objector, “the ‘independents’ always remain out in the cold.” Such realism led her and others to argue that voting only for those who distanced themselves from parties was to distance oneself from any influence on real power.⁵³

Sir Robert Stout, a former Premier, the parliamentary leader of the Temperance Movement and one of the most influential New Zealand politicians of the late nineteenth century, advocated that New Zealand act upon the recommendations of the 1891 Constitutional Reform Committee, a bipartisan parliamentary Committee established to inquire into “modifications of the existing system of government in New Zealand as will diminish the evils of the present party-system.”⁵⁴ He supported William Steward in introducing an Elected Executives Bill in 1894 that had the purpose of ensuring the cabinet was elected by all the members of parliament rather than just members of the winning party.⁵⁵ Stout purportedly believed in strong independent members of parliament who were able to exercise integrity: “I do not say that members of Parliament should be simply delegates, and not have a mind and a conscience of their own. I wish we had more – a great deal more of it – in this House, and that ‘whipping’ was unknown.”⁵⁶ Although the 1894 bill was unsuccessful, Steward and, after his death, others continued to introduce similar bills at regular intervals until 1923.⁵⁷ Because they were private members bills, touched upon constitutional issues, and received both support and opposition from both sides of the House, all of these bills were treated in an unwhipped fashion by all parties.

Permitting members of the Liberal party to vote as individuals on certain issues was partly a concession to those of a traditionalist predisposition, but it was done mainly for pragmatic reasons. The need to maintain party cohesion in an environment relatively hostile, at least initially, to party unity provided a powerful motivation to be pragmatic about discipline. Nevertheless, ideology also played a part in this, and the wider debate over the appropriateness of party governance also contributed to the acceptance

⁵² These included some which did not achieve parliamentary representation like the New Liberal Party, also known as the Young New Zealand Party, and the Democratic Party, and others which did manage to have MPs elected like the Political Reform League (forerunner of the Reform Party) and the Country Party. The latter party was particularly concerned about cronyism, and purportedly gave its own MPs freedom to vote as they saw fit on all but confidence votes. “A Democratic Policy,” *West Coast Times*, 20 June 1899, “New Political Parties,” *The Tuapeka Times and Goldfields Reporter and Advertiser*, 1 July 1905. *NZPD*, Vol. 251, 8 July 1938, 369-74. Want of Confidence, Arthur Sexton

⁵³ “Editorial,” *Taranaki Herald*, 6 May 1892, “Free Association of Women Electors,” *Poverty Bay Herald*, 2 October 1893.

⁵⁴ *Appendix to the Journals of the House of Representatives*, I-10, Constitutional Reform Committee Report, 8 September 1891

⁵⁵ “Herald,” *Wanganui Herald*, 23 August 1894.

⁵⁶ *NZPD*, Vol. 88, 2 August, 1895, 417a. Alcoholic Liquors Sale Control Bill, Sir Robert Stout

⁵⁷ During the 1912 incarnation of the Elected Executive Bill, for example, one MP believed it would “admit of every man voting according to his conscience on every measure that came up before this House, and he could do that without jeopardizing the party to which he belonged.” In 1914 the argument for reforming the party system was again based upon this premise: “What we ought to bring about in a House of Parliament is political freedom, and that can be secured by altering the present system of party government and Cabinet control. When any contentious measure comes under discussion every member should be free to vote for it or against it, or for any amendment of it, not on party lines, but from his own inner convictions.”

that some issues should not be party matters. For all that, however, considerations of personal conscience were only a minor consideration.⁵⁸

In addition to the governance by party debate, a wave of moralising swept New Zealand from the 1880s sparked by the late 19th century economic depression and social problems caused by a duopoly of interdependent social vices: alcohol and gambling. This moralistic push emerged in response to a perceived threat to middle class and family oriented values. As a result, religious influences became more organised and politically active, expanding their presence in both government and society. Government at the time was limited to largely economic concerns, so pressure was brought to bear on the government by various interest groups to become more socially proactive and address the country's social problems. This, in turn, amplified the concern over party government because of the fear the government would become autocratic – an expectation had been inherited from the Old Country that many areas such as social services were solely the province of private enterprise and charity. On the other hand, the necessities of a fledgling colony demanded the pragmatic exercise of authority, which began New Zealand's tradition of relatively big government.⁵⁹

Extra-parliamentary groups were prevalent in the late nineteenth and early twentieth centuries. Most of the conscience issues of the time had links to the liquor question, however, making the Temperance Party and the Publicans Party the most powerful pressure groups of the time. The Women's Christian Temperance Union was also active with respect to female enfranchisement. In gambling, the initial reluctance of politicians to restrict an industry that was a cash cow for the national accounts encouraged the issue to become apolitical, with the Women's Christian Temperance Union, Protestant ministers and the National Council of Women forming a sectarian alliance. Another debate over the appropriateness of religion in public schools pitched the Protestant churches against their Catholic equivalents and the secularists.

Religion, in fact, played a much larger role in early political debates than is commonly ascribed by many historians.⁶⁰ Many Christian denominations and para-church organisations were active in most if not all of the early conscience issues in New Zealand. Christian leaders adopted an increasingly activist stance when politicians failed to deliver effective solutions quickly enough or at all. Threats from secularistic trends such as Darwinism also prompted religious leaders to abandon their hitherto absence from the public realm and be proactive in vocalising their beliefs and concerns using political, and other, forums.⁶¹ Christian leaders were seeking moral control, and their campaigns against intemperance, sexual immorality, gambling and desecration of Sundays were organised, articulate and determined. The editor of the Presbyterian journal *Christian Outlook* ran a sustained moral campaign during the 1890s in which he named alcohol and gambling as New Zealand's greatest enemies. An anti-gambling league was formed in 1898 comprised mainly of church leaders but also included some city councillors, an academic

⁵⁸ It is interesting to note, however, that Richards, in the British context, argues for the importance of the preservation of conscience in the emergence of free voting. Richards believes that conscience was more important personal and social characteristic than it is today, and parties of the late nineteenth and early twentieth centuries were less willing to abrogate the consciences of their members than those of later generations. Richards, *Parliament and Conscience*, Ch.1.

⁵⁹ Bassett, *The State in New Zealand*, esp. Chapter 1.

⁶⁰ P.S. O'Connor, "Sectarian Conflict in New Zealand, 1911-1920," *Political Science* 19 (1967).

⁶¹ David Grant, *On a Roll: A History of Gambling & Lotteries in New Zealand* (Wellington: Victoria University Press, 1994), 75, Erik Olssen, "Towards a New Society," in *The Oxford History of New Zealand*, ed. W.H. Oliver (Wellington: Oxford University Press, 1981), 263.

and Sir Robert Stout, by then the Chief Justice. The league grew rapidly, being supported by women's groups, the trade unions and other lobby groups. The exception was the Roman Catholic Church which, because of sectarian differences and their need to finance their private schools, welfare societies, sports clubs and lodges, were somewhat ambivalent about opposing the traditional vices on moral grounds. Consequently, the Roman Catholic Church "opposed Bible instruction in schools, was lukewarm on temperance and divided on gambling."⁶²

Thus, a number of trends coincided in the last decade of the nineteenth century to foster the emergence of unwhipped voting: the debate over the wisdom of party government, the debate between those who were concerned about the effects of alcohol and gambling (and some other social vices) on society and those who had a vested interest in their continuance, the debate over the extent to which the state should involve itself in the country's social life, and a struggle for control over society's values.

There were four key issues in particular that gave modern shape to unwhipped voting in New Zealand.

Liquor

Although the question of the regulation of liquor had been around for many decades, from the 1890s the issue became the lightning rod through which free voting became firmly established. The Temperance Movement was gathering momentum throughout the country, stoked by continuing social costs from drunkenness and the presence of political leaders such as Fox and Stout. As a result of parliamentary and extra-parliamentary agitation, legislative pressure had been building to enact legislation that either prohibited or restricted the supply of liquor, and for a time the issue eclipsed most other issues on the legislative agenda.⁶³ From the perspective of the role of parties, matters came to a head in 1893 when the Temperance Movement's political leader, Sir Robert Stout, introduced the Licensing Act Amendment Bill which proposed to give citizens the right to vote on whether or not to grant new liquor licenses and continue existing ones. This became known as the 'local option', and Stout made it clear that he had introduced the private members bill because the government had been slow to introduce its own legislation. Seddon, on behalf of the Liberal government, argued that the issue was too important a matter for a private members bill and that the government not only should but would introduce a more comprehensive bill on its own terms. In order to protect his own bill, Stout countered that the government need not act as a government in the matter, and that adequate precedent existed to make the matter an 'open question':

There are such things in a Government as open questions; there are such things in a party as open questions; and honourable members must see that no Cabinet government could be carried on if there were no open questions in it. ... A question should only become a Government question when the Government finds that the proper conduct of the public service necessitates an agreement amongst members, and not till then.⁶⁴

Stout went further by arguing that the cause of a party could be injured by its handling of an issue not legitimately within its domain:

...it was not the duty of the Ministry to take up this question; and, Sir., I submit they injure their party by so doing. They have to recognise that they have a right to expect support from their party on party questions alone, and in such cases not to expect it from those who take extreme

⁶² Grant, *On a Roll*, 79.

⁶³ William Pember Reeves, *The Long White Cloud: Ao Tea Roa*, 4th ed. (London: George Allen and Unwin, 1950), 266-7.

⁶⁴ *NZPD*, Vol. 80, 9 August 1893, 539. Licensing Act Amendment Bill

views on either side of a question. It was therefore a mistake on their part to make this a Cabinet question, or to make it a party question [by introducing their own bill].⁶⁵

Nevertheless, the following week the Government introduced its own bill designed to "place this [liquor] trade under restriction, and to enable the people to exercise a vote as to its regulation and control."⁶⁶

Seddon, however, was reluctant to accept that the liquor question should be unwhipped. In the debate over this latter bill, the Alcoholic Liquors Sale Control Bill (1893), he gave an instructive explanation of party issues:

...when the time comes for a dissolution, and we are sent to the country, and the electors are asked to send men to legislate, not upon one given subject, but upon all subjects needing legislation in the interests of the country – we know that there are two parties, and, no matter what a candidate's fitness for the position of a member of Parliament may be, we know that unless he is prepared to commit himself on either one side or the other, and to abandon that independence which is absolutely necessary to a member of this House – unless he is prepared to do that, the result will be that probably we shall have the best men excluded from Parliament. And I say, seeing that these two parties are in this position, it is our bounden duty to step in and pass a measure which will pass by these parties [i.e. as a party measure] and do justice to the country, resting satisfied that the House has done justice to them and their convictions. [On Stout's bill] [w]e had among our supporters, members of the Liberal party, men who held convictions upon this subject, and whose convictions were so strong that, irrespective of party, irrespective of friends they had worked with for years, they set those ties aside and made this question paramount. Had it not been that the Government refused to permit that to dominate legislation, the result would have been that we should have had a Bill from the hands of a private member dealing with this large subject; we should have found parties holding views as diverse as could possibly be, and the groundwork of the measure itself such that it would have been impossible to frame amendments; and the result would have been confusion, and probably a law passed that would not do justice to the people of this country. The Government took up the position...that it was too large a subject to be dealt with by a private member, even though that member was the honourable member for Inangahua [Stout]. But I say that it was not a question of the Government being taken into the "Ayes" lobby or into the "Noes" lobby. It was not a question of allowing their followers to be taken on one side of the House or the other. It was one of those questions on which the Government must accept the responsibility; the Government must lead, and not be led.⁶⁷

Seddon was arguing that leaving such a matter to individual consciences would not only dissipate the cohesion of the party but would also result in poor legislation. As such, making the liquor question government legislation (and thus a party matter) was the responsible thing to do.

Although not without considerable political motivation of their own, the response of Seddon's opponents on the liquor issue was two-fold. First, they argued that the size of the social issue bears no relationship to whether it should become a party question – the great social reforms in Britain had never been achieved by a single party but by MPs from across parliament.⁶⁸ Second, social issues invariably cut across parties rather than between them. Party positions could not therefore be taken on social matters without violating the consciences of party members and the integrity of their relationship with their electors.⁶⁹ The early roots of New Zealand's political parties were in economic, rather than social, concerns; the development of infrastructure, employment conditions and industrial development were the primary concerns of the colony at the time and party platforms reflected this. Social matters such as the control of liquor distribution were, therefore, appropriately considered outside of the scope of party

⁶⁵ *NZPD*, Vol. 80, 9 August 1893, 539. Licensing Act Amendment Bill

⁶⁶ *NZPD*, Vol. 81, 18 August 1893, 169. Alcoholic Liquors Sale Control Bill

⁶⁷ *NZPD*, Vol. 81, 18 August 1893, 169. Alcoholic Liquors Sale Control Bill

⁶⁸ *NZPD*, Vol. 81, 30 August 1893, 495. Alcoholic Liquors Sale Control Bill, William Rolleston

⁶⁹ "Editorial."

policies. Consequently, it was undesirable for the government to produce government legislation on the issue, or, if they did, make it a whipped vote.⁷⁰

Added to this mix was the fact that liquor legislation was being constructed in a spirit of compromise.⁷¹ A workable legislative solution was being sought that would be acceptable to both extremes. The fierceness with which the protagonists in the liquor battle had fought over this bill was a reflection of the long and bitter conflict between the temperance movement and the liquor industry.⁷² Liquor legislation was the major social battleground for a generation of politicians. Coping with the enmity it generated whilst maintaining the party unity that had been built up within the fledgling parties of the time was a feat the significance of which should not be underestimated. Unwhipped voting was a critical safety valve without which the course of party politics may have been significantly different. Permitting members to vote around social concerns rather than purely political interests was a pragmatic, and perhaps inevitable, response given the circumstances. Thus, the intersection of political parties with organised social interests created the conditions that led to liquor coming to be known as a non-party issue.

The Liberal Party was particularly torn by the liquor issue.⁷³ Their cohesiveness was unprecedented in colonial New Zealand but was nevertheless still fragile, and Seddon was sensitive to anything that might threaten its unity. Issues that threatened to divide its members presented a potential challenge to more than just the successful passage of legislation – it threatened an entire political movement; a movement, moreover, that had pretensions of governing semi-permanently. Opposition members highlighted these tensions in an effort to destabilise their political opponents. Liberal members themselves acknowledged the tension, but encouraged each other to “Let us remember the nineteen subjects upon which we can agree and fight side by side, and let us not be severed because of the twentieth upon which we disagree. ...in differing on this question, we should try to differ as friends, not as enemies.”⁷⁴ Starting from a position of commitment to their party, Liberal members stressed that internal disagreement and even independent action was not a sign of party disintegration but of strength of character:

The very best friends of the Government are those who think and act for themselves on questions of importance that are brought before this House. If a Government had a blind, obedient majority, a majority of servile followers the result would be that such Government might be led into political corruption, and, in the meantime, lose the confidence of the country. I believe the best friends of the honourable gentlemen who occupy the Government benches to-day are those who think for themselves and act according to their convictions, and place the welfare of the country above party.”⁷⁵

Despite preferring to treat the matter as a party vote, Seddon’s pragmatic response was to avoid direct confrontation with the liquor issue, attempting to develop policy that was moderate as well as making the matter a non-party issue. For Seddon, a liquor bill was not:

...a matter that should be dealt with as a party question. That is what I have claimed from the very first time I introduced a Bill dealing with the liquor question into this House. ...we, as a party, have in our ranks, and in the House itself, - which is a reflex of the country, - those who are, as far as the Liberal cause is concerned, supporters of the Liberal party, and yet they hold upon this question views as far apart almost as the two poles. Sir, I do not think the Liberal party

⁷⁰ NZPD, Vol. 81, 30 August 1893, 494. Alcoholic Liquors Sale Control Bill, Robert Stout

⁷¹ NZPD, Vol. 82, 25 September 1893, 640a. Alcoholic Liquors Sale Control Bill, Henry Fish

⁷² James Drummond, *The Life and Work of Richard John Seddon* (Christchurch: Whitcombe and Tombs, 1907), 202-3.

⁷³ NZPD, Vol. 81, 30 August 1893, 490a. Alcoholic Liquors Sale Control Bill, William Hall-Jones

⁷⁴ NZPD, Vol. 81, 30 August 1893, 466, 496. Alcoholic Liquors Sale Control Bill, William Pember Reeves

⁷⁵ NZPD, Vol. 81, 30 August 1893, 488. Alcoholic Liquors Sale Control Bill, Richard Meredith

– the party of the people of this country – should be wrenched in twain on this question, although by many it is claimed to be of great importance from a social standpoint. I have said, myself, I would be no party to having the Liberal party disintegrated upon this question, or that we as a party should be so divided that it was impossible to deal with other, larger, and, if I may be permitted to say so, much more important questions...⁷⁶

Less wedded to party cohesion, members of the opposition “calmly accepted the matter as one on which they might cast a free vote.”⁷⁷

The Alcoholic Liquors Sale Control Bill (1893) became law after a particularly bruising passage through parliament. Seddon had correctly assessed the extreme positions in the debate and kept himself to a middle course, believing this was where the majority of New Zealanders were.⁷⁸ Both the temperance movement and the liquor trade drew its members from both sides of the House, and removing a strict association with party was a politically pragmatic move that allowed the issue to progress. Despite his success in passing this legislation, Seddon opined that “I hope it may never again fall to my lot to have to take charge of a Bill dealing with the liquor question. If I wished to punish my political opponents I could not do it more effectually than by giving them a Licensing Bill to get through the House.”⁷⁹

The 1893 Act mollified the pro- and anti-prohibition factions within the Liberal caucus for a time, but it did not remove the issue from parliamentary politics for long. Despite his best intentions, Seddon was forced to introduce further liquor legislation just two years later. The 1895 Bill stipulated, among other things, that the ‘local poll’, a poll of electors to decide whether licensing would be permitted in that electorate, should occur on the same day as the general election in order to streamline the voting process and assist with voter turnout. Debate on this point turned on the question of whether voting for political candidates and the local option at the same time would create an unhealthy association between social and political matters. The desire of a number of MPs to separate the two gave impetus to the view that the liquor question, being one of the most pressing social questions of the time, was not a matter for politics at all – creating a satisfactory resolution to the liquor problem was more important than scoring political points, and the more social and political matters were separated, the better. Sir Robert Stout expressed this view thus: “I do ask this House to look at this question from its social aspect, and not from its political. I do not think we ought—and I hope it will not be treated as a party question. It has nothing to do with politics in a party sense. Let us look at it purely from its social aspect, and I do think if this is done we ought to consider what is best for the community.”⁸⁰ From the outset Seddon made the whole bill a non-party issue, in the process accepting that he would have his share of defeats in the committee stage.⁸¹ Ad hoc amendments to legislation, particularly regarding liquor questions, thus have an early precedent and have been a source of frustration for legislators ever since.⁸² In addition, the tension between the need to achieve maximum social good and minimising political interference has a parallel in the approach of later generations to issues such as road safety, which is deliberately divorced from party politics by agreement of all parties.

⁷⁶ *NZPD*, Vol. 96, 30 September 1896, 340, 342. Alcoholic Liquors Sale Control Amendment Bill

⁷⁷ Martin, *The House*, 112.

⁷⁸ Drummond, *The Life and Work of Richard John Seddon*, 287-8.

⁷⁹ *NZPD*, Vol. 81, 30 August 1893, 500-1. Alcoholic Liquors Sale Control Bill

⁸⁰ *NZPD*, Vol. 88, 2 August, 1895, 417b, Alcoholic Liquors Sale Control Bill, Sir R. Stout. See also *NZPD*, Vol. 90, 27 September 1895, 561a, Alcoholic Liquors Sale Control Bill, Thomas Buick and 568b, Robert McNab

⁸¹ “The New Liquor Bill,” *Marlborough Express*, 10 September 1895.

⁸² Law Commission, “Alcohol Legislation and the Conscience Vote.”

The precedent established by Seddon in allowing members to vote as they wished on licensing legislation was continued by successive governments. The Liberal government's tenure finally ended in 1912, but the Reform government that replaced it, led by William Massey, continued Seddon's approach: "The liquor question has never been made a party question. In Mr. Seddon's time the Government brought down a Liquor Bill and said: 'There is the Bill; there are the proposals; but we don't intend to use the party whip. Everyone can use his own discretion.' If we brought down a Liquor Bill we should do exactly the same."⁸³ Again, in 1913, the *Evening Post* reported Massey as relating the free vote principle to both a member's personal conviction as well as his election pledges:

The [1913] Bill would not in any sense be made a party question or a policy measure; it would be considered, as Licensing Bills were usually considered, from a non-party point of view. Each member would be free to vote in accordance with his conviction and his election pledges. On both sides of the House there was a considerable difference of opinion in regard to licensing matters; many Government members would support the Bill, others would vote against it. As a matter of fact, some difference of opinion existed in the Cabinet itself.⁸⁴

Thus, in the two decades after the establishment of the Liberal party in 1891, the removal of the party whip during liquor legislation had become so well-entrenched as to comfortably survive a change of ministry.⁸⁵

Gambling

Like alcohol, gambling was also a very prevalent 'vice' in the late nineteenth century. The two vices were, in fact, related, for drinking and gambling were commonly conducted together as the favoured recreational activity by many sections of society. As concern about the social effects of alcohol grew, interest in restricting gaming developed commensurately. Also as for alcohol, the House was deeply divided over the gambling issue.⁸⁶ Unlike for alcohol, however, opposition to gambling legislation was sufficiently powerful to prevent major legislation restricting the practice from being passed, with the exception of the 1881 legislation, until 1907. Protracting the standoff further was the eminence of the factional leaders – William Russell for those promoting its expansion, particularly horse racing, and Sir Robert Stout for those implacably opposed to any gambling. The even strength of these parties meant that changes to the 1881 Act were slow and minor, suggesting the "failure of the Protestant urban middle-class to achieve a cultural hegemony, despite its growing political power."⁸⁷

As is often the case in politics, resistance to reforms was pragmatic. After the 1881 legislation, gambling came to provide a significant income stream for the government. Making it illegal was therefore unpopular with many politicians and the government generally. But concern for its social consequences and an ideological opposition to activities that lured people with the promise of unearned income constituted powerful undercurrents that ran through the House.

⁸³ "Bare Majority Wanted," *Evening Post*, 5 May 1913.

⁸⁴ "Licensing Bill," *Evening Post*, 5 December 1913.

⁸⁵ The liquor question was extremely contentious, but as early as 1904 future Premier Massey articulated the thoughts of many, that the heat generated by the issue and the necessity for using the free vote defied logic: "I cannot understand why men should get so excited in discussing the liquor question when they can discuss other subjects, however important without violent language or unnecessary heat, and I see no earthly reason why the same state of things should not obtain with regard to a liquor Bill." *NZPD*, Vol. 130, 8 September 1904, 259

⁸⁶ Grant, *On a Roll*, 63.

⁸⁷ *Ibid.*, 61.

Although gambling was not a social problem on the scale of liquor abuse, parties were divided on gambling and the best way to regulate it.⁸⁸ To this extent, there were parallels with the liquor licensing issue: should gambling be permitted at all? How best should a regulatory regime be imposed? How best should the licensing of gambling be made responsive to local communities?

In the early twentieth century, Massey announced that the Gaming Amendment Bill (1910) would “not involve a party question. The members of his party were free to vote as they liked.”⁸⁹ Massey, a committed Christian, had long been sympathetic to the anti-gambling movement and acknowledged its growing strength. But the country and the House continued to be divided on the issue, so he was reluctant to pursue a draconian strategy in either the content of the legislation or the manner by which it was pursued. In 1907 he had introduced a moderate measure in the form of the Gaming and Lotteries Act Amendment Bill which imposed a series of restrictions on gaming generally such as preventing newspapers from publishing race dividends and outlawing certain types of gambling. Most parliamentarians felt they had a moral duty to suppress gambling excesses, but the clause regularising bookmakers passed by just a single vote. The 1907 Act was an indication of the growing strength of the anti-gambling lobby, but it failed to significantly curtail gambling activity. Consequently, further legislation was inevitable.

The 1910 bill addressed perceived problems with gambling on horses with a range of measures such as reducing the number of race days permitted, limiting the duration of race meetings, and taking steps to lessen the incidence of illegal bookmaking. A proposal to ban the totalisator completely was lost on a free vote, mainly due to the significant impact such a ban would have had on the government’s accounts.

Religious Education

Because provincial government had been responsible for the education of its citizens in the early phase of New Zealand’s history, the abolition of the provinces in 1876 created the need for a national policy on education. The ensuing debate became a sectarian controversy as Protestants and Catholics contested this policy space, and although this tension manifested in the political realm, the dominant cleavage was not political but religious.⁹⁰ The 1876 Education Bill had eventually passed in 1877 and included a clause that all state schools would operate on a secular basis, which was less an attempt to mimic the American principle of separation of church and state and more an effort to keep sectarian conflicts outside the school gates. The passionate debate and confused political divisions that resulted, however, had caused the government of the time to lose a vote of no-confidence, making education generally, and religious education in particular, a subject that subsequent governments learned to keep their distance from.⁹¹ It didn’t help that some of the religious groups themselves adopted opposite stances on prohibition. The sectarian groupings involved transcended political alliances, and members of the various church organisations, especially Catholics, sometimes invoked a ‘block vote’ for sympathetic

⁸⁸ "Mr. Bell in Reply," *Evening Post*, 19 July 1912.

⁸⁹ "The Gaming Bill," *Evening Post*, 10 November 1910.

⁹⁰ O'Connor, "Sectarian Conflict in New Zealand."

⁹¹ Lipson, *The Politics of Equality*, 64, Colin McGeorge and Ivan Snook, "Church and State in New Zealand Education," in *Church, State, and New Zealand Education*, ed. Colin McGeorge and Ivan Snook (Wellington: Price Milburn, 1981).

politicians, thus further contributing to the difficulty of imposing discipline upon political parties during such debates.⁹²

In the decade after the 1876 Act was passed, those who continued to oppose it reacted in four distinct ways. First, the Sunday School movement was established to provide spiritual education for those who desired it. Second, the so-called Nelson system of religious instruction in state schools was devised; a loophole in the Education Act allowed up to two hours of religious instruction a week, and enterprising churches attempted, with some success, to take advantage of this. Third, a series of privately funded independent church schools was founded to provide a spiritual education to students. And fourth, some tried, unsuccessfully, to change the law.⁹³

This final option was the spur for the creation of the Bible in Schools Committee in 1879, committed to "amendments in the Act to permit brief devotional observances and Biblical instruction, without elaborate interpretation or exploration of the text."⁹⁴ This effort lasted until the middle of the 20th century. Other groups were formed for the same purpose, such as the Bible-in-State-Schools League formed in 1912 and the Catholic Federation, set up in 1913 to oppose the League.⁹⁵ Between the passage of the 1877 Act and 1930, a total of 42 private members bills were introduced, all of which failed to become law but in all of which MPs were permitted to vote as they pleased. By 1896 the Bible in schools question was entrenched as a non-party question, such that one member was able to say "the question of Bible reading in schools had never been made a party or government question, and members were perfectly free to vote as they pleased on it."⁹⁶

Female Enfranchisement

The enfranchisement of women was another controversial matter over which political parties were divided.⁹⁷ The social movement for greater recognition of females in society generally had been growing since the 1860s, and this came to include political recognition. Besides becoming a political issue it was also a social question, for women's interests were integrally related to questions of liquor reform and other social matters.⁹⁸ This led to the political alliances around each social issue being cross-cutting and fluid. The politicised yet cross-cutting nature of the issues involved in women's suffrage has been summarised by Grimshaw:

Those who assumed that the woman's vote would be radical tended to back the measure, if they sat on Liberal benches, or oppose[d] it from the Opposition side of the House. Those who saw in woman a conservative and cautious nature, supported the measure from Opposition benches, and feared it from the Liberal side, especially the office-holders [i.e. cabinet ministers].⁹⁹

⁹² M.D. Clark, "The Roman Response to the Protestant Mission" (Research Paper, University of Auckland, 1984).

⁹³ Ian Breward, *Godless Schools? A Study in Protestant Reactions to the Education Act of 1877* (Christchurch: Presbyterian Bookroom, 1967). A good summary of the debate and the legal issues is found in Commission on Education in New Zealand, *Report of the Commission on Education in New Zealand* (Wellington: New Zealand Government, 1962), 675-97.

⁹⁴ Bruce Turley and Margaret Reid Martin, *Religion in Education: Outlines and Reflections on the History of New Zealand Developments* (Churches Education Commission, 1981).

⁹⁵ McGeorge and Snook, "Church and State in New Zealand Education," 12-3.

⁹⁶ "NZ Parliament," *Otago Witness*, 16 July 1896.

⁹⁷ Scholarly accounts of women's suffrage can be found in Patricia Grimshaw, "Politicians and Suffragettes: Women's Suffrage in New Zealand, 1891-1893," *New Zealand Journal of History* 4, no. 2 (1970), Patricia Grimshaw, *Women's Suffrage in New Zealand* (Auckland: Auckland University Press, 1987).

⁹⁸ Neill Atkinson, *Adventures in Democracy: A History of the Vote in New Zealand* (Dunedin: University of Otago Press, 2003), 88-89, Grimshaw, *Women's Suffrage in New Zealand*.

⁹⁹ Grimshaw, *Women's Suffrage in New Zealand*, 66-7.

Bills advocating female enfranchisement had appeared regularly from 1878, though some were not seriously debated. Many of these bills were private members bills, helping to establish a precedent for the government party to take a non-partisan stance on the issue. Divisions during suffrage legislation in both 1887 and 1890 had split the ministry of the time, indicating that suffrage could qualify as an 'open question'. The comparative fluidity of the political parties was a feature of divisions on this issue, both before and after 1890. Grimshaw records that:

...the woman's vote was an issue which led to considerable divergence of opinion within the two parties themselves. This was due, in the first place, to the varying personal convictions about the question from a theoretical or emotional viewpoint, as in society in general. For politicians in particular, however, another element influenced their opinions. In all the arguments about the woman's vote, there existed one question which loomed large in the politician's mind. For which party, the right or the left, would women vote?¹⁰⁰

Ballance, Premier from 1891 to 1893, personally supported the reform but was concerned that women voters would not favour his party.¹⁰¹ There was also the concern that women would be less partisan than men, though this was interpreted positively by some.¹⁰² The emergence of party government, of which Ballance himself had played a major part, brought a new political dynamic to policy considerations, and perhaps for the first time a New Zealand premier was subverting his personal convictions to his ambitions in and for his party. Ballance's Liberal party had hoped to avoid the issue by simply ignoring it, but he was reluctantly forced to "put on a bold front" during the Electoral Bill (1891) when it appeared that the majority of members from both sides of the House favoured enfranchisement. Consequently, Ballance announced that "[a]s a party question is not involved members will be free to vote as they like."¹⁰³ When it was eventually debated and a division held, the enfranchising amendment had support – and opposition – from both sides of the House. After stonewalling the bill until 2:30am, those opposed to the amendment narrowly won a vote which effectively killed the bill.

The issue was not over for the session, however, as its supporters forced the government into giving a full day's consideration to another private members bill, the Female Franchise Bill (1891). The second reading debate was again conducted without party considerations, eventually passing by 25 votes. In Committee, an attempt to delay the operation of the bill until after the 1894 election narrowly failed. Opponents of the franchise, again on both sides of the House, then made the Bill deliberately unpalatable to the Legislative Council by the inclusion of the right of women to stand for Parliament, thus sealing its fate once again.

In 1893, yet another Women's Suffrage Bill was introduced as a private members' bill, passing its second reading comfortably. Once again, voting patterns indicate this was essentially a non-party division – just three members dared vote against its second reading although the cabinet was conspicuously absent. As had happened during the two years previous, the government's 1893 Electoral Bill subsumed the private members bill, leading to the withdrawal of the latter after its second reading. The Electoral Bill (1893) passed through the House comfortably, if not unanimously, and once through the House, all eyes were on the Legislative Council. Once again, some councillors tried to derail the Bill, but were unsuccessful. The Bill passed after pressure from Seddon, the now Premier, on a councillor

¹⁰⁰ Ibid., 62.

¹⁰¹ Atkinson, *Adventures in Democracy*, 90.

¹⁰² NZPD, Vol. 73, 24 August 1891, 500. Female Suffrage Bill, Sir J. Hall

¹⁰³ "Female Franchise," *Poverty Bay Herald*, 21 August 1891.

backfired, with two councillors changing their position in disgust. Thus it was that female enfranchisement, initially introduced as a series of private members' bills but subsequently taken up by the government, established a precedent that persists today,¹⁰⁴ that the "embodiment of a great right in the electoral laws of the country will in this case owe nothing to party alliance considerations".¹⁰⁵

Early Principles

Together, these four social issues acted to create a fault line in party government that all but forced Premier Balance and then Premier Seddon into granting their party members free votes on a regular basis. The debates over these four social issues from 1891 to 1910 illustrate some principles that emerged early and have remained a feature of conscience voting in New Zealand since.

First, the struggle for change in each of these cases was driven by a significant extra-parliamentary social movement, meaning that divisions within society at large on the issue were also reflected by cross-party divisions within parliament.

Second, although political ties were loosened during these 'free votes', alternative, sectarian groups formed in their stead. These alliances did not directly correspond to the interests of political parties, meaning that the political wings of these sectional parties were groups of MPs from across parliament, splitting parties across rather than down. Confusingly, these alliances were also referred to as 'parties.' The Temperance Party and the Publican Party, for example, were both recognised, if not formally, as entities both within and without parliament. Although alliances rather than political parties, these factions acted in lieu of political parties, producing leaders, caucuses, strategy, fundraising, cohesion, co-ordinated publicity, collective action and loyal constituencies. The extra-parliamentary organised interests were sufficiently influential to bring real pressure to bear upon parliament. Successive governments felt this pressure sufficiently keenly to ensure all four social issues became non-party votes. Dr. McLintock, the author of a comprehensive, government-commissioned 1953 report on liquor licensing in the King Country, noted that:

...when any attempt was made to modify or overthrow the no-licence system a strong body of opinion throughout the whole of New Zealand could be roused and marshalled in its defence. Moreover, as the prohibition party grew in strength in the early decades of this century, successive Governments became conscious of the weight of organized opinion, which, if thrown into the political balance, could easily decide the issue. It was a risk no Government or party was prepared to face.¹⁰⁶

Often, these sectarian alliances not only crossed parties but also spanned more than one social issue. Female suffrage was closely integrated with the greatest social movement of the day, temperance, which was a strongly non-partisan matter. Those opposing female suffrage tended to be the same faction as those who supported the liquor industry's interested in the liquor debates. Similarly, the 'grand old man' of the temperance movement, Sir William Fox, called the enfranchisement of women the movement's "trump card" in "driving the common foe [liquor] from this fair land",¹⁰⁷ and the only organised interest to oppose female suffrage was the liquor trade.¹⁰⁸

¹⁰⁴ Votes over the introduction of MMP in the 1990s were similarly non-party.

¹⁰⁵ "Female Franchise."

¹⁰⁶ Dr. A.H. McLintock, "Liquor and the King Country," (Wellington: New Zealand Parliament, 1953), 56-7. Also quoted in *NZPD*, Vol. 301, 19 November 1953, 2404, Licensing Amendment Bill (No.2), Thomas Webb

¹⁰⁷ "Bulls," *Wanganui Herald*, 29 January 1890.

¹⁰⁸ Grimshaw, *Women's Suffrage in New Zealand*, 57.

Third, the use of free voting was a pragmatic response to the need to protect political parties. Pragmatic self-preservation was the dominant principle in the New Zealand parliament, and free voting was a means to an end rather than an end in itself. The Liberal party was beginning to form itself into a semi-cohesive body, making the question of party and non-party matters newly meaningful in the early 1890s.

Fourth, once the free vote mechanism was established, a precedent was set for future parliaments that became hard to break. Expectations were quickly raised that MPs voting as they wished would be permitted on certain issues, simply because it had been previously.

Fifth, parliamentary advocates of social change attempted to advance their cause by introducing regular private members bills. Private members bills have been the source of many free votes since that time.

Ironically, in addition to those issues where the parties were hopelessly divided, some issues became non-party matters because the House was entirely unanimous. Where no disagreement exists, a partisan spirit is less likely to be invoked. For example, a series of defence bills in the 1910s established a principle that some issues were too important to subvert to party politics. Such was the case with the Defence Amendment Bill (1912), a Bill that entrenched the compulsory military training scheme that had been established a few years previously and addressed the question of recalcitrant defaulters, the principle of the bill being so universally accepted that there was little to quarrel about.

Early Descriptions of Conscience Voting

Initially, non-party votes were described with variants of the phrase 'free to vote as MPs like'. Reflecting, in part, its emergence from the party governance debate, that a "member of Parliament should be free to vote according to his conscience"¹⁰⁹ became a familiar catchphrase amongst newspaper editorialists, political commentators, politicians, candidates, interest groups and the public. For example, a group of MPs on both sides of the House who supported free trade and were known as the 'Freetraders' announced that they would "act as independent members and consider themselves free to vote on either side" in order to further their cause.¹¹⁰ The Free Association of Women Electors committed themselves to supporting candidates who would be free from party bias.¹¹¹ A correspondent spoke for many in imploring all voters to withhold their vote from all except those who "belong to no Party, but shall hold themselves free to vote according to their consciences and the best dictates of their reason after having made an honourable endeavour to read and thoroughly master each bill."¹¹² One MP placed a notice on the Order Paper asking the government whether, "in order that members of the House may be more free to vote upon each question that may arise, ... they will agree to take no motion or decision of the House as involving a want of confidence in the Government..."¹¹³ Another MP articulated his position on this matter this way: "The people's representatives ought to be free to vote according to their unbiased opinions, without the necessity of supporting that which they believe to be wrong or opposing that which they believe to be right, for the purpose of serving party interests."¹¹⁴ And the Premier, during

¹⁰⁹ Editorial.

¹¹⁰ "Parliamentary News," *West Coast Times*, 8 August 1888, 2.

¹¹¹ "Women in Politics," *Poverty Bay Herald*, 23 September 1893, 2.

¹¹² Observer, "Party and Principles."

¹¹³ "Parliamentary," *Poverty Bay Herald*, 18 July 1890, 2.

¹¹⁴ "Editorial," 2.

the Government Loan Bill (1896), stated he would leave the House 'free to vote, without making it a Party question.'¹¹⁵

The phrase 'free to vote,' being used very regularly as a normative description in the decade from 1891, eventually became shortened to 'free vote' when referring to the state of freedom to vote according to personal conscience granted by an MP's party. The first recorded reference to 'free vote' is found in 1894, which was, ironically, made in reference to a party issue. The occasion was a debate over the Imprest Supply Bill (No.3) (1894). On a motion "that in the opinion of the House an import duty should be placed on coal", Seddon, the Premier, stated that "if he could give a free vote he would give it in favour of the motion".¹¹⁶ However, regular occurrence of the term 'free vote' did not emerge until several years into the twentieth century.¹¹⁷

Both the phrase 'free to vote' and its nounal version 'free vote' came into more frequent usage as party voting increased in frequency. This transition occurred only gradually, however, and, for a number of reasons, there was not a sudden change between pre- and post-1891 parliaments. In the first place, a clear understanding of what was meant by a 'party issue' did exist before 1891, although by modern standards it was a very cabinet-centric view of party. Many divisions before 1891 were, therefore, party-oriented. Second, even after 1891 party policies were still relatively rudimentary and narrowly focused. A docile mass of Liberal supporters coalesced around the leader while a broad fringe provided a "substantial background noise of fretting discontent, bitterly critical of the government, often more so than the formal opposition." Mitchell has described the Liberal party during the 1890s as more of a congress than a party, an umbrella under which a cluster of groups congregated.¹¹⁸ Such disagreement was acceptable to the party leadership provided they voted with the party on no-confidence motions. It was not until 1899 that the Liberal party became a truly national organisation with central planning, vetting of candidates, policy development and an annual conference – up until this time it had been a network of local committees.¹¹⁹ And it would be several more decades before party cohesion became ubiquitous. For their part, the opposition was incohesive and without a coordinated policy platform until well into the twentieth century. Many post-1891 divisions were therefore only loosely whipped by parties on both sides of the house, and free votes were equally loosely delineated.

Consequently, many issues lie within a grey area from about 1880 until the 1920s during which protocols on what was and wasn't a whipped vote were underdeveloped. The influence of party and the concomitant call for freedom from the party whip were not infrequently observed in the period before party politics became firmly established in 1891, for example. The *Bay of Plenty Times* complained as early as 1884 that the government was guilty of "declaring questions non-party ones and yet trying to carry them as party ones all the same..."¹²⁰ In like manner, two years later it was widely acknowledged that the Representation Bill was creating divisions in both major parties such that it was declared a non-party issue: "The question not having been made a Ministerial one, left members and Ministers quite free to vote as they thought fit, and the division list shows that they took the fullest advantage of the

¹¹⁵ "The Government Loan Bill," *Evening Post*, 3 September 1896, 2.

¹¹⁶ "Yesterday's Afternoon Sitting," *Evening Post*, 31 August 1894, 4.

¹¹⁷ The term 'free to vote as one pleased' was still being used by at least 1907. See, for example, "The Political Situation: Parliament and Press," *Hawera & Normanby Star*, 7 September 1907, 5.

¹¹⁸ Austin Mitchell, *Politics and People in New Zealand* (Christchurch: Whitcombe and Tombs, 1969), 23.

¹¹⁹ Atkinson, *Adventures in Democracy*, 103.

¹²⁰ "The Appointment of Chairman of Committees," *Bay of Plenty Times*, 11 September 1884, 2.

position..."¹²¹ Atkinson also acknowledges a party influence during this early period of party politics when he explains that between 1878 and 1890 members "expressed a range of personal viewpoints free from popular or party influence" on the subject of women's suffrage.¹²²

Conversely, subsequent to the establishment of party politics in 1891 members were free to vote as they chose on many issues which are not traditionally considered 'free votes.' Some of these are listed below.

- The distribution of the Government's banking business (1891).¹²³
- The 'eternal lease' question of the Land Bill (1892).¹²⁴
- A range of issues related to the Railway Bill (1893), including the extension of the Government contract with the Midland Railway company.¹²⁵
- The Government Loan Bill (1896), authorising of the government to increase the public debt.¹²⁶
- The transfer of 'B' list accounts to the Bank of New Zealand in The Bank of New Zealand and Banking Act Amendment Bill (1896).¹²⁷
- The Eight Hours Bill (1897), limiting the standard working week for labourers.¹²⁸
- A series of motions relating to the report of the Royal Commission on Lands (1905). The government wished to develop a land policy that addressed the vexed question of freehold vs. leasehold status of Crown land and associated issues.¹²⁹
- A vote over two honorarium payments included in the Supplementary Estimates in 1906.¹³⁰
- Tariff levels during the 1907 Tariff Bill Committee of Supply debate.¹³¹
- An amendment to reduce the Land and Income Tax Department vote during debate on the Consolidated Estimates of 1910.¹³²
- A series of Industrial Conciliation and Arbitration Bills during the 1920s.¹³³
- Want of Confidence motions during the 1920s.¹³⁴

It was also not uncommon during the 1890s for party members to speak differently to how they eventually voted, the division lists being what mattered most to the party whips. Further, the decision by

¹²¹ "The Representation Bill," *Wanganui Herald*, 14 August 1886, 2. See also "Representation," *Wanganui Herald*, 1 March 1887, 2.

¹²² Atkinson, *Adventures in Democracy*, 86.

¹²³ "Political News," *Poverty Bay Herald*, 19 August 1891, 2.

¹²⁴ "The Land Bill," *Tuapeka Times*, 7 September 1892, 6.

¹²⁵ "The Midland Railway," *Marlborough Express*, 3 October 1893, 2.

¹²⁶ "The Government Loan Bill," 2.

¹²⁷ "Banking Bill," *Poverty Bay Herald*, 14 October 1896, 2.

¹²⁸ "Wellington City Election," *Evening Post*, 7 March 1898, 2. In his campaign speech, Mr. Taylor contended that Seddon had refused to make this bill a party question because "he knew he had a number of members in that Parliament pledged to support him personally."

¹²⁹ "The Land Question," *Taranaki Herald*, 29 August 1905, 4.

¹³⁰ "A Changed Parliament," *Observer*, 10 November 1906, 2.

¹³¹ "House of Representatives," *Wanganui Herald*, 7 September 1907, 5, "Troubled Waters," *Evening Post*, 5 September 1907, 7.

¹³² "The Estimates," *Evening Post*, 1 October 1910, 9.

¹³³ Lipson, *The Politics of Equality*, 343.

¹³⁴ *Ibid.*

the government to declare some issues a party measure often drew the derision of both the opposition and much of the media, suggesting that party whipping was far from the norm on every issue into at least the early 20th century.¹³⁵ Thus, voting against the wishes of one's party continued to occur relatively frequently, although censure for crossing the floor became increasingly severe as the years went by.¹³⁶

The strength of the party whip should not be underestimated however. When a dispute developed in 1894 over who the new Sergeant-at-arms should be, Seddon got his choice only because the voting was whipped: "...had every member been left free to vote according to the dictates of his conscience, a very different result would have been reported". Although "a very large proportion of those who voted with the Government ... loathe[d] and detest[ed] the very idea of [Seddon's choice, they] were compelled to do so by party motives and party discipline."¹³⁷

Overall, in this period of political evolution from 1891 up to as late as 1930, it is a misnomer to talk of 'free voting' in the modern sense. There were some issues that parties officially distanced themselves from, but, equally, numerous divisions were also characterised by cross-voting. Despite Seddon's personal dominance and the attention of the Liberal party's whips to winning no-confidence motions during this period, government legislation was regularly defeated in this manner. Seddon introduced nearly 200 bills per session while Premier, but fewer than half of these were passed. Ironically, the opposition, though impotent and comparatively unorganised, displayed more voting cohesion than the supposedly highly disciplined Liberals.¹³⁸

Lipson has calculated the percentage of party splits for selected sessions in the era of Liberal party government. Even using the relatively high threshold of at least a quarter of party members constituting a party split, it reveals that splitting was commonplace at this time, especially in the Committee stages of a bill. Although the proportions vary, being influenced by a range of matters including the size of the government majority and the stage of the Liberal party's evolution, both parties split on at least 5%, and up to 10%, of divisions in the House, and between 15% and 40% during the Committee stage.¹³⁹

¹³⁵ See, for example, coverage of the Preferential and Reciprocal Trade Bill (1903), "Passing Notes," *Otago Witness*, 25 November 1903, 5, "Preferential Trade," *Evening Post*, 20 November 1903, 5. See also "The Week," *Hawera & Normanby Star*, 2 September 1904, 2.

¹³⁶ "The Government Caucus," *West Coast Times*, 19 September 1901, 3, "The Government Caucus," *Evening Post*, 18 September 1901, 5, "Latest Political News," *Tuapeka Times*, 30 October 1897, 3.

¹³⁷ "Government by Party," *Marlborough Express*, 2 July 1894, 2.

¹³⁸ Martin, *The House*, 144.

¹³⁹ Lipson, *The Politics of Equality*, 341.

Table 5.1: Party Splits in the NZ House of Representatives, Selected Years from 1892-1911

Session	Splits during Divisions	Percentage of All Divisions where a split occurred*	
		Liberals	Conservatives
1892	Committee	15%	22%
	House	8%	11%
1894	Committee	37%	30%
	House	6%	7%
1896	Committee	34%	16%
	House	10%	6%
1899	Committee	13%	18%
	House	8%	9%
1904	Committee	25%	16%
	House	7%	6%
1907	Committee	41%	15%
	House	5%	3%
1911	Committee	27%	24%
	House	7%	9%

* Lipson defined a split as where at least a quarter of party members vote against their colleagues.
Source: Lipson, 1948, p.341

Seddon died in 1906, leaving leadership of the Liberal Party to Sir Joseph Ward who, by some accounts, was a more conciliatory figure. Ward was less insistent upon winning every parliamentary vote and more relaxed about having the government's agenda amended by parliament. For example, far from making every vote effectively a vote of confidence in his government, Ward "resented a suggestion" that votes during discussion on the Consolidated Estimates of 1910 would be whipped.¹⁴⁰ The *Observer* wrote just a few months after Seddon's departure that:

The crack of the whip is less frequently heard, and an unaccustomed degree of freedom is conceded to members on the Government side of the House. The divisions are no longer remarkable for their strict party character. Oppositionists and Government supporters record their votes together, with the common desire that the measure under consideration should be made as beneficial as possible, and the whips have ceased to exist in a perpetual state of feverish activity. ... There is no strain upon the conscience or conviction of members, the unspoken menace of expulsion from the party is conspicuous by its absence, but on the other hand there is a greater confidence between the contending parties, as well as a more conciliatory spirit.¹⁴¹

Ward's more relaxed approach to party discipline prolonged the 'grey area' after 1891 when non-partisan issues and free votes were somewhat indistinct. As the quote above suggests, whipping was not a ubiquitous activity several years into the 20th century, and imposing the whip occurred when strategically necessary rather than as a matter of course.¹⁴² Throughout 1907 the opposition did not employ whips at all.¹⁴³ The freedom to vote as one pleased did have its limits, however, as Ward explained during the infamous Tariff Bill (1907), when a group of government backbenchers appeared to form a compact with the opposition to defeat the government's intentions. Ward repeated that the tariff issue was not a party question, but that an alliance of members "unknown to the Government was a different matter."¹⁴⁴

¹⁴⁰ "The Estimates," 9.

¹⁴¹ "A Changed Parliament," 2.

¹⁴² See also "Troubled Waters," 7.

¹⁴³ "At Work," *Evening Post*, 21 August 1907, 7.

¹⁴⁴ "The Crisis on the Tariff," *Otago Witness*, 11 September 1907, 33.

In 1909 the opposition explicitly recognised their need to more formally adopt party principles in order to compete with the Liberal party. Once the Reform Party, under Massey's leadership, committed itself to being a formal political party with a distinct policy manifesto and organisational structure, legislative debates became more parochial and voting more strictly party oriented.¹⁴⁵ Calls for non-partisanship to characterise politics declined, the introduction of reform bills such as the Elective Executive Bill became less frequent, and the existence of independent MPs became tenuous. Massey was an implacable party man, and his commitment to his party fostered loyalty from his party.¹⁴⁶

Even so, a further generation of politicians was strongly rent by sectional, rather than party, influences. Between 1912 and 1928 the Liberal Party, now in opposition, continued to split frequently. Of the 289 divisions during this period, they split at least 113 times, 42 of them in the short period from 1925-28.¹⁴⁷ A widespread view persisted well into the twentieth century that many matters simply weren't party issues, such as questions of finance, education and defence.¹⁴⁸ Lipson argues, though without supporting data, that while parties continued to split into the 1920s, the maturation of party government in New Zealand meant that the matters causing the splits eventually became fewer and more tightly centred around social and moral issues.¹⁴⁹

The advent of World War 1 provided further impetus for the non-party principle, particularly via the establishment of the 'coalition' ministry in 1915. The coalition ministry was, in part, a response to the need to work in the best interests of the country but also a reaction to the political stalemate produced after the 1914 election. Regardless of the motive, the negotiations preceding the coalition, or national, government were framed in a spirit of needing to produce a truly national ministry that would not be dominated by party politics and would avoid contentious legislation. Sir Joseph Ward, the Leader of the Opposition, wrote that "the proposed national Cabinet, if constituted, should be for the currency of the war and for war purposes only, and that all contentious legislation should be avoided... The elimination of all contentious legislation... would make the Cabinet for the time being non-party, and it would be able to devote itself unitedly to the country's sole interests from a war and financial standpoint." In response, Massey, the Prime Minister, agreed that "all contentious legislation should be avoided during the war period."¹⁵⁰

After some wrangling, Massey and Ward agreed to a cabinet with six members from each party, leaving the small number of Labour members as the opposition. The war years encouraged a spirit of frugality, manifesting in social legislation in the interests of the war effort that widened the scope of government in New Zealand a little further. The Sale of Liquor Restriction Bill (1917), for example, proposed to limit the opening of pubs and bars to 6pm. Passed with a free vote, 6 o'clock closing became a New Zealand institution until it was revisited, again with a free vote, in 1951.

By the time the National Ministry was disbanded in 1919, the parliamentary Labour party, from small beginnings in 1905, was on the verge of becoming the official opposition. The Labour caucus was

¹⁴⁵ Martin, *The House*, 139.

¹⁴⁶ Michael Bassett, *Three Party Politics in New Zealand 1911-1931* (Auckland: Historical Publications, 1982).

¹⁴⁷ Robert N. Kelson, "Voting in the New Zealand House of Representatives, 1947-1954," *Political Science* 7, no. 2 (1955): 102.

¹⁴⁸ *NZPD*, Vol. 158, 7 August 1912, 668. Elected Executives Bill, Josiah Hanan

¹⁴⁹ Lipson, *The Politics of Equality*, 343.

¹⁵⁰ "Coalition Proposals," *Evening Post*, 29 July 1915, 3. See also "Opinions in the City," *Evening Post*, 30 June 1915, 7.

proving a formidable force, dedicated to unified action in support of a collective cause. Jackson has claimed that in New Zealand strict party discipline originated with the Labour party rather than Seddon's Liberal party.¹⁵¹ Its high level of cohesiveness has been explained by reference to both its trade-union origins and its emphasis on solidarity, as well as the need for a fledgling party to remain unified in the face of longer-established rivals.¹⁵² For Labour, a cohesive party was an essential component in furthering the extension of class interests, so in its early years little provision was made for free votes. To expect the party to achieve socialistic goals while being accountable to only themselves or their electorate constituents made no sense – collectivism and solidarity was the key to strength.

The first World War contributed, ironically, to the unity of the Labour opposition. Although the previously separate elements of the labour movement all acknowledged the power and necessity of collective action, they often disagreed on ideological points. The government's proposal, in the Military Service Bill (1916), to introduce conscription gave the labour movement an alternative issue around which to coalesce, and, in general, they united against compulsory conscription. The conscription vote was not a free vote, but one Labour MP, W.A. Veitch, broke with his party over the question. He subsequently resigned from the party, complaining that the Labour party was being inconsistent in their concern for the 'conscience of the man who didn't want to go' i.e. conscientious objectors, while not permitting Veitch to exercise his conscience in opposing the party position.¹⁵³

As it had been for the Liberal party two decades earlier, the liquor question was also contentious within Labour's ranks. The Labour party's official establishment in 1916 coincided with the prohibition movement's heyday, and the party was not immune to the divisions that existed over the issue. Like the other parties, "political Labour's traditional attitude had been to eschew connection with either [continuance or prohibition], since the ranks of Labour contained both ardent prohibitionists and, if not ardent supporters of continuance, ardent tipplers at least", as well as a range of views in-between.¹⁵⁴ The party itself, although initially inclined to prefer state ownership of the industry, quickly dropped all reference to the issue in its electoral platform, deciding that it would be neither a prohibitionist nor a liquor party. No major party has been brave enough to have had a firm policy on liquor issues since.¹⁵⁵

Labour perhaps had a greater incentive to take a neutral stance than the other parties since members were also divided over how to handle the capitalistic nature of the trade. Some supporters of continuance wanted to bring the industry under complete state control while others felt a greater level of regulation would be sufficient. On the other hand, some Labour prohibitionists were religiously motivated while others believed alcohol to be a capitalist weapon being used to stupefy and degrade the working class to their detriment. The brewing industry's monopoly position encouraged most Labour members to support prohibition as a way of disrupting the economic model upon which the industry was based.

¹⁵¹ Jackson, *The Dilemma of Parliament*, 46.

¹⁵² Milne, *Political Parties in New Zealand*, 137-8.

¹⁵³ Barry Gustafson, *Labour's Path to Political Independence: The Origins and Establishment of the New Zealand Labour Party, 1900-19* (Auckland: Auckland University Press, 1980), 113-4.

¹⁵⁴ Bruce Brown, *The Rise of New Zealand Labour: A History of the New Zealand Labour Party from 1916 to 1940* (Wellington: Price Milburn, 1962), 30. Anthony Grigg, "The Attack on the Citadels of Liquordom: A Study of the Prohibition Movement in New Zealand, 1894-1914" (University of Otago, 1977), 322.

¹⁵⁵ Paul John Christoffel, "Removing Temptation: New Zealand's Alcohol Restrictions, 1881-2005" (Victoria University, 2006), 54.

The party's adoption of the free vote on the liquor question dates from 1917 when M.J. Savage moved a remit at the first annual conference of the party asking that the ownership, manufacture, and sale of liquor in the hands of the state become part of the party's policy platform. Such a policy would lessen the need for prohibition, and its suggestion caused violent opposition within the party. Although a compromise solution was eventually adopted, including an agreement that members would be left to decide for themselves how to vote, the incident demonstrated the partisan nature of the liquor issue, the fragility of even Labour party unity in the face of the issue, and the wisdom of making the matter a non-party question.¹⁵⁶ Further, in 1919, the year of the national prohibition referendum, Holland, the then party leader, was obliged to clarify Labour's position in a speech entitled 'Where Labour Stands on the Liquor Question.' Reiterating the position that endures to this day, Holland stated that the party itself did not have an official policy on the matter and did not support any particular option, as the party contained supporters with a variety of viewpoints.¹⁵⁷

Despite the tacit acceptance of freedom from the party whip on certain issues, Labour party discipline was tightened when the National Executive, in 1920, moved to give the party more control over candidate selection, ostensibly to increase cohesion. Among other constitutional changes, it developed a pledge of loyalty which candidates were required to sign. The pledge "bound the aspirant to support the objective and platform of the Party, to vote in Parliament, if elected, in accord with the majority decision of the Labour caucus, and not to retire from an election campaign without the consent of the Party."¹⁵⁸ This pledge was partly in response to simmering ideological disagreements within the Party and, it was hoped, it would reduce internal squabbling. Subverting personal opinion to party considerations made sense politically, although it created the potential for conflict if major policy agreements did arise. So began the long Labour tradition of loyalty to party decisions even if it conflicted with personal views, for the greater good of the labour movement.

Opportunities for parliamentary cross-voting were multiplied throughout the 'three party system' period from 1912 to 1935. On many occasions, the government could not muster a majority without the support of either one of the other opposition parties, or some of the independent MPs. The 1922 election was so close that the result was not known for some months after the election, and the one seat majority for the Reform government that eventually emerged remained tenuous. This made party alliances fickle, complex and confusing, and party discipline became essential. Cohesion was again a challenge after the 1925 election when the Reform party swept back into power with an increased majority – in contrast to the previous session, the size of the caucus made it difficult to maintain cohesion and prevent factions. Dissent became common, once again creating a grey area in the voting record because it is often unclear exactly when cross-voting was officially sanctioned and when it was not. Even for Labour, cohesion was not complete. Overall, the three party era in New Zealand politics was a confusing time that produced a potpourri of legislation and voting outcomes. Little progress was made on the most controversial social issues of the day – liquor and gambling.¹⁵⁹ Cross-voting was at least as common as

¹⁵⁶ Gustafson, *Labour's Path to Political Independence*, 122-3.

¹⁵⁷ "Labor Party's Liquor Policy," *Maoriland Worker*, 9 April 1919.

¹⁵⁸ Brown, *The Rise of New Zealand Labour*, 57.

¹⁵⁹ The MP for Auckland West, Michael Joseph Savage, saw a perverseness in the bills the House was dealing with: "...I think for political humbug recent events in New Zealand take a lot of beating. One moment we are asked, quite seriously, to pass a Bill providing for the giving of religious instruction in schools, and the next moment we are asked to increase the facilities for gambling." *NZPD*, Vol. 215, 7 November 1927, 684

in earlier periods, but free voting became less so, in large part due to the widespread acceptance of the party system and the existence of dissent as an alternative.

Summary

The seeds for modern-day conscience voting in New Zealand were mostly sown in the era of the Liberal government, up until 1912. The themes of conscience bills, the patterns of dissent and a conducive political context are observable in the early parliaments of the party government era. Many of the issues now treated with conscience votes were first so treated in this period – the regulation or prohibition of alcoholic liquor, questions of religion such as Bible in schools, marriage and divorce laws, and the control of betting and gambling all have antecedents before 1912. Expectations in practically all of these thematic areas began early and have now continued for more than a century. Further, the expectations that surround which issues will be granted a conscience vote have expanded. The use of free votes during divisions on the regulation and prohibition of alcohol has extended to practically anything related to alcohol, such as trading hours, drinking age, drink driving and the sale of alcohol in supermarkets. Although religious education in schools has not been a direct issue for many decades, religion generally remains an active force creating controversy and intra-party disagreement. The Death with Dignity Bills of 1995 and 2003 and the Prostitution Reform Bill (2000), for example, were infused with religious sentiment.¹⁶⁰ Marriage and divorce laws continue to be conscience issues but have now been widened to family issues generally. For example, this status was extended to the Civil Unions Bill (2004) which dealt with formal homosexual union and the Care of Children Bill (2003). Conscience votes continue to be automatically held when a gambling issue arises, and its gambit has come to include licensing, casinos and horse racing.

MPs struggled, then as now, with the tension between representing their constituents and being faithful to their parties. Pledges made to the electorate and to the party sometimes conflicted, creating the need for a safety valve. Personal views also collided with corporate stances, again necessitating the maintenance of an outlet for discontent.

The next chapter extends this history until the present day, covering the period when a much wider range of issues confronted parties.

¹⁶⁰ Rex Ahdar, "Religious Parliamentarians and Euthanasia: A Window into Church and State in New Zealand," *Journal of Church and State* 38, no. 3 (1996), Tim Barnett, "Moral Leadership from the Back Benches," *Political Science* 56, no. 2 (2004).

CHAPTER SIX: THE DEVELOPMENT OF CONSCIENCE VOTING SINCE 1936

Once the United and Reform parties merged to form the National party in 1936, the era of two party politics began in earnest. Both the National and the Labour parties became more formal and competitive, which led, in turn, to party discipline increasing dramatically. In one sense, this marked the low point of conscience voting, although, paradoxically, conscience votes during this period became much more meaningful than they had been previously. After the second world war, party politics was gradually transformed by a range of factors, providing an ever more prominent role for conscience voting. The post-war period is a history of conscience voting becoming institutionalised as, first, an informal parliamentary procedure, and, second, a formal provision in the post-1996 standing orders.

Phase Three: 1936-1996, Universal Party Discipline, Punctuated By Free Voting

By the advent of two party politics in the late 1930s, expectations of party cohesion were very high. One commentator suggested that MPs had become “competent enough to be useful to the House, but not independent enough to be dangerous to the government.”¹ Research from Kelson clearly shows that expectations of cohesion grew subsequent to 1930 (Table 6.1). Party discipline, particularly for the Labour party, was abetted by the depression which galvanised support for Labour policies at both the electoral and parliamentary levels, whilst discipline on the conservative benches grew in response to the threat from the Labour party.² The decade after WW2 saw very few members crossing the floor on any issue. Kelson counts a total of just 10 divisions between 1947 and 1953 during which any member at all voted in the opposite lobby, an average cross-voting level of just 3.4%.³

Table 6.1: Party Splits in the NZ House of Representatives, 1947–1954⁴

Session	Percentage of All Divisions where a Split Occurred	
	Labour	National
1947	0%	2%
1948	1%	3%
1949	0%	0%
1950	0%	4%
1951*	25%	25%
1952	0%	0%
1953**	18%	9%
1954	0%	0%

*There were just 4 divisions in this session, one of which saw cross-voting from both parties.

** There were just 11 divisions in this session, with cross-voting observed twice from Labour and once from National.

Cottrell reports that party discipline became even stronger subsequent to 1950, listing only 12 instances of free voting during the 2,718 public bills between 1950 and 1972 (0.44%). And Hobby counts just 169 free vote divisions out of a total of 4,432 divisions between 1936 and 1985 (3.81%).⁵

¹ P. Campbell, ‘Politicians, public servants, and the people in NZ, I and II’, *Political Studies*, vols. 3, 4, 1955-6, p.210 in Martin, *The House*, 225.

² Bassett, *Three Party Politics*, 62, 64.

³ Kelson, "Voting in the New Zealand House of Representatives," 113.

⁴ Adapted from Ibid.

⁵ Cottrell, "Parliament and Conscience", Hobby, "The Crack of the Whip?"

Although backbench dissent after World War 2 did occasionally result in government bills being postponed or abandoned, opportunities for independent thought was greatest in select committees. Their work was conducted in a comparatively non-partisan manner, especially the Local Bills Committee that considered bills sought by local bodies. These bills, a form of private members bill, were often the subject of free votes in parliament, and this approach was also followed in the committee. Committees were, however, relatively powerless and they were usually given very limited time to consider the bills that were referred to them.

Independent MPs continued to be returned to parliament until the late 1940s, almost always campaigning on the value of their independence, though in many cases they were assisted by one of the larger parties not standing a candidate against them.⁶ W.J. Barnard, during his 1943 election campaign, published a leaflet in which he promised to be guided in his decision-making by “a committee representative of all sections of the people, which he would consult from time to time.”⁷ Another independent candidate, T.O. Maddison, assured voters he had no policy other than what the voters wanted; during the campaign Maddison announced he would produce a weekly newsletter in which he would summarise the important legislative decisions in the House. A coupon would be included which his constituents could use to direct him how to vote, and he pledged himself to do what his constituents wanted or else resign.⁸ Such an attempt at direct democracy was unusual but reflected an attempt to tap into anti-party sentiment. Such was the strength of parties by the 1940s, however, that neither candidate was elected.

Conscience Voting and the Labour Party

The Labour party found their high level of cohesion difficult to maintain after assuming the government benches in 1935. The influx of a large number of new members, a generational and philosophic division between the older, more experienced leadership and younger members, and the stresses of being a governing as opposed to an opposition party contributed to growing divisions within the party. Its long period of gestation in opposition had been characterised by a spirit of cooperation and comradeship borne of a common purpose. With good intentions, Labour MPs had determined to continue their collegial attitude by such tokens as running the government as a team, appointing backbenchers as ministerial supports, and the pooling of ministerial salaries. Now, with a huge parliamentary majority and real power a reality, some of this goodwill dissipated. Backbenchers found cabinet members unwilling to share power now that they had it, and the size of the cabinet mitigated against the same degree of intra-party intimacy. Savage, the Prime Minister, was unwilling to allow caucus to elect his cabinet, and the principle of collective cabinet responsibility seemed to many backbenchers as a violation of the principles of openness their party was founded upon. Disagreements created two caucuses within the party – one loyal to the leadership, and another which formed themselves around John A. Lee. These disputes were always seen by the party itself as dissent, and Lee was eventually expelled for criticising the leadership, though history records he consistently voted with the party.⁹ Such events forced the Labour party to provide exceptions to its policy of unity and its use of the party whip. Walter Nash, Labour Prime Minister from 1957 to 1960, reflected in 1963 that:

⁶ Milne, *Political Parties in New Zealand*, 77.

⁷ *Ibid.*, 72.

⁸ *Dominion Post*, 8 November 1935, p.17

⁹ Brown, *The Rise of New Zealand Labour*, 188-9.

The rule that a majority decision of caucus shall be binding has...been qualified; on matters which lie outside the policy of the Party, and on which there are strong differences of opinion, the practice of caucus has been to give the members who are concerned a right to vote in accordance with their own conviction. ... If the matter is thought to be of major importance from the point of view of party policy, members must vote in accord with the decision of the majority at a Parliamentary Party meeting. But if it is a subject that is felt to be one of individual conviction...then the decision of the caucus is that members should have the right to vote as they will... In certain cases a given member may say, 'Well, that's not the way that I see things; I hope that I won't be compelled to vote in accordance with that rule.' Then either the Parliamentary Leader or the caucus can give the member concerned permission to vote as he will.¹⁰

Labour's transition from a party of solidarity to a broad-based home for left-leaning ideologues was not smooth. The early leaders, subsequent to gaining the government benches, until as late as Nordmeyer in the 1950s tended to make loyalty to their leadership an article of faith and would brook no dissent. Even in 1963, Nash wrote that:

It is the Leader of the Opposition also who calls for a division; no-one else on the Opposition benches normally has the right to call for a division unless he comes first to the Leader of the Opposition or the whips. He may say, 'I would like to go against that, or move an amendment', so we see what it is and if we are satisfied that it is good from the Party point of view, or at least harmless, then the member can move his amendment; but in general the call for the division is made by the Leader of the Opposition.¹¹

This approach made the party an uncomfortable place for idealists or the independent-minded who had been attracted to it in the 1930s. By the time of Norman Kirk in the 1960s, however, discussion, the expression of independent opinion, and even dispute was being valued for their contribution to improving policy outcomes.¹² This consequentially made the party much more comfortable with the principle of free voting and brought it much more into line with the practice of the National party.

Conscience Voting and the National Party

Labour's ascendancy to the government benches in 1935 forced their political opponents to rethink their own organisation. After a lengthy courtship, the Reform and United parties merged to form the National party in 1936, beginning New Zealand's two-party system of politics. The National party developed a policy platform and an extra-parliamentary organisation, and maintained a cohesive though small parliamentary team. The party's basic philosophic position as expressed in seventeen general objectives referred repeatedly to the valuing of individuality, and included their desire to respect 'individual differences'.¹³ In a 1943 leaflet entitled 'Where the National Party differs from the Labour Party', point seven stated "We believe members of Parliament should be free and unfettered" and "Labour demands subservience on all occasions, and no Labour M.P. dares to oppose a Government measure." Despite the talk of individuality, cohesion in the House was high for National members, almost matching that of Labour members which had always been high.¹⁴

World War 2 once again encouraged parliament into a more cooperative, non-partisan mode. A war cabinet to deal with the war effort was formed in 1940, though a larger, Labour only, cabinet dealt with

¹⁰ Right Honourable Walter Nash, "The Leader of the Opposition," *Political Science* 15, no. 2 (1963): 31-33.

¹¹ *Ibid.*: 30.

¹² Ian Templeton and Keith Eunson, *Election '69: An Independent Survey of the New Zealand Political Scene* (Wellington: A.H. & A.W. Reed, 1969), 64, 81.

¹³ Barry Gustafson, *The First 50 Years: A History of the New Zealand National Party* (Auckland: Reed Methuen, 1986), 182-3.

¹⁴ *Ibid.*, Alan Robinson, "The Rise of the New Zealand National Party, 1936-1949" (Victoria University of Wellington, 1957).

all domestic matters. By 1941 the war was not going well and, with many party officials and MPs overseas on active service, the Labour government introduced the Prolongation of Parliament Bill to postpone, for a year, the next general election. The National opposition begrudgingly agreed, "on the understanding that there would be as little contentious party legislation as possible. [In response, Prime Minister] Fraser congratulated the House for its cooperative spirit."¹⁵ The work of government went on in this manner until Japanese expansion in 1941 forced a renewed commitment to consensus government and a further postponement of the election. A larger War Administration was formed in 1942 with seven Labour and six National ministers for the purpose of prosecuting the war.

The war had tightened the government's grip on the country.¹⁶ Wartime executive orders constraining citizens in all sorts of ways were commonplace and media censorship was one of the most stringent in the English speaking world. Whilst acknowledging the importance of such impositions and broad acceptability to the electorate, by 1943 the war was turning the Allies' way and the National party felt confident enough to begin a campaign promising to remove such restrictions to pre-war levels and, even, beyond this level. By implication, they wished to cast doubts on Labour's commitment to 'free' the people once the immediate need for restrictions had passed by invoking the fear that "the Government has used the war situation to implement its domestic policy of socialisation of the means of production, distribution, and exchange."¹⁷ It was a game of one-upmanship which played on fears about socialist Labour's propensity to involve government in more of social life than the country had been used to.

The National party saw Labour's very tight discipline as a potential area of vulnerability. National's sharp focus on prosperity through freedom, self reliance and personal effort lent itself naturally to the expectation that this should also include freedom of thought, extending also to intra-party relationships. The ability to disagree with one's friends and neighbours had to be demonstrated within the party by the ability to disagree in meaningful ways with one's political colleagues. National's leader, Sidney Holland, gave numerous speeches, subsequently published in pamphlet form, outlining what National stood for, not just what it opposed. This included "individual freedom, a competitive economy, and the minimum of bureaucratic intervention, restriction and regulation."¹⁸ Reminiscent of the party-government debates of the late nineteenth century, the National party argued that:

A fundamental part of our democratic form of government should be that the men and women who have been chosen by the people, to govern them in the best interests of the nation, must be absolutely free to express their independent judgment on every matter brought before Parliament, and not be bound by some out-of-date tradition to vote in the direction dictated by the Leader of the Party for the time being. ... Time was when every member had to dance to the Leader's tune, but the National Party of to-day has changed all that, and every one of its members is absolutely free and unfettered to vote on every question according to his or her own conscience and judgment. The only occasion on which members are under any pledge to vote with the Party is on a motion of No Confidence in the Government; and such a motion can be introduced only after opportunities have been provided for full discussion and a majority decision arrived at. ... The National Party is alone in this splendid freedom for its members to vote only for those measure they are in favour of.¹⁹

¹⁵ Martin, *The House*, 213. Robert Chapman, "From Labour to National," in *The Oxford History of New Zealand*, ed. W.H. Oliver (Wellington: Oxford University Press, 1981), 350. quotes Fraser as promising to "reduce legislation on purely party lines to a minimum."

¹⁶ Lipson, *The Politics of Equality*, 234-5, Milne, *Political Parties in New Zealand*, 55.

¹⁷ S.G. Holland, *Passwords to Progress: A Plan for Post-War Security, Freedom and Prosperity* (1943), 18.

¹⁸ Gustafson, *The First 50 Years*, 47.

¹⁹ Holland, *Passwords to Progress*, 19.

Other party literature repeated this theme. According to another pamphlet, "Subject to their election pledges, these [National] Members are free to vote and speak in the house as they think fit. They are answerable to no authority save their own consciences, and to their constituents at election time. There is no 'caucus domination'."²⁰ National was thus pledging themselves to a lesser degree of party cohesion which, by implication, was closer to the democracy they imagined people preferred.

This interpretation of personal freedom and its relationship to political parties laid the platform for unwhipped voting to once again become an election issue in New Zealand. The Reform party had made freedom to vote as individuals without censure an election promise in the 1890s and 1900s²¹ and the National party was repeating their promise. This pattern of right-of-centre parties making freedom from strict party discipline a feature of their modus operandi was to recur throughout the 20th century – the Act party also adopted a similar stance when it entered parliament in 1996.²² At the time of these statements all three parties were relatively new, all were parties on the right of the political spectrum, and all were in opposition.²³ It may be that new parties are tempted to make such promises in the hope of tapping into an anti-party sentiment amongst the electorate, and, because of their opposition status, can afford to do so. It is easier for parties in opposition to promise the removal of discipline when the legislative cost to them is perceived to be lower than the potential electoral gains. Right-leaning parties also tend to be more individualist in their voting behaviour than parties of the left.²⁴ Kelson notes, in regard to the early National caucus, that "the small size of the caucus, particularly in the early years when the party was out of power, was a factor in creating a co-operative atmosphere. With few members in the National caucus, there was plenty of time for all members to speak freely in caucus discussion; and, with little prospect for the party to attain power in the near future, divergencies [sic] of opinion were permissible."²⁵ Nevertheless, Holland "expressed the hope that such defections from the agreed policy or the consensus of caucus would be infrequent and only carried out after very serious consideration."²⁶

Capital punishment became the first major issue that challenged the National party and provided it with an opportunity to demonstrate its purported respect for personal conscience. In response to a perceived increase in homicides, the National party, in their 1949 election manifesto, adopted a policy of reintroducing capital punishment which the Labour government had formally abolished in 1941. Although many National party members had been supportive of capital punishment for some time, the party, sensing an opportunity, quickly promoted its reinstatement for the crime of murder as one of its election

²⁰ New Zealand National Party, "For Freedom and Progress," (Wellington: 1946), quoted in Robert N. Kelson, *The Private Member of Parliament and the Formation of Public Policy: A New Zealand Case Study* (Toronto: University of Toronto Press, 1964), 49.

²¹ See, for example, "The Constitution of the Ministry," *Evening Post*, 26 September 1903. Interestingly, these promises stopped when the Reform Party became the government in 1906, although in 1920 Massey, their leader and then Prime Minister, had declared that "No members could have had more freedom than the members of the Reform party..." *NZPD*, Vol. 188, 18 October 1920, 651. Elective Executive Bill

²² Rodney Hide, "Act Is Delivering," in *Act Party National Conference* (Raye Freedman Centre, Auckland: 2009). It is also noteworthy that the right wing political parties in Australia take similar stances. See, for example, the comments in his valedictory speech of Petro Georgiou, retiring Australian Liberal Party MP: "On some issues ... I was unable to support the position of the party majority. A Liberal Member of Parliament has the right to do this. The Liberal Party has changed over the decades, but the right of Liberal parliamentarians to differ from the majority of their colleagues on matters of individual principle and conscience has endured. The belief that party discipline does not override individual principles is built into the very foundation, the very reason for the Party's existence." Commonwealth of Australia, "Parliamentary Debates," (3 June 2010), 5171.

²³ Act was, between 1996 and 1999, a small party with a confidence and supply agreement with the government party.

²⁴ Lindsey, "Conscience Voting in New Zealand".

²⁵ Kelson, *The Private Member of Parliament*.

²⁶ Gustafson, *The First 50 Years*, 62.

promises.²⁷ If elected to government, they promised, they would introduce a bill restoring the pre-1945 legislative position on capital punishment and submit it to a free vote.²⁸ Although such a pledge was consistent with their earlier refrains, the free vote commitment for this legislation, the Capital Punishment Bill (1950), was principally due to a few of their members strongly opposing the party policy on capital punishment.²⁹ This promise may have been important in the National party's election win that year, for at one election rally the announcement was met with "a storm of hysterical applause" and was "received by the audience as an announcement of first-class order."³⁰ Their political opponents slated the response as "the feelings of revengeful, sadistic people".³¹ Nevertheless, the fact that it was a free vote, at least for the National party, contributed to the precedent that matters of fundamental importance to life and death should be free votes as a matter of course.

The post Second World War euphoria was characterised by "universal relief, optimism for the future and a very strong feeling that many New Zealanders ... wanted to enjoy themselves without restraint."³² It is, therefore, perhaps no coincidence that the role of the state in imposing and maintaining restrictions began to be questioned at this time, and that this coincided with an increase in free voting. Previous efforts at curtailing gambling, for example, had failed miserably, though no government was bold enough to significantly reform gaming laws. Returned servicemen and women contributed to a threefold increase in totalisator returns, making a mockery of existing gaming laws and increasing the pressure for gambling reform. In 1946 the Labour government established a Royal Commission on Gaming and Racing which reported in 1948. In the post-war spirit of freedom and a desire for less government, the Commission argued that "gambling was a matter of personal conscience and not the business of the state."³³ This signalled a shift in the purpose of gaming legislation from repression to permissiveness, with legislation only being used if social harmony was being threatened. The Commission's findings were largely accepted by the Labour government, and, after a public referendum on the subject, eventually enshrined in legislation by way of the Gaming Amendment Act (1950) by the succeeding National government. In this case, the referendum was used to diffuse the contentiousness of the issue and the danger for the government. Nevertheless, National allowed their members a conscience vote because of a small degree of internal disagreement, though the party again stressed their free voting policy in positive terms:

Mr. ROY: Some might say that I as a member of the Government am bound to vote for this measure. I do not consider I am. A large number of people voted against off-course betting when that referendum was taken. I was one of that minority, and I am exercising my right in this House to-night to state my objection to the extension of this system. ... I regret, as a member of my team, that I have to take up this attitude, but in fairness to myself I felt I should make this explanation.

The Right Hon. Mr. HOLLAND (Prime Minister): The honourable member is entitled to do that. There is no occasion to express regret.

Mr. ROY: Yes I know there are no restrictions. At no time has any attempt ever been made

²⁷ New Zealand National Party, "National Party Manifesto," (Wellington: 1949), Section 8, 'Women and Children'.

²⁸ S.G. Holland, speech to Dunedin electors, 28 November 1949, quoted in *NZPD*, Vol. 293, 16 November 1950, Capital Punishment Bill, 4309

²⁹ *NZPD*, Vol. 293, 17 November 1950, Capital Punishment Bill, 4352

³⁰ *NZPD*, Vol. 293, 16 November 1950, Capital Punishment Bill, 4309

³¹ *NZPD*, Vol. 293, 16 November 1950, Capital Punishment Bill, 4309

³² Grant, *On a Roll*, 124.

³³ *Ibid.*, 127.

either by my leader or any one else in my party to prevent me stating my view, or voting as I intend to vote tonight on this Bill.³⁴

Debate over the 1947-8 budgetary estimates also demonstrated the National party's looser discipline, but also their lack of established policy. The party, still in opposition at the time, challenged an overseas travel estimate that purportedly was necessary to maintain New Zealand's participation in UNESCO. Despite votes on estimates usually being matters of confidence, five members of the opposition voted with the government. This example constitutes an early form of cross-voting that would ordinarily be considered dissent except that it appears that a policy on UNESCO had not been established by the National caucus and the matter was considered sufficiently minor to not warrant rigid discipline.³⁵

Prosperity, Stability and Consensus

The post-war era had become characterised by prosperity, stability and consensus, and these mitigated against any cause for unconventional political responses.³⁶ Party government and strong discipline had become an accepted part of political life for members, punctuated by free votes only on rare occasions. There were periodic calls for more freedom, but these were isolated expressions of opinion and opposition to the party system was not widespread or organised.³⁷ From contentious beginnings, the office of party whip had become an esteemed position, and parliamentary procedure had long since bent itself to the default of deciding the outcome of a debate before it had begun.³⁸ Since its beginnings in the late nineteenth century, caucusing – the meeting of parliamentary members of a party and the establishing of a joint position – had become integral to decision making within the party, usurping the independence of MPs.³⁹ An elaborate set of party and parliamentary committees and protocols also bore testimony to the pre-eminence of party over the individual member.⁴⁰ While parties were dominant, a high degree of inter-party consensus existed, reflected in the fact that many policy issues and parliamentary committees were bipartisan affairs.⁴¹

Thus, by the 1950s, MPs voting free from party dictates had become an unusual event. In a sense, free voting as a concept no longer existed at all – there were merely a few votes in which parties decided their members should vote as individuals.⁴² This was helped, in 1957, by the closeness of the Labour victory – just one seat after the Speaker has been provided – and ensured that, during this electoral period, discipline would be very tight. If National's promise of 'free votes on demand' had become observed more in theory than practice, the principle nevertheless embedded itself in their MPs' minds.⁴³ One National backbencher maintained as late as 1963 that "my own Party makes it quite clear to a new candidate that he is entitled to vote on moral issues according to his conscience, unless the issue is a

³⁴ NZPD, Vol. 291, 4 October 1950, 2980-2. Gaming Amendment Bill

³⁵ Robert N. Nelson, "Voting in the New Zealand House of Representatives, 1947-1954," *Political Science* 7, no. 2 (1955): 106.

³⁶ R.M. Chapman, W.K. Jackson, and A.V. Mitchell, *New Zealand Politics in Action: The 1960 General Election* (London: Oxford University Press, 1962), Barry Gustafson, "New Zealand since the War," in *New Zealand Government and Politics*, ed. Raymond Miller (Melbourne: Oxford University Press, 2006).

³⁷ NZPD, Vol. 304, 11 August 1954, 1097. Ralph Hanan

³⁸ Alfred E. Allen, "The Role of the Whips and the Caucus in the New Zealand Parliament," *The Parliamentarian* 52, no. 1 (1971), Hobby, "The Crack of the Whip?", May, "The Role of the Whips."

³⁹ Allen, "The Role of the Whips.", Jackson, "Caucus - the Anti-Parliament System?.", Lipson, "The Origins of the Caucus.", Mitchell, "Caucus."

⁴⁰ Martin, *The House*.

⁴¹ Atkinson, *Adventures in Democracy*, esp. 166-76, Martin, *The House*.

⁴² Mitchell, *Government by Party*, 12.

⁴³ National had expelled one member for cross-voting in 1950. See NZPD, Vol. 293, 16 November 1950, 4295. Capital Punishment Bill

specific policy plank that has been agreed to by all the candidates prior to the General Election or a motion of no confidence which could tumble the Government.” To illustrate that this was not just talk, he pointed out that he had, on one occasion, crossed the floor and voted against his party.⁴⁴ Other backbenchers during the early 1960s enhanced the party’s reputation as a team of free spirits by speaking their mind, both inside and outside the caucus room. Keith Holyoake proved an inspired party leader in such circumstances – instead of suppressing, censoring or expelling them, he harnessed their skill and enthusiasm by fusing them onto the party’s decision-making structure. The beneficiary of this was the National party “which gained a reputation for individualism, force and practicality.”⁴⁵ In contrast to some other party leaders, Holyoake saw the value in independent spirits working within the party structure, and stressed that his party did not require pledges from candidates or members to vote as the party wished.

Although the middle of the twentieth century was a low point for free votes, Hamish Wilson, MP for Palmerston North, spoke about the gradual increase in ‘non-party issues’ which was occurring as he introduced his private members Hoardings Bill into the House in 1948:

There are a lot of matters which are not directly concerned with the policy of the Government of the day, or any Government, but which are of general importance to the community, and in which individual members of Parliament can usefully take some share of the responsibility. I suggest that this bill, which aims at prohibiting hoardings along the countryside, is such a measure. It is not in any sense, and could hardly become, a party measure, but it is something which concerns the welfare of the community as a whole. Whether I am right or wrong in introducing it is, of course, for members to say, but it is a matter of general concern, and something which it is most suitable for individual members in this House to concern themselves with.⁴⁶

The Hoardings Bill was a private member’s bill of just four clauses that sought to protect New Zealand’s natural beauty and motorists’ safety by prohibiting hoardings outside of urban areas. Although there were many members who concurred with what he said about both conscience votes and hoardings, Wilson’s bill was nevertheless defeated at its second reading.

By the 1950s, the government’s role in society had expanded to the point where other subjects also came to be viewed as legitimate areas for government attention. Political sensitivity to these issues ensured that at least some of these were treated as unwhipped votes including bills relating to families, crime/punishment and, especially, gambling. Liquor also continued to be a fertile source of intra-party division and thus free voting, helped by the ardent opposition to liquor of MPs such as J.A. Roy in the 1950s and Lance Adams-Schneider and Trevor Young in the 1960s.

Also reinforcing the concept that some issues were beyond the appropriate boundaries of parties were the issues treated in a specifically non-partisan fashion. New Zealand foreign policy, for example, had, since World War Two, been a non-partisan issue. Prime Minister Peter Fraser had appointed a Foreign Affairs Committee just after World War Two which was charged with ensuring relevant, timely and quality information was provided to all members on issues pertaining to New Zealand’s foreign policy. This committee strived to set aside party differences in the larger interests of a peaceful world. Ironically, another war, this time in Vietnam, caused this long-standing convention to be abandoned. The conflict in Vietnam was polarising for many countries, including New Zealand. As a result, the two major parties

⁴⁴ H. J. Walker, "A Government Back-Bencher," *Political Science* 15, no. 2 (1963): 46.

⁴⁵ Templeton and Eunson, *Election 1969*, 51-2.

⁴⁶ *NZPD*, Vol. 281, 28 July 1948, 998

diverged on foreign policy for the first time, leading to foreign policy discussion being the subject of parliamentary debates and questions instead of backroom agreement.⁴⁷

Much later, in the mid 1980s, another committee was established on a non-partisan basis. The increasingly complex business of running parliament required a large and skilled staff, and overseeing its functions fell to the Parliamentary Service Commission, established in 1985. According to Martin, “[o]n Don McKinnon’s suggestion, members were deliberately mixed up around the table. Although party loyalty subsequently reasserted itself in the seating arrangements, the understanding that matters should not go to a vote and that decisions should be reached by consensus proved durable.”⁴⁸

Emergence of the Term ‘Conscience Voting’

In the decades subsequent to 1950, the term ‘conscience issue’ became more common. Having a ‘free vote’ on a ‘conscience issue’ became the standard method for describing a party’s removal of their whip. By the mid-1970s, however, this phrase had become shortened to simply ‘conscience vote’. The Crimes Amendment Bill (1974-5) was the first bill during which a member referred to freedom from the party whip as a ‘conscience vote’. Robert Muldoon, then Leader of the Opposition, was at pains to dissociate his party from the legislation, stating repeatedly that it was a matter for “individual conscience and decision” for both parties. He went on to say that members of the House “know what is meant by a conscience vote.”⁴⁹ The term subsequently became more common, though initially the phrase “free and conscience vote” tended to be used.⁵⁰ During the 1975 Licensing Trusts Amendment Bill, Muldoon goaded the Labour members for “no longer having a conscience vote available to them”,⁵¹ and the term ‘conscience vote’ was used by Labour MP Mary Batchelor to refer to its unwhipped status during the 1976 Health Amendment Bill, but it was not until the Contraception, Sterilisation and Abortion Bill (1977) that unwhipped votes were regularly referred to as ‘conscience votes’.

It is notable that the emergence of the phrase ‘conscience issue’ and the term ‘conscience vote’ coincided with the increasing regularity and scope of the social concerns coming before parliament. Parties came to rely upon unwhipped voting increasingly during the 1960s and 1970s, partly in response to the social revolution that was occurring. Consequently, an appeal to personal conscience came to be heard more frequently during this period, although the motivation for granting a conscience vote remained party cohesion, not conscience itself.

The parliamentary standing orders had been revised at infrequent intervals throughout the century, and another revision in 1972 was notable for its explicit recognition of party discipline. Up until this time, the Speaker was responsible for deciding the speaking order during debates by ‘calling’ MPs to speak. The amended Standing Orders, however, created a Joint Committee of the party whips which was charged with deciding both the time of a debate and the speaking order, lessening the Speaker’s role to one akin to a referee. This change placed greater power in the hands of the whips as they could now more easily

⁴⁷ Graham Hill, “The Relationship between the NZ House of Representatives and NZ’s International Relations,” *Legislative Studies* 9, no. 1 (1994), C.R. Marshall, “The NZ Parliament and Foreign Policy,” *The Parliamentarian* 57, no. 2 (1976).

⁴⁸ Martin, *The House*, 310.

⁴⁹ *NZPD*, Vol. 399, 3 July 1975, 2771. Crimes Amendment Bill, Robert Muldoon

⁵⁰ *NZPD*, Vol. 408, 7 December 1976, 4543-3, Licensing Trusts Amendment Bill 1976, Jim McLay. “When this Bill was first introduced by the Minister, he made it clear that members on this side of the House would enjoy a free vote. ... Members on this side of the House will have a free and conscience vote on the Bill...”

⁵¹ *NZPD*, Vol. 402, 9 October 1975, 5340. Licensing Trusts Amendment Bill, Robert Muldoon

control the messages delivered on the House floor and went a long way to silencing renegade MPs. The provision assumed that parties were the principal representative institution within parliament and that all MPs were members of parties. The change thus effectively stifled members who stepped outside the party umbrella and diminished the House's collective role as a representative body. MPs had, by now, become regarded as the servants of party interests with no other voice beyond speaking for their party.⁵²

Causes and Consequences of Political Change

In the late 1960s, parliament was challenged by unprecedented social change. Social movements were changing traditional society, economic certainty was receding with the impending entry of Britain into the EEC, mass media, especially television, had arrived, and extra-parliamentary interest groups were becoming more organised and influential. Simultaneously, traditional party identifications were weakening.⁵³ Other relevant issues at the time included population change, especially the growth of the population in the North Island, a proposal to extend the parliamentary term to four years, and the need to attract a higher calibre of members to parliament to cope with the increasingly complex issues and legislation it had to deal with. These all played a role in bringing new, particularly moral, issues onto the political agenda and raising the prospect of a greater role for non-party voting. As Martin describes it,

New Zealand's place in the world was changing and being challenged. The relatively tranquil and prosperous period that had begun after the Second World War and been buttressed by exports of primary produce to Britain was ending. Involvement in the Vietnam War and Britain's entry into the European Economic Community posed new questions. Social issues such as equal pay and others raised by the women's movement, the testing of nuclear weapons in the Pacific by the French, abortion, homosexual law reform, apartheid and sporting contacts with South Africa, and compulsory military training were all to change New Zealand's political landscape. The established pattern of strong government through a two-party system was now challenged by pressure groups which sought a place in the political order at a time when traditional party identifications were weakening. Television was rapidly becoming the primary medium for political comment and criticism, and played an increasingly important role in election campaigns. ... The traditionally very high voting rate in general elections (90 per cent or more) had begun to decline. Ways had to be found to increase public participation and attract younger voters.⁵⁴

As a result, "in the short term, society was to become more alienated from those who sought to represent it",⁵⁵ exacerbated by parliament's only slowly changing demographics. Up until this point, parliament had been a middle class institution, but the changing demographics were influential in altering the political culture, with more young people, females, and those with advanced education entering the House.

The Changing Role of Religion

From New Zealand's earliest days, religion has served as both a social unifier and as a source of division,⁵⁶ and it played a vital role in creating the conditions that led to conscience voting becoming established as a parliamentary institution. Post-WW2 social change was altering both religion and its influence on public policy.

⁵² Tom McRae, *A Parliament in Crisis: The Decline of Democracy in New Zealand* (Wellington: Shieldaig Publications, 1994), 116-8.

⁵³ Gustafson, "New Zealand since the War.", Templeton and Eunson, *Election 1969*.

⁵⁴ Martin, *The House*, 268.

⁵⁵ *Ibid.*, 269.

⁵⁶ Ian Breward, *Religion and New Zealand Society* (Presbyterian Historical Society of New Zealand, 1979), McGeorge and Snook, "Church and State in New Zealand Education.", G.A. Wood, "Church and State in New Zealand in the 1850s," *Journal of Religious History* 8, no. 3 (1975).

Conscience voting is closely related to the socio-cultural environment. Society's values and attitudes towards moral standards is roughly reflected by its legislative representatives, and many of these values have historically been influenced by religious influences.⁵⁷ These views flow through into the issues they find controversial and are split over, and for which they expect, ask for, or are simply granted a conscience vote.

Some of the social changes described can also be traced to the changing role of religion in New Zealand society. Never the dominant force it was in some countries, the Christian church in New Zealand had been becoming less central to the lives of New Zealanders and to the formation of public values subsequent to World War 2.⁵⁸ The diversification of social attitudes and the increasing secularisation of society combined to take its toll on the public face of the church.⁵⁹ In addition, the progressive expansion of the welfare state throughout the twentieth century diminished the role the institutional Christian church played in the delivery of social services such as the care of orphans or the indigent.⁶⁰

Although the churches had managed to influence the outcome of some legislation, laws had continued to be passed for decades that many Christians saw as ungodly such as the continued legality of gambling, the refusal to introduce prohibition and a reluctance to permit biblical education in state schools. Christian protestations against the introduction of the Golden Kiwi lottery in 1961, for example, were largely ignored by the majority of parliamentarians because of the huge financial benefits the country would receive from it. For the church, a grounding in Christian principles was essential for the maintenance of civil society; values such as honesty, thrift, hard work and integrity were at least partly gained from adherence, or at least a knowledge of, scriptural principles, and their exclusion from the public square was inimical to a healthy society. This had been a view also held and expressed within the House for many decades, although this assumption had become increasingly challenged by alternative viewpoints by the 1960s.⁶¹ At heart, however, the change was centred in the move away from the traditional view that parliament had a positive responsibility to enforce a particular view of morality within

⁵⁷ Hill and Zwager suggest that a 'secular religion' akin to a 'civil religion' may be replacing traditional religion. Hill and Zwaga, "Civil and Civic."

⁵⁸ David Arrowsmith, "Christian Attitudes Towards Public Questions in New Zealand in 1975" (University of Auckland, 1978), John Adsett Evans, "Church State Relations in New Zealand, 1940-1990" (University of Otago, 1992). Stenhouse argues, however, that "Secular New Zealand" has been overstated, existing "more in the minds of its historians than in reality." He and others in John Stenhouse, ed., *Christianity, Modernity and Culture: New Perspectives on New Zealand History* (Adelaide: ATF Press, 2005). make the case for the integral, albeit changing, role of religion in general and Christianity in particular from the beginning of New Zealand's European history to the present day.

⁵⁹ Rex Ahdar, "Reflections on the Path of Religion-State Relations in New Zealand," *Brigham Young University Law Review* (2006).

⁶⁰ GA Wood, "Church and State in the Furthest Reach of Christianity," in *Christianity, Modernity and Culture: New Perspectives on New Zealand History*, ed. John Stenhouse (Adelaide: ATF Press, 2005), 218.

⁶¹ See Lineham, "Evangelicals and Social Issues in the 1950s."

In 1943, National's election broadsheet claimed forthrightly that "No form of Government that lacks a spiritual basis can last" and that the party's policies were directed towards the development of "a true Christian democracy." Holland, *Passwords to Progress*, 9. The leader was not shy in affirming his party as having its "first principle...[in] a faith and a belief in the principles of Christianity". S.G. Holland, speech to Dunedin electors, 28 November 1949, quoted in *NZPD*, Vol. 293, 16 November 1950, 4310, Capital Punishment Bill. During and subsequent to the Great Depression, Labour had promoted themselves as implementing "Christianity in action." At the same time, each political party attempted to claim the moral high ground by claiming their version of Christianity was more true to biblical teachings. Holland described Labour's welfare policies as not "applied Christianity" but "applied lunacy". Robert Muldoon, *My Way* (Wellington: Reed, 1981), 11-12. And Labour politicians explained at length why how National's willingness to hang people by reintroducing the death penalty was not Christian at all. See the Committal debate during the Capital Punishment Bill in *NZPD*, Vol. 293, 16 November 1950 – 21 November 1950, especially the contributions from Combs and Nash.

and for New Zealand society. Alternative moralities emerged to compete with the traditional one,⁶² and the assumption that legislation was inseparable from the upholding of a moral code was also questioned.⁶³ Thus, ironically, at a time when the state was becoming more important in the lives of citizens, it was simultaneously divulging itself of moral responsibility. This created considerable tension for political parties faced with moral-type legislation, and they increasingly turned to free voting as a way out.

Further, the church itself was no more unified than it had been at the turn of the century.⁶⁴ The various denominations often disagreed with each other, though the major division was between Protestants and Catholics.⁶⁵ The debates that occurred within the Christian church were, on occasion, carried into the House, and non-partisan groupings sometimes emerged that were religiously based.⁶⁶ Other sectarian groups also emerged in the 1970s. A Maori caucus could sometimes be observed considering what was in the interests of their people, and, with the entry into parliament of more activist female MPs like Marilyn Waring in 1975, a women's perspective was also supported by members sympathetic to that opinion.⁶⁷ These groups cut across political parties and were an important step in the evolution of parties away from class ideology and towards a greater focus on social issues. They also stoked the political necessity for free voting, especially over issues such as abortion and homosexual law reform.⁶⁸

Despite the decline of the institutionalised Christian church in recent decades, its predicted demise as a value-shaper and as a policy influencer is perhaps exaggerated – its evolution into a more personal belief system rather than an institution is well documented.⁶⁹ Religion, widely defined to include whatever philosophic assumptions and worldviews people held, continues to exert a pervasive influence

⁶² New Zealand's first Rastafarian MP was elected in 1999, for example, and its first Muslim and Indian MP in 2002. Both brought alternative views into the House on various issues. Nandor Tanczos' ecological perspectives, for example, stemmed from his acknowledgement of "the Creator, the Most High Jah Ras Tafari", the "Earth that sustains all life, and...the sea that surrounds us." In his maiden speech, he gave greetings to "the spirits that guide and protect I and I, and I greet the guardians of this area, Te Whanganui a Tara." *NZPD*, Vol. 581, 10 February 2000, 414. Ashraf Choudary, in his maiden speech, achieved a first by beginning with an acknowledgement of Allah. *NZPD*, Vol. 602, 28 August 2002, 69

⁶³ See the debates in G. E. Hughes, "Capital Punishment: A Moral Discussion," *Landfall* September 1957, no. 43 (1957), Rae, "The Enforcement of Morals." For later examples see Paul Key, "Euthanasia: Law and Morality," *Auckland University Law Review* 6, no. 2 (1989), Liezl van Zyl, "Euthanasia, Virtue Ethics and the Law," *New Zealand Bioethics Journal* (2002).

⁶⁴ *NZPD*, Vol. 414, 11 October 1977, 3576. Contraception, Sterilisation, and Abortion Bill, Denis Marshall

⁶⁵ Peter J. Lineham, "The Nature and Meaning of Protestantism in New Zealand Culture," *The Turnbull Library Record* 26, no. 1&2 (1993).

⁶⁶ Grant, *On a Roll*, 170-1, 82.

⁶⁷ Tony Garnier, Personal interview, 24 July 2009. See also Fiona Barker and Stephen Levine, "The Individual Parliamentary Member and Institutional Change: The Changing Role of the New Zealand Member of Parliament," *Legislative Studies* 5, no. 3 (1999): 111.

⁶⁸ These controversies have been discussed by Laurie Guy, "Evangelicals and the Homosexual Law Reform Debate 1985-1986," *Stimulus: the New Zealand journal of Christian thought and practice* 13, no. 4 (2005), Marilyn Pryor, *The Right to Live: The Abortion Battle of New Zealand* (Auckland: Harlen Books, 1986), Raewyn Stone, "The Political Response to the Question of Abortion in New Zealand from 1970-1975" (University of Auckland, 1977).

⁶⁹ Rex Ahdar and John Stenhouse, eds., *God and Government: The New Zealand Experience* (Dunedin: University of Otago Press, 2000), Lineham, "The Nature and Meaning of Protestantism in New Zealand Culture.", Paul Morris, "Fragments of Faith: Religion in Contemporary New Zealand," *New Zealand Studies* 9, no. 1 (1999), Stenhouse, ed., *Christianity, Modernity and Culture*. Morris goes so far as to state that "New Zealand without Christianity is unthinkable and anyway as yet unthought." (p.17). Lineham believes that "secularism itself emerged to a large extent within a Protestant framework." (p.72). In addition, a majority of MPs in the 44th New Zealand parliament declared themselves as adhering to Christian beliefs. Philip Temple, *Temple's Guide to the 44th New Zealand Parliament* (Dunedin: McIndoe, 1994). On the other hand, Ahdar (1996) found during an examination of the potency of religious sentiment during a euthanasia debate that "Religious convictions are, it seems, better expressed in a secular voice in a predominantly secular forum such as the New Zealand Parliament of the 1990s." (p.583) Ahdar, "Religious Parliamentarians and Euthanasia."

on the social mores of society.⁷⁰ These mores contribute to the general views and opinions held by the public, and remain a major factor in determining the moral sensitivity of an issue for both parliamentarians in particular and society in general. Warhurst, writing in relation to Australia, believes that religious values are a key motivator behind public conscience and consequently the voting behaviour of MPs in conscience votes.⁷¹ One New Zealand MP expressed this very idea during the Homosexual Law Reform Bill (1985): "...we bring to the Chamber the beliefs and the moral laws with which we were brought up. I was instructed in the Christian belief, and I adhere to it to this very day. ... That is the view I bring to Parliament and put to the test when legislation such as this comes before the House."⁷²

Although other theologies such as Islam and the resurgence of indigenous Maori faiths are also clamouring for attention, Christianity's traditional influence on associated ideologies such as conservatism, the 'moral right', and the western system of production and consumption means that its influence remains integral to New Zealand society.⁷³ The evolution, rather than the dissolution, of the relationship between church and state means that future conscience issues are likely to continue to have a religious dimension.

The Changing Role of the Media

The introduction of new media technology such as television meant that, at various levels, an enlargement of popular participation in politics was possible. It also challenged government policies in a way not previously seen, increasing parliament's role as a battleground for a range of political and moral ideologies.⁷⁴

From the 1960s the media became more searching and critical. Both interviewing and being interviewed became less scripted, and the objective for journalists shifted from presenting government policy to seeking its justification. The development of televised current affairs programmes like *Gallery* and *Compass* placed a spotlight on the policies and procedures of parties like never before.⁷⁵ Some parliamentarians perceived the mass media's political value and used it to enhance their profile, but others struggled to adjust to technology that represented a new era and required the projection of personality and not just policy.⁷⁶ The mass media also enabled the publicising of the marked rise in protest activity during the 1960s and 1970s. By disrupting the political consensus and combining with searching interviews and constant examination of politicians, the mass media encouraged parties generally, and the executive in particular, to articulate opinions on a wider range of issues, thus paving the way for a further expansion in the scope of social issues the state was involved in. Paradoxically, parties also became increasingly sensitive about being associated with issues that were not electorally

⁷⁰ Rex Ahdar, "New Zealand and the Idea of a Christian State," in *God and Government: The New Zealand Experience*, ed. Rex Ahdar and John Stenhouse (Dunedin: University of Otago Press, 2000), Morris, "Fragments of Faith." See also Colin Jacobi, "Private Reasons, Public Decisions: Restraint of Private Moral and Religious Beliefs in Public Decisions" (Dissertation, University of Auckland, 1999).

⁷¹ John Warhurst, "There Is No Such Thing as a Free Vote," *The Canberra Times*, 12 April 2002.

⁷² *NZPD*, Vol. 466, 9 October 1985, 7273. Doug Graham

⁷³ B. Ansley, "The Growing Might of the Moral Right," *New Zealand Listener*, 26 October 1985, Bruce Ansley, "The New Conservatives," *Listener*, June 12 2004, Morris, "Fragments of Faith.", Orwin, "Conservatism in New Zealand", Allanah Ryan, "For God, Country, and Family: Populist Moralism and the New Zealand Moral Right," *New Zealand Sociology* 1, no. 2 (1986).

⁷⁴ Martin, *The House*, 268, 71.

⁷⁵ Chapman, "Political Culture," 22, Martin, *The House*, 271-2.

⁷⁶ Robert Muldoon, *The Rise and Fall of a Young Turk* (Wellington: A.H. & A.W. Reed, 1974).

expedient, in turn increasing the likelihood that they would dissociate themselves from them via the free vote mechanism. The rapid increase in free votes during the 1960s mirrors this expansion of mass media.⁷⁷

The arrival of mass media outlets meant that national political polling and the timely reporting of the results now became easier. The increase in the number of opinion polls and the extent of their reporting gave another reason for politicians to be sensitive to public opinion, for the public were now more aware of controversial issues and what politicians generally were saying about them. Thus, polling tended to wean MPs away from a sole concern with the opinion of the constituents in their own electorate towards an appreciation of the impact of their views on public opinion generally and, consequently, on the party as a whole. Once again, this tended to encourage parties to adopt the free voting mechanism when expedient.

Inter-Generational Change

In concert with the changing society, controversial social legislation was on the rise. The Contraception, Sterilisation and Abortion Bill (1977) was particularly contentious, creating deep rifts, especially in the National party.⁷⁸ Irreconcilable positions were adopted by the respective sides of the debate, including the women's sections of the parties. The youth sections also increasingly found themselves with opinions that differed from the older members of their parties – both the cause and the result of dissent over contemporary social issues. The generation gap seemingly widened during the 1960s, with young people seeing themselves as more different from their elders than had the previous generation. A National party pamphlet authored by a young Murray McCully prominently stated that "...invariably, I find myself disagreeing with some things the National Party is doing. And that's a healthy sign. I think to me, the real value of Young Nationals is the ability to make your voice heard on issues you feel strongly about."⁷⁹ The pamphlet "highlighted [McCully's] belief that the Young Nationals were more liberal than many older party members and that inevitably there would be some disagreement between them, particularly on non-economic matters." This created a new sense that the settled norms were no longer applicable. "Young people, better educated and more independently opinionated than in the past, wanted personal freedom and responsibility to make decisions for themselves in a rapidly changing world. Issues such as racial discrimination, abortion, homosexuality, the environment, the equality of women, the nuclear threat, freedom of information, education reform, minimal state interference in the lives of individuals all had to be addressed by society and by the party."⁸⁰

The intra-party debates many of these issues created extended beyond MPs, sometimes causing painful rifts in the extra-parliamentary wings also. Recognising the need for a wide interpretation of freedom from party influence, the National leader announced in 1974 that members of his party "both inside and

⁷⁷ For a politician's view of the implications of the media's more activist stance in the second half of the twentieth century, see *NZPD*, Vol. 537, 3 August 1993, 17168, Electoral Reform Bill, John Luxton. "The role of the media has changed, in the reporting of Parliament, from once just quoting directly from Hansard, to now constantly editorialising and often indulging in an element of mischief-making; highlighting the maverick; creating the "Peters Party", then destroying it; getting conflict into the media all the time to sell media space. That is fair enough. People want to read interesting newspapers and watch action on television, but I am not sure that it is a really good basis for democracy if we do not give a fair balance to the way in which we present the issues."

⁷⁸ Interview with Bill Birch, as quoted in Martin, *The House*, 284.

⁷⁹ Quoted in Gustafson, *The First 50 Years*, 265.

⁸⁰ *Ibid.*, 264.

outside the House” would be exercising their personal conscience during the Crimes Amendment Bill (1974-5) which proposed to legalise homosexual relationships.

Nevertheless, National’s leadership throughout this period included men who ostensibly maintained that party’s commitment to personal freedom. John Marshall, for example, who succeeded Sir Keith Holyoake as National leader in 1972, believed that “Personal liberty is the freedom under the rule of law to think and act, and to speak and worship as we will”.⁸¹ Muldoon, often criticised for his dictatorial manner, nevertheless permitted a high degree of freedom and dissent within his caucus throughout the 1975-84 period, with relatively regular unwhipped votes.⁸² Nevertheless, Muldoon warned his caucus that crossing the floor without a conscience vote being announced was a serious matter.⁸³ Muldoon even proscribed the much vaunted freedom of National members to vote as they please on all but confidence issues when, in his third term, he reacted to his government’s one member majority by extracting assurances from his caucus that they would not cross the floor during the election year.⁸⁴ Evidently voting freedom was a privilege a party could ill afford when it had such a slim majority, even for the party promoting individual freedom as a core value.

The Role of the State

Concomitant with the new social issues being dealt with by conscience votes, debates about the role of the state were more frequently heard. Abetted by a renewed focus upon health and safety and successive governments who were increasingly unafraid to pass legislation to achieve positive outcomes, a spate of social legislation on subjects such as the mandatory use of seat belts, the fencing of swimming pools, and the limiting of the availability of dangerous fireworks raised the ire of those who noticed an element of state compulsion becoming a recurring pattern.⁸⁵ Conscience votes on these matters revolved around improving the safety of people from themselves and others. While few argued that people should not be kept safe if possible, there was disagreement over the balance between state regulation and personal responsibility. An exchange between two MPs during the Transport Amendment Bill (No. 2) (1971) which introduced the mandatory use of seat belts exemplifies this tension:

Is not the compelling of people to wear seat belts to obviate the possibility of injury, even though they are safe and slow drivers, similar to prohibiting people from smoking because they may get lung cancer?⁸⁶

I am also wondering just how much further this Parliament, or any other Parliament, intends to go in infringing the rights of the individual. We are reaching the stage where one cannot do anything unless Big Brother - Parliament - says so.⁸⁷

Those who were concerned about the curtailment of civil liberties that state compulsion entailed included the Prime Minister, Normal Kirk, who opposed the seat-belt provision. Many in the Labour caucus disagreed with him, however, and the granting of a free vote was the only way the issue could be dealt with by that party. According to another senior Labour figure, this decision established the precedent,

⁸¹ NZPD, Vol. 276, 8 July 1947, 294. Maiden speech, John Marshall

⁸² Gustafson, *The First 50 Years*, 128.

⁸³ Robert Muldoon, *Number 38* (Auckland: 1986).

⁸⁴ Martin, *The House*, 296.

⁸⁵ Hugh Templeton, *All Honourable Men: Inside the Muldoon Cabinet, 1975-84* (Auckland: Auckland University Press, 1995), 70.

⁸⁶ NZPD, Vol. 376, 3 November 1971, 4287. P. Blanchfield

⁸⁷ NZPD, Vol. 376, 11 November 1971, 4553. A.E. Allen

that continues to this day, of granting conscience votes on land transport matters that affect personal freedom.⁸⁸

The compulsory fencing of swimming pools was another issue that crystallised the debate around the role of the state:

I regard it first as my responsibility as a member of the House to be an advocate for the vulnerable. That can be the only justification for the introduction of a measure such as this. It can be the only basis for legislative intervention. ... The real issue at present is whether that vulnerability is demonstrated, and, if it is, whether the Bill we are now debating is the best means to afford protection.⁸⁹

One of the matters that propelled me into the House...was to ensure freedom from excessive government and to ensure that the Government's interference in our everyday lives was at an absolute minimum. ... The Bill authorises the entry on to private property of local authority officials. In my view, that is a serious invasion of private property that would require considerable justification. What is that justification? ... We know that small children can be electrocuted by playing with electrical switches. We know that children scald themselves by pulling hot-water jugs off the stove, and sometimes poison themselves by taking medicine to which they should not have access; we know that they can do themselves serious injury with carving knives; yet we do not legislate to try to lock those dangerous items away from small children. There is no law for that.⁹⁰

These were by no means the only issues that led to debates over the role of the state. Other conscience bills of note to have revolved around such questions include the Human Rights Commission Amendment Bill (1990), Smoke-Free Environments Amendment Bills of 1991, 1999 and 2005, the Human Rights Bill (1993), the Human Assisted Reproductive Technology Bill (1996), the Local Government (Prohibition of Alcohol in Public Places) Amendment Bill (2001), the Animal Welfare (Restriction on Docking of Dogs' Tails) Bill (2004) and the Excise And Excise-Equivalent Duties Table (Tobacco Products) Amendment Bill (2010).⁹¹ Representative of the debate on this point in these bills are the comments of Doug Kidd:

It is now getting to the point at which there is not much doubt that people are free to think what they like, but the Government is absolutely determined to dictate to the most minute degree the way in which people will act, and, indeed, even to a considerable extent the way in which they will express themselves. The Bill imposes a set of rules about behaviour, action, and expression that is far beyond anything that we have been prepared to impose [in the past].⁹²

Taking an alternative view, however, Bill Birch felt that the erosion of society's moral values he perceived to be occurring was justification enough for the state to show positive leadership in maintaining them.⁹³

These debates around role of the state frequently split parties, and this contributed towards such bills being granted conscience votes. A pair of quotes from members of the Act party during the Excise and Excise-Equivalent Duties Table (Tobacco Products) Amendment Bill (2010) illustrate this intra-party division:

⁸⁸ *NZPD*, Vol. 574, 3 December 1998, 13829. Land Transport Bill, Michael Cullen

⁸⁹ *NZPD*, Vol. 471, 4 June 1986, 1944. Fencing of Swimming Pools Bill, Ruth Richardson

⁹⁰ *NZPD*, Vol. 471, 4 June 1986, 1946-7. Fencing of Swimming Pools Bill, Doug Graham

⁹¹ During the Human Rights Bill 1993, for example, MP John Robertson argued thus: "Occasionally in this House we debate issues that surround the role of the State in society. Tonight we are participating in such a debate, and I am pleased to join it. The issues that the Human Rights Bill addresses are very basic. They force us to revisit the concept of liberty. They force us to revisit and to think about individual freedoms, and they force us to think about the rights that we need to claim in order to exercise those freedoms without being denied them by others. ...this Parliament in its appetite to legislate is in danger of replacing the disciplines and the standards that healthy societies can and do naturally develop, with, instead, the heavy hand of the State as represented by the law and its accompanying costly bureaucracy." *NZPD*, Vol. 537, 27 July 1993, 16920-1

⁹² *NZPD*, Vol. 510, 6 September 1990, 4357. Human Rights Commission Amendment Bill

⁹³ *NZPD*, Vol. 414, 11 October 1977, 3539. Contraception, Sterilisation, and Abortion Bill

...political life in this Chamber seems to be dominated by the view—held by many politicians in the National Party, the Labour Party, the Green Party, and the Māori Party—that the purpose of Government is to solve private problems. ... The problem with that approach is that our flight from individual responsibility never ends; in this country over the last 20, 30, and 40 years we have seen a substantial flight from individual responsibility.⁹⁴

Why are we discussing this issue? The blunt reality is that tobacco companies kill their customers. It is simple as that. Tobacco companies kill their customers. The only way they can survive is if they get new, young, fresh customers coming in the front door. I believe that this Parliament, this Government, needs to take every step it can take to reduce the number of new young people coming in the door.⁹⁵

A New Era

Emerging technologies were also placing pressure upon parliament to deal with the legal and ethical aspects of many issues. From the 1970s onwards, reproductive technology, for example, such as in-vitro fertilisation, sperm- and ova-banking, sex-selection for social reasons, and, eventually, cell-cloning and genetic modification exercised the minds of lawyers, scientists, journalists, parliamentarians and the public alike. Few political parties had policies on these issues, and, in their absence, party splits were almost inevitable. These splits were complex, revolving around not only the issue itself but the ethical dilemmas they posed and the role of the state in either facilitating further scientific research or preventing it. One MP made this link in discussing the Human Reproductive Assisted Technologies Bill in 1997: "Technology is tending to outstrip our moral and ethical beliefs and extend beyond our existing legal framework. The State, I believe, has a role to ensure that all parties are protected. I suspect that it is the size and shape of that State role that creates the differences between the parties in this House."⁹⁶

By the 1980s, the New Right was in ascendancy throughout the western world. Its tenets of individualism and equality led to further social evolution, in turn resulting in a rash of liberalising laws in a range of subjects. Gambling, liquor, shop trading hours, homosexuality, abortion and human rights were all the focus of attention in the final decades of the twentieth century. The Homosexual Law Reform Bill (1985), for example, was one of the most protracted and controversial conscience issues of the twentieth century, partly because both sides saw it as a marker of wider social patterns.⁹⁷ Conservatives saw it as an opportunity to roll back the liberalising trend they observed in society and reinsert a moral dimension into legislation, while liberals saw it as important that this issue not be used to stall the liberalisation of other issues.⁹⁸ The key axis in this debate was, therefore, socio-religious, and the "successful passing of the [Homosexual Law Reform Bill] in 1986 was thus a further defeat for the conservative moral worldview as a hegemonic shaper of New Zealand values."⁹⁹ Indeed, the victory liberals won on this occasion was to be followed by others like it. In introducing the Shop Trading Hours Act Repeal Bill (1989), the Minister of Labour, Helen Clark, stated that "Public attitudes towards restricting trading hours have changed in the last decade. Sunday trading is an idea whose time has

⁹⁴ NZPD, Vol. 662, 28 April 2010, 10574. Roger Douglas

⁹⁵ NZPD, Vol. 662, 28 April 2010, 10586. John Boscowen

⁹⁶ NZPD, Vol. 559, 23 April 1997, 1232. Patricia Schnauer

⁹⁷ NZPD, Vol. 461, 8 March 1985, 3525. Homosexual Law Reform Bill, Graeme Lee. Eight years earlier, another MP had commented on the importance of the Contraception, Sterilisation, and Abortion Bill as a "weathervane of the current attitudes of New Zealand society to traditional concepts of morality. In this respect, the subject of abortion is becoming the great watershed for debate on moral issues and changing values in our increasingly sophisticated society." NZPD, Vol. 414, 11 October 1977, 3555. Barry Brill

⁹⁸ Ansley, "The Growing Might of the Moral Right.", Nick Barnett, "Coaxing the Liberals," *Pink Triangle* 54 (1986), Guy, "Evangelicals and the Homosexual Law Reform Debate 1985-1986.", Mike Riddell, "The Divine Right," *New Outlook*, September/October 1985.

⁹⁹ Guy, "Evangelicals and the Homosexual Law Reform Debate 1985-1986," 70.

come.”¹⁰⁰ It was not just religious attitudes to trading on Sunday that had delayed the adoption of such legislation, however. Many in Clark’s own party, and some in the National party, had long argued that increased trading hours would be a boon for employers but not be in the interests of workers or working proprietors. The ability for such people to spend time with family or in leisure pursuits would be compromised, and the limit on weekly work hours, hard-won in earlier decades, may be lost if trading hours were not also limited. Tensions had thus shifted from revolving around a purely socio-religious axis in the late nineteenth century towards being augmented by socio-economic concerns by the end of the twentieth century.

Ironically, the new social concerns and some of the postmaterialist issues that would eventually find their expression under MMP were beginning to assert themselves in a new conservatism. Whilst trading hours, liquor licensing, human rights, and access to divorce, gambling outlets and abortions were being liberalised, restrictions on liquor advertising, fireworks, smoking, drink driving and criminal punishment were being tightened, with conscience voting being invoked in each of these cases. Social conservatives sometimes deliberately provoked the use of direct democracy measures such as conscience voting and referenda to support their case. In questioning the wisdom of enacting legislation legalising casinos in New Zealand, Winston Peters encouraged a public referendum on the issue and asked “What makes parliamentarians special to give authorisation for such a dramatic change in our country’s social life?”¹⁰¹ Although he did not get his wish, that particular bill was decided with a conscience vote.

Women’s Issues

An historic connection between the issues receiving non-party votes and matters of concern to women was leading to a general feminisation of conscience issues. The four key issues instrumental in the emergence of conscience voting in New Zealand – the liquor question, gambling, female enfranchisement and religious education – were all recognised at the time as being of particular concern to women, either for their direct impact as in the case of suffrage, or for their impact upon families. Parliamentary debate on liquor and gambling was frequently conducted in terms of male abuse of women and families, and religious education was generally considered a primary responsibility of mothers. In addition, women’s groups such as the Women’s Christian Temperance Union and the National Council of Women were particularly active in all four debates. Further, for many decades both parliament and party politics was dominated by men – the rough and tumble of political life was considered no place for the gentler sex. The normal *modus operandi* of parliament was therefore seen as explicitly masculine, the obverse being non-party votes where the masculine traits were suspended in favour of a more refined approach. Non-party votes and issues of particular interest to women thus developed an early association, and the impression arose that conscience issues were primarily of interest to women. Sufficient numbers of recent conscience issues have perpetuated this theme in the modern era – abortion, human rights (especially gender discrimination), pornography, matrimonial property reform, contraception, prostitution and the care and safety of children have, in general, been of particular interest to women. For many years the National party included discussion of most conscience issues under the manifesto heading ‘Issues of Concern to Women’, and the Labour party has long had

¹⁰⁰ Claire Ramsay, "The Evening Post," *Conscience vote for Bill*, 9 December 1989, 1.

¹⁰¹ "Casino Bill Passes Second Stage on Conscience Vote," *The Dominion*, 4 April 1990, 2.

an explicit policy of gender equality that they and their members have on occasion attempted to advance through the use of the conscience vote.

Phase Four: 1996-Present, Mixed Member Proportional

By the 1990s, in response to the range of pressures discussed above, parliament had experienced considerable evolution in both subjects and procedure.¹⁰² More change was to come, however, notably the adoption of MMP in 1996 which signalled the most significant constitutional change for the New Zealand parliament – and for conscience voting – in its history.

The internal and external pressures that led to the proposal for electoral reform in the 1980s and 1990s also indicated a demand for a more consensual style of politics.¹⁰³ The Electoral Law Committee, charged with considering the Electoral Reform Bill that would introduced MMP, worked in a non-partisan way to “forge a consensus that would enable us to fashion a workable and consistent model of an MMP system, acceptable in all its key components to the majority.”¹⁰⁴ The House considered the Bill keenly, with whips withdrawn during the Committee of the Whole House stage.

In anticipation of the introduction of MMP, a Standing Orders Review Committee was established to consider how the standing orders could be adjusted to accommodate the new arrangements MMP would inevitably entail. As a result of the Committee’s report,¹⁰⁵ new standing orders were introduced which were significantly different from their predecessor in some important ways.¹⁰⁶ For example, with some members to be elected on the basis of a party vote, it was not appropriate that the standing orders assume all members represented electorates.¹⁰⁷ Mechanisms for recognising coalitions also needed to be developed. The new standing orders also increased the power and importance of select committees, usually the most non-partisan component of the House’s business. The multi-party nature of parliament now demanded representation on select committees from all or at least most parties, and the government no longer had a guaranteed majority. More time was allocated for committee work, and the ability of committees to amend bills before they went back to the House made their work much more meaningful. Although not all committee work became non-partisan, these changes did mean that non-partisan work contributed to the legislative process to a greater degree than previously. These efforts made the New Zealand parliament internationally noteworthy.¹⁰⁸

David McGee, the then Clerk of the House, had presented a case to the Speaker for reform of not just the standing orders but also parliamentary procedure itself. He advocated, among many other things, that the discipline imposed by parties on their members over speaking and voting be relaxed in order to make debates on the House floor more meaningful.¹⁰⁹ Although such advice was not adopted, conscience voting, which had already become an entrenched parliamentary convention, did become more formalised. For example, it was no longer tenable to maintain the fiction that parties were extra-

¹⁰² NZPD, Vol. 537, 3 August 1993, 17257. Electoral Reform Bill, Denis Marshall

¹⁰³ Malone, *Rebalancing the Constitution*.

¹⁰⁴ NZPD, Vol. 536, 22 July 1993, 16729. Murray McCully

¹⁰⁵ New Zealand Parliament, *Report of the Standing Orders Committee : Review of Standing Orders* (Wellington: NZ House of Representatives, 1995).

¹⁰⁶ MMP’s impact upon parties and MP’s behaviour can be found in Barker and Levine, “The Individual Parliamentary Member and Institutional Change.”

¹⁰⁷ The Standing Orders had, in practice, indirectly recognised parties for many years. Party whips, for example, had been recognised for several decades.

¹⁰⁸ Martin, *The House*, 331.

¹⁰⁹ David McGee, ‘Parliamentary reform’, memo to Speaker, 20 July 1992 in *Ibid.*, 324-5, see esp. n.126.

constitutional institutions, as the basis of the MMP electoral system is the party vote. For the first time, parties were explicitly recognised as the key institution during both elections and legislative debate. Voting procedures for whipped and unwhipped votes were distinguished and defined.¹¹⁰ A distinction was made between a party vote and a personal vote, the latter being reserved, in the main, for conscience votes. This procedural recognition of conscience voting gave the practice a new status. No longer merely a reaction to party dissent or something done when party discipline could not be imposed, conscience voting was an officially recognised parliamentary practice, an institution in its own right and sufficiently imposing to be given its own set of codified procedures. This did not mean that the subjects, reasons or motivations for parties granting their members a conscience vote were any more defined, but if parties were going to grant a conscience vote, and the expectation was that they would continue to do so, then the standing orders now explicitly defined the procedure to be followed.

An additional procedural innovation was split-party voting. The MMP-era standing orders permit parties to vote as parties, with the party leader or whip voting on behalf of their colleagues. Inherent in this system is the provision for a split-party vote whereby the party may vote in both lobbies in whatever proportion has been decided upon by their caucus. Split-party voting obviates the need for a division in the House – the vote may be taken in the caucus room and simply announced when the House votes. Voting in caucus is not, of course, uncommon, but the ability to reflect this division in the House rather than making a majority decision is novel. Split-party votes are discussed in more detail in Chapter Seven.

MMP created the opportunity for a number of new parties to form. While none had specific policies on conscience voting, most promised a new style of politics, usually being described as more consultative. The new MMP parties increased the variation in approaches to party discipline and whipping. The Green and Maori parties, for example, adopted a specifically collaborative approach to policy making, whilst NZ First appears to have had a particular attraction towards split-party voting. Some of the MMP-parties developed explicit policies on many of the issues that previously divided National and Labour – issues pertaining to homosexuality, human rights, and abortion, for example, are all part of the Green party manifesto. Consequently, conscience votes have been used much less frequently by the Green party than most of the other parties.

Further, MMP permitted the larger parties to limit the range of views it was necessary to accommodate. Some of the new MMP parties were now representing policy positions either on the extremes or in niches of the policy spectrum, depriving the larger parties of the necessity to do so. Shorn of these policy extremes, policy opinions within the larger parties tended to become more moderate, and disagreement with the policies adopted lessened.¹¹¹

Each government since 1996 has involved a coalition of some sort, and for the first time the partners in these coalitions has been faced with how to handle inter-party discipline. The National-NZ First coalition agreement was detailed, with elaborate procedures to be followed in the event of disagreement.

¹¹⁰ Parties were also recognised in the Electoral Reform Act 1993 which established an Electoral Commission to handle, for the first time, the registration of political parties.

¹¹¹ Maryan Street, Personal interview, 30 August 2007

Subsequent agreements have been more generic, with 'agree to disagree' provisions enabling each party to go their respective ways if necessary – a kind of conscience vote at the party level.¹¹²

The introduction of MMP in 1996 also gave rise to a new challenge – party defections, especially of list MPs. Although defections were not new in themselves, the multiplication of the number of parliamentary parties made 'party hopping' much easier, and the defections of list MPs such as Alamein Kopu led some to question the mandate of such members to continue in parliament. Such discussion led to the passing of the Electoral Integrity Act (2001) to prevent this very scenario. This Act had a sunset clause that came into effect in 2005, but the opportunities presented by MMP and, in particular, the influx of both new parties and new MPs after the 1996 general election, made parliament a less stable institution than it had been for many decades.

Summary

The emergence of conscience voting began in Britain with what were known, in the nineteenth century, as 'open questions'. Given the relatively unformalised nature of parties at the time, these were unwhipped votes that applied only to members of the executive. The emergence of party discipline in the late nineteenth century created tensions over the role of the individual MP, and being 'free to vote' as they chose became a feature of the debate that raged around this issue. In the first decade of the twentieth century members' freedom to vote as they pleased had coalesced around a number of identifiable issues. It had also become entrenched as a technique for protecting the cohesion of parties to the point where it was increasingly referred to simply as a 'free vote'. This became the standard term for unwhipped voting until the 1970s by which time the cultural revolution, the development of the mass media, and the retreat of religion from the public square combined to unsettle the country's social relationships and create an increasing need for legislative decisions on a wider range of social issues. These matters were not in the gambit of traditional political parties so they were left to MPs' personal conscience – the term 'issue of conscience' thus came into increasing usage, eventually being shortened to 'conscience issue.' From there, it was a short step to refer to votes on conscience issues as 'conscience votes,' the current term for unwhipped votes in New Zealand.

Conscience voting, in the modern sense of the term, did not really emerge until party discipline became universal, strict, and consistent in the late 1930s. Prior to this, members were 'free to vote as they pleased' when members demanded it, but, in general, penalties for crossing the floor were comparatively soft regardless. The advent of two party politics in 1938 increased the need for discipline within parties, and long periods of entirely predictable voting outcomes became punctuated only by occasional instances of members being granted a free vote. Although the incidence of free voting has gradually increased since then, this situation has basically prevailed until the present day.

The introduction of MMP in 1996 altered the practice of conscience voting in some important ways. Some of the small parties that were spawned at the time adopted policies specifically built around the issues that previously divided parties, and a few have also adopted a more consensual style of politics, both of which have lessened the need for conscience voting, at least for those parties. The small size of some MMP parties has also made it easier for them to demonstrate exceptional degrees of cohesion. Further, the introduction of party voting, whereby parties hold a general proxy for their members and can

¹¹² Malone, *Rebalancing the Constitution*.

vote as corporate entities, led to the practice of split party voting which has provided another outlet for intra-party dissent.

CHAPTER SEVEN: CONSCIENCE VOTING AND PARLIAMENTARY PROCEDURE

Although parliament's procedures, protocols and conventions were officially blind to political parties for most of the twentieth century, parliamentary practice nevertheless reflected their dominance.

Conscience voting was being operated within a system that assumed the presence of its opposite, and voting free from the party whip became not only uncommon but anomalous in parliamentary practice.

Although conscience votes were sufficiently rare throughout the twentieth century to not warrant formal procedures of their own, they were also held frequently enough and on issues of above-average import to lead to a range of both informal protocols and procedural irregularities in their conduct. A range of tensions developed, which continue to exist, between the formal parliamentary procedures and the needs of individual MPs during unwhipped debates and divisions. The application of formal procedures to conscience voting is sometimes problematic and at other times anomalous, prompting one MP to conclude that "parliamentary procedures do not facilitate conscience votes on complex issues"¹ and another to complain that "The parliamentary procedures are ill equipped for dealing with issues such as this. ... Our procedures do not easily handle conscience matters..."² Often, the procedure must simply be made to work by the combined good will and ingenuity of the members and the Speaker.

The enforcement of some parliamentary rules and conventions are relaxed somewhat during conscience votes. Although certain limits are observed, this understanding recognises that conscience votes require more leeway because of the absence of the personal disciplines and ideological buffering that parties normally provide. On the other hand, some provisions are tightened during conscience issues such as those requiring restricting the number and scope of private members bills.

The following sections discuss some of the parliamentary procedures surrounding the use of personal voting in the House, many of which are either not specifically addressed, or have implications that are not addressed, in the Standing Orders but which are regularly encountered by parliamentarians during conscience votes.

Business Committee

A number of post-1996 procedural matters are relevant to the discussion of conscience voting as it exists within the New Zealand parliament. The Business Committee, for example, is prescribed by the post-1996 Standing Orders as a committee of parliament that controls the business of the House. There are currently eight members on the Committee including the Speaker who acts as the chair. The rest of the members on the committee are representatives of as many of the parties currently in parliament as possible, and are mostly party whips. In practice, the Business Committee:

1. facilitates efficiency by removing from the debating chamber any potential issues of confusion, thus preventing precious House time from being occupied on procedural matters, and
2. acts as a clearinghouse of information, ensuring that opposition parties are not unaware of the amount, nature and manner of business the House will be dealing with.

¹ NZPD, Vol. 498, 30 May 1989, 11027. Sale of Liquor Bill, Ian McLean

² NZPD, Vol. 472, 2 July 1986, 2588. Homosexual Law Reform Bill, Paul East. See also Vol. 412, 19 August 1977, 2359, Contraception, Sterilisation, and Abortion Bill, Bill Rowling

Although it does not have the power to alter or override the Standing Orders, the Business Committee is influential in the affairs of the House. The Standing Orders give the Committee certain powers to decide for the House the terms of a debate. In some circumstances, even the Speaker is bound by what the Committee decides.³ The Speaker will sometimes be heard to declare that a conscience vote will be held for a particular issue on the basis of Business Committee decisions. Further, without a determination of the Business Committee, requests for a conscience vote have less weight.⁴ Thus, the Business Committee has, to a certain extent, formalised the way parties and parliament approach conscience votes.

Although the declaration of a conscience vote is still a party decision, agreement between parties on this matter can, and often is, reached in the Committee because most parties give their Business Committee representative the mandate to make decisions on behalf of their party. Thus, what was decided in the Business Committee becomes what the respective parties abide by in the House, including during conscience votes.⁵

Whether a party decides to exercise a party line or whip or not is for that party [to decide]. The Business Committee essentially is determining whether something is going to be handled as a personal vote, to the extent that those things are different. ... [It is] a decision for the Speaker to make, but in practice it is determined beforehand through the Business Committee.⁶

In making such a decision, the Committee will have regard to how an issue is traditionally treated. The involvement of the Business Committee in setting the parliamentary agenda has tended to make the granting of a conscience vote a slightly more a cross-party affair than it has previously been.

Decisions of the Business Committee are made unanimously, if possible. Once made, however, they effectively bind the whole of parliament. A determination of the Business Committee is carried forward into the House, where parties are bound by its details. It is, therefore, possible that a party or parties will not agree with the approach adopted by the Business Committee. A party that either disagrees with the determination, changes its mind on the appropriate procedure, or finds itself needing to accommodate an internal division on a particular matter – such as wishing to have a conscience vote on a question that would otherwise be a party vote – can do so but must seek the leave of the House to have their wishes accommodated.⁷

Voice Votes

The current Standing Orders specify that, under normal circumstances, when bills are ready for a vote, the Speaker (or the Chair when the House is in Committee) 'puts the question' to the House.⁸ In the first instance a Voice Vote is taken, and in doing so the Speaker gauges the will of the House by the response received to this appeal. Under normal conditions, the Speaker assumes that the government will have the majority whether or not the volume seems louder from the opposition benches, for it "is the Speaker's job to construe the sense of the House from the voices, not to register who can shout

³ NZPD, Vol. 579, 27 July 1999, 18558. Sale of Liquor Amendment (No.2) Bill

⁴ NZPD, Vol. 598, 14 February 2002, 14369. Shop Trading Hours (Abolition of Restrictions) Bill, Richard Prebble

⁵ See, for example, Michael Cullen's statement of the outcome of the Business Committee's discussion in NZPD, Vol. 588, 21 November 2000, 6705. Property (Relationships) Amendment Bill

⁶ David Bagnall, Personal interview, 30 August 2007

⁷ NZPD, Vol. 590, 21 March 2001, 8435-6. Property (Relationships) Amendment Bill

⁸ House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 135

loudest.”⁹ When the vote is not whipped, however, assumptions about the government having a majority cannot be made. In these cases, greater reliance is placed upon volume, but the course of the debate will also have provided a sense of the relative strength of each side. A further consideration on such occasions are parliamentary conventions such as permitting private members bills to at least be considered by a select committee.¹⁰

The voice vote itself may, on occasion, be used as a powerful political weapon in a government’s arsenal. In the Australian context, the voice vote was purportedly exploited by the then Australian Prime Minister John Howard during the very controversial RU486 ‘abortion pill’ debate in 2006. In the Australian House of Representatives the Prime Minister allegedly “avoided a formal vote, letting it pass on the voices instead... By doing so he ensured anti-abortion campaigners wouldn’t be able to target individual MPs who voted for RU486.”¹¹

In the majority of cases, the Voice Vote is sufficient to determine the outcome of votes, even conscience votes, and the minority acquiesces in the Speaker’s decision. If unsatisfied with the Voice Vote however, members in the minority may then call for a division.¹² No reason is needed for this request, although he or she will no doubt believe that the result may be different if a more formal voting method is used. In most circumstances, and subsequent to 1996, that further vote will be a Party Vote (discussed next), the exception being where the vote is on a conscience issue, in which case the House may proceed directly to a Personal Vote (discussed following).

Party Votes

In a Party Vote, one member of each party – ostensibly the leader although in practice a whip¹³ – votes on behalf of the party corporately, casting their votes one way or the other according to their predetermined party position.

The time parliament spends on voting is reduced when Party Votes are used instead of Personal Votes. Although a Party Vote is a division, it obviates the need for members to troop through the lobbies, in turn enabling parliament to do more work in less time. There is no requirement on parties to cast all of their votes, however, and a party with 30 members, for example, may cast a Party Vote for just 29 if they so wish. Because the House requires no explanation for the casting of less votes than there are party members, the possibility exists of what one member has described as “secret non-voting” – the abstention of one or more member from the vote without their party actually announcing that an abstention has occurred or who has abstained.¹⁴ The Journals of the House record only the votes of the party, not the votes of each member. Although such an abstention may be attributable to a number of factors, it could also be a sign of intra-party dissent that the party has chosen to not treat as either a Personal Vote or a Split Party Vote (discussed next), both of which require names to be recorded against votes. For example, the Maori Party was divided over the Employment Relations (Probationary

⁹ McGee, *Parliamentary Practice*, 203.

¹⁰ An informative discussion on these points is in *NZPD*, Vol. 356, 14 August 1968, 1367-70. Fair Credit Transactions Bill

¹¹ Peter van Onselen and Wayne Errington, "With Consciences to the Fore, Politics Gets Uglier," *Canberra Times*, 20 February 2006.

¹² House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 140

¹³ McGee, *Parliamentary Practice*.

¹⁴ *NZPD*, Vol. 621, 20 October 2004, 16337. Richard Prebble

Employment) Amendment Bill (2006) but chose to handle it by simply casting less than their full complement of votes during the second reading Party Vote, the dissenting member simply not appearing in the vote count of either lobby.¹⁵ Thus, a particular vote may appear to be a 'Party' Vote but nevertheless be masking what would otherwise be a Personal, or conscience, vote if the Party Voting mechanism did not exist. To this extent, Party Votes improve the efficiency but reduce the transparency of parliament.

Split Party Votes

As an extension of the Party Vote, parties are permitted to cast a Split Party Vote whereby the same party distributes its vote in more than one voting lobby – Ayes, Noes and, sometimes, Abstentions. Under such circumstances, members of one party may vote against each other even though it is still technically a Party Vote. The Shop Trading Hours (Abolition of Restrictions) Bill, first introduced in 1997, for example, was so treated when the National party split 20 to 19 that the Bill proceeded to the select committee stage, and split again 17 to 10 that the Bill proceed past consideration of the select committee's report.

Since their introduction in 1996, a total of 179 Split Party Votes have been cast during consideration of 25 bills. 38 of these votes have been in the House, and the remaining 141 in the Committee of the Whole House. A full list of Split Party Votes and which party split is in Appendix 3.

A party may decide to cast a Split Party Vote for a variety of reasons including internal disagreement, the preservation of an appearance of unity, or as an alternative to the Personal Vote. The result of a Split Party Vote differs little from that of a Personal Vote, the effect being to enable individual members of a party to vote as they wish. Split Party Votes (and Personal Votes) provide an avenue for parties to accommodate disagreement and/or sanction intra-party dissent.

Transparency in voting is an important parliamentary principle. When Split Party Voting was first introduced, it was not initially a requirement that parties tell the House which of their members voted each way – parties voted on behalf of their members, simply giving the Speaker the totals rather than the details of how their members voted. In 2005 however, the Standing Orders were altered to require parties, when casting a Split Party Vote, to provide the Speaker with a list of their members and which way they voted. The Journals of the House list these names individually, but this is the only time MPs' names appear in the official record during Party Votes. Further, parties who wished to split their party vote in this way initially required the leave of the House but, since 2005, each party has been able to split their vote as of right.¹⁶

Despite the result being indistinguishable from a conscience vote, Split Party Votes nevertheless are formally Party Votes – the party, not the individual member, casts the actual vote in the House. In contrast to conscience votes, Split Party Votes effectively increase the importance of the caucus meeting, as any intra-party division must be worked out prior to the (Party) Vote.

¹⁵ NZPD, Vol. 635, 22 November 2006, 6752

¹⁶ McGee, *Parliamentary Practice*, 204. See, for example, NZPD, Vol. 627, 27 July 2005, 22085, NZPD, Vol. 621, 20 October 2004, 16366-9, NZPD, Vol. 597, 18 December 2001, 14075, NZPD, Vol. 588, 22 November 2000, 6805, NZPD, Vol. 610, 13 August 2003, 7928, NZPD, Vol. 619, 25 August 2004, 15074, NZPD, Vol. 618, 29 June 2004, 14153

Split Party Votes are becoming increasingly common, often at the expense of conscience voting, for a number of reasons:

1. Split Party Votes are quicker to conduct than Personal Votes which involve a full division. They take little longer than ordinary Party Votes to conduct, and entail only the submission to the Speaker of a correctly filled out form to validate the vote.
2. When the Business Committee (discussed above) has determined that a vote will be a Party Vote but a party finds itself, for one reason or another, wanting to cast its votes both ways, a Split Party Vote is the easiest way to achieve this. A Personal Vote cannot be declared without leave of the House when a prior determination of the Business Committee has been made. If leave is sought but denied, a Split Party Vote is the only alternative available to parties.
3. Perhaps most importantly, Split Party Votes are politically useful, for they tend to deflect attention away from the fact that disagreement exists within a party. In so doing they enable parties to avoid the more public act of requesting a Personal Vote and forcing the whole House to go through a division. For example, three members of the Maori party refused to vote for the second reading of the Te Roroa Claims Settlement Bill (2007) because they believed it to be an inadequate legislative response. Instead of crossing the floor in the traditional sense, or forcing a Personal Vote for the whole House, the party simply cast a Split Party Vote.¹⁷ From a publicity point of view, therefore, a Split Party Vote can be passed off as a Party Vote, whereas a full division, or Personal Vote, is sufficiently unusual to be likely to be reported in the media. Confusingly, however, some bills have received both Split Party Votes and Personal Votes.¹⁸

Table 7.1. Split Party Votes by Parliament

	Parliamentary Term					Totals
	1996-99	1999-02	2002-5	2005-8	2008-10	
Bills with both Conscience Votes & Split Party Votes ¹	2	0	3	0	0	5
Bills with Solely Split Party Votes ¹	3	3	7	6	1	20
All Split Party Vote Bills ¹	5	3	10	6	1	25
All Conscience Vote Bills ^{1,2}	10	6	16	9	4	45
% CVs with Split Party Votes	50%	50%	63%	67%	25%	56%

¹ Classified by date of first introduction

² Including Split Party Vote bills

It is a contention of this thesis that Split Party Votes are a form of, and can be considered as essentially the same as, a conscience vote. They represent an alternative procedural outlet for the same party divisions that lead to conscience votes. The expression of disagreement may be conducted in the caucus room rather than on the floor of the House, but in essence they are equivalent.¹⁹ Certainly, politicians themselves from across the House seem to be of this opinion, and numerous examples of both MPs and parties themselves equating conscience votes and split party votes can be found. For

¹⁷ NZPD, Vol. 640, 20 June 2007, 10093

¹⁸ For example, the Shop Trading Hours (Abolition of Restrictions) Bill (1997)

¹⁹ Maryan Street, Personal interview, 30 August 2007. "A split party vote and a conscience vote effectively are the same thing. In terms of the numbers of the House they are the same thing."

example, Heather Roy explained her party's position on the Human Assisted Reproductive Technology Bill (2004) by stating that "ACT MPs will be voting according to their consciences on this bill, so we will have a split vote."²⁰ John Boscawen, in explaining another Split Party Vote the Act party was about to cast, expressed his gratitude that he was a member of a party that permitted its members a free vote when disagreements arose.²¹ During the Marriage (Gender Clarification) Bill (2005), which received a split party vote rather than a personal vote, Peter Brown made it clear that "...New Zealand First has made this issue a conscience vote, and we are not all of the same mind."²² National's Dr Lynda Scott stated during the Smoke-Free Environments (Enhanced Protection) Amendment Bill (2003) that "...the National Party will be considering this bill as a conscience issue, because we have always treated this subject as such." The National party's procedural response to this 'conscience issue' was to cast a Split Party Vote rather than a Personal Vote, however.²³ Michael Cullen, Deputy Leader of the Labour party during the Land Transport Bill (1997), used 'free vote' and 'Split Party Vote' interchangeably when explaining Labour's position on aspects of that bill.²⁴ And, in a strange procedural twist, the Act party cast a Split Party Vote during the Sale of Liquor (Youth Alcohol Harm Reduction: Purchase Age) Amendment Bill (2005), then immediately followed it with a Personal Vote, splitting in exactly the same proportions on both votes. It is not known why a Split Party Vote and a Personal Vote were used successively rather than two of one or the other, but it made no difference to the proportions in which the party cast its vote, and suggests that the party considered them equivalent.

Although the Split Party Vote is often, even usually, used as a direct procedural substitute for the Personal Vote during conscience issues, it is possible to view Split Party Voting as an incremental step in the evolution of unwhipped voting. The successful use of Split Party Voting may establish a precedent that, in the medium term, could make party dissent both more common and more tolerated by party whips. Even parties that exhibit an exceptional cohesion during conscience votes not infrequently cast Split Party Votes. The Green party and the Maori party, for example, seem to find Split Party Votes more palatable than conscience votes.²⁵ Thus, the mechanism of Split Party Voting may be one component in the recovery of a greater role for individual MPs in the House.

An argument has been advanced by one MP that split party votes are particularly popular amongst parties with centrist policies because these parties tend to attract to them people from diverse

²⁰ *NZPD*, Vol. 621, 10 November 2004, 16845

²¹ *NZPD*, Vol. 662, 28 April 2010, 10585-6. Excise And Excise-Equivalent Duties (Tobacco Products) Amendment Bill, John Boscawen: "...we represent a very small party, but it is a party that does not whip its members."

²² *NZPD*, Vol. 628, 7 December 2005, 669

²³ *NZPD*, Vol. 609, 25 June 2003, 6611. The party's views during this same debate are illustrated by the whips seeking leave for a Split Party Vote because they wished to treat it as a conscience issue: JOHN CARTER (Senior Whip-NZ National): "...the National Party is treating this as a conscience issue... Accordingly, I seek leave for us to cast a split vote when it comes time to vote. The ASSISTANT SPEAKER (Clem Simich): Leave is sought. Is there any objection? There appears to be none." *NZPD*, Vol. 609, 25 June 2003, 6611

²⁴ See, for example, *NZPD*, Vol. 574, 3 December 1998, 13829

²⁵ Given the Green party's very principled stance on many issues with civil liberties implications, Keith Locke's announcement that "Four of the Green MPs will be voting against the part of the bill that is to become the Parole (Extended Supervision) Amendment Bill" was almost nonchalant. The other five members had no such qualms. *NZPD*, Vol. 618, 29 June 2004, 14147. Other bills to have split the Green party with a Split Party Vote include the Local Government Law Reform Bill (2006) and the Shop Trading Hours Act Repeal Amendment Bill (2001). The Maori party has used Split Party Voting during the Employment Relations (Probationary Employment) Amendment Bill (2006), Te Arawa Lakes Settlement Bill (2006), and the Te Roroa Claims Settlement Bill (2007).

backgrounds and who approach issues pragmatically.²⁶ The logic is that collections of such people encounter intra-party disagreements more infrequently – Split Party Votes are more common amongst centrist parties than those on the ideological extremes as a result. The data provides mixed support for this assertion, however, as, in general, the pattern is that right-of-centre parties tend to use split party votes more often than do left-of-centre parties (Tables 7.2 and 7.3). Of the 25 bills that have received Split Party Votes since their introduction in 1996, National has used the procedure in 13 of them and the Act party in five. On the left, Labour has used the procedure in just five bills and the Greens in just three. The two traditional centrist parties of the MMP-era, NZ First and United Future, have used the procedure in four and five bills respectively.

Table 7.2: Bills Receiving The Use of Split Party Votes by Party by Parliament

Party	Parliamentary Term					Total
	1996-99	1999-2002	2002-5	2005-8	2008-10	
Greens		1	1	1		3
Alliance	1					1
Progressives			1			1
Labour	2	1	1	1		5
Maori Party				2		2
NZ First	1			3		4
United Future	2		2	1		5
National	4	2	4	3		13
Act	2		1	1	1	5
Total Number of Bills Receiving Split Party Votes						25

Notes: Bills are classified by date of first introduction.

The votes of some bills were spread over multiple parliaments.

Five of the 25 bills also received conscience votes i.e. Personal Votes.

Split party votes conducted during child bills have been allocated to the parent bills to maintain consistency with other analysis in this thesis and to prevent double counting.

Whilst Table 7.2 focuses upon the number of bills receiving Split Party Votes categorised by year of first introduction, Table 7.3 illustrates the number of actual Split Party Vote divisions cast by each party, this time by the actual date the division was cast. A total of 179 such divisions have been cast, more than half of them in the 2002-5 parliament. Of the 179, National has split its vote on 100 occasions, easily the most divided party according to this measure. United Future and NZ First have split on 42 and 40 occasions respectively. The Greens have split on just 11 occasions, and Labour on just 17.

²⁶ NZPD, Vol. 639, 16 May 2007, 9321-2. Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill, Judy Turner

Table 7.3: The Number of Split Party Vote Divisions by Party by Parliament

Party	Parliamentary Term					Total
	1996-99	1999-2002	2002-5	2005-8	2008-10	
Greens		3	5	3		11
Alliance	12					12
Progressives			18			18
Labour	11	1	4	1		17
Maori Party				13		13
NZ First			27	13		40
United Future			33	9		42
National		11	86	3		100
Act	4		17		5	26
No. of Split Party Vote Divisions	17	13	113	31	5	179

Notes: Bills are classified by date of actual vote.

Split party votes conducted during child bills have been allocated to the parent bills to maintain consistency with other analysis in this thesis and to prevent double counting.

In summary, Split Party Voting has changed the political response to conscience issues by providing an alternative procedural mechanism with which to handle intra-party disagreement. It is largely used in an equivalent way to conscience voting, and has lessened the use of the traditional conscience vote – since 2002, more than half of conscience votes have included Split Party Votes. The implications of this shift is further discussed in Chapter Ten.

Personal Votes

In contrast to Party Voting, during a Personal Vote members file through the respective lobbies and have their votes recorded individually instead of being announced corporately.²⁷ The circumstances under which a Personal Vote is held are basically two:

1. When the Speaker has been notified that parties intend to treat the vote as a conscience issue.²⁸
2. "...following a party vote if a member requests one [i.e. a Personal Vote] and the Speaker considers that the decision on the party vote is so close that a personal vote may make a material difference to the result".²⁹

A Personal Vote may be held when one or more parties have agreed that the matter in question is a conscience issue. In this case, further explanation is provided by Standing Order 138 which states that "Where the Speaker considers that the subject of a vote is to be treated as a conscience issue, the Speaker will permit a personal vote to be held instead of a party vote." In such circumstances, the Party Vote will be dispensed with and the Personal Vote will immediately follow the Voice Vote. Often, the

²⁷ The procedure for a Personal Vote has been helpfully explained by the Speaker shortly after the adoption of MMP. *NZPD*, Vol. 560, 14 May 1997, 1894-5

²⁸ House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 138

²⁹ House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 140

Voice Vote is also dispensed with. Either way, only when one or more parties agree that the matter is to be a conscience vote does this apply; the freedom of members at these times is therefore very much at the behest of their parties.³⁰

With respect to the second scenario, a request for a Personal Vote following a Party Vote is not automatically granted, and there have, so far, been no instances when Personal Votes have been held under this provision. A series of Speakers Rulings have established that the closeness of the vote is not sufficient on its own to invoke a Personal Vote under this Standing Order; rather, a specific mention must be made during debate that a member, if given the opportunity, would vote against their party and that this may make a material difference to the outcome.³¹ Dissenters are therefore the intended beneficiaries of this provision which provides the ability to not only have their opposition to their own party recorded, but also to do it in circumstances where their dissent might make a difference to the outcome of the vote.

A conscience vote is not triggered simply because one or more MPs do not like the way their whips have directed them to vote. A former Leader of the House once pointed out that “a conscience vote is not defined as something where some people do not like voting the way they are told to by their party. That is not quite the same thing as a conscience vote. Indeed, members who are here for the first time will come to learn that probably on a number of occasions they will end up voting in a way different from their personal beliefs. That is not a conscience vote.”³² Rather, conscience issues “may arise on the grounds of the traditional understanding of that term over many Parliaments or out of the flow of debate—public debate as well as in the House”,³³ but the Speaker must be satisfied that at least a portion of the House intend to so treat the issue.

The Speaker also expects prior notification of parties’ intentions in this regard from either a select committee such as the Business Committee or the party whips. An instructive exchange on this point occurred during the Casino Control (Poll Demand) Amendment Bill (1997) when a procedural issue regarding conscience issues was raised:

JOHN CARTER (Senior Whip-NZ National): I understand that the Casino Control (Poll Demand) Amendment Bill will be a conscience issue. ... I understand from the Business Committee that there was agreement that it would be a conscience issue. I think it might be normal for you to comment on that, Mr Speaker. ...

Mr SPEAKER: Yes, I have had forms of advice to indicate that at least a significant element of the House intends to treat the Bill as a conscience matter. I therefore declare that any vote after the voice vote would proceed to a personal vote.³⁴

Strictly speaking, a Personal Vote is distinct from a conscience vote; a Personal Vote is a parliamentary voting procedure, whilst a conscience vote is a party decision pertaining to the degree of discipline imposed upon their members. One Speaker referred to this difference when he explained that “the

³⁰ The Speaker may decline to treat a vote as a conscience issue if, for example, insufficient indication of a party’s intention has not been made in advance of the vote. Thus, in 1997 the Chairman of Committees ruled that despite requests by a certain member in the Committee of the Whole House for a personal vote, “There has been no indication to date in the Committee stage, from any of the parties, that this is to be a conscience issue or a matter to be considered as a conscience issue, nor has there been, to my hearing, any indication in the debate that this is an issue that might normally be considered a conscience issue. I therefore rule in accordance with many established Speaker’s rulings on the conscience issue question that this is not a matter for a conscience vote.” *NZPD*, Vol. 560, 21 May 1997, 2087-2088, Compulsory Retirement Savings Scheme Referendum Bill

³¹ *NZPD*, Vol. 558, 41. Speaker Kidd

³² *NZPD*, Vol. 558, 13 December 1996, 38. Appointment of Deputy Speaker, Michael Cullen

³³ New Zealand Parliament, *Speakers Rulings*, 2005, ‘Personal Vote.1’

³⁴ *NZPD*, Vol. 562, 13 August 1997, 3831. Casino Control (Poll Demand) Amendment Bill

Speaker decides whether there will be a personal vote. The parties can decide whether they will give their parties a conscience vote.”³⁵ Nevertheless, the Standing Orders relevant to Personal Voting were explicitly designed to cater for the conscience vote.³⁶

Unlike Party Votes, the Journals of the House record the names of each individual member casting a Personal Vote, which lobby they voted in, and whether or not their vote was by proxy.³⁷ The voting record of individual members is therefore a matter of public record. The open nature of the voting record ensures a degree of accountability for members, and it is this feature of conscience voting that enthuses some people about the Personal Votes’ resemblance to the voting procedure of the nineteenth century – MPs voting in one or other of the lobbies as individuals, being accountable to none but their constituents and their conscience.

A Personal Vote can be invoked at any stage of a bill’s progress through parliament, including in the select committee. Nevertheless, party rules also govern members’ voting in select committees, and select committees usually take their procedural lead from a bill’s treatment in the House.³⁸

Tied Votes and the Speaker

A long-standing convention, established by a Speakers’ Ruling in the 1870s and reiterated on a number of occasions up until 1996, guided how the Speaker voted in the event of a tied vote. This ruling stipulated that, in such circumstances, Speakers should vote with the status quo.³⁹ In 1982, however, Speaker Harrison modified these principles after he was called upon to break a tie caused by one government member not hearing the division bells due to his giving a radio interview at the time. Because the government of the time had only a one member majority, the Speaker’s vote was casting. Speaker Harrison restated the long-standing principles that guided Speakers in such circumstances, with the modification that Speakers could vote with their consciences on the third reading division of a conscience issue.⁴⁰ Since 1996, however, the Speaker’s casting vote has been removed, with a tied vote deemed to have been lost.⁴¹

Proxy Voting

Voting by proxy is an additional innovation proposed by the Standing Orders Review Committee of 1995, and was introduced in the 1996 Standing Orders. Although many legislatures around the world have resisted proxy voting on the grounds that it violates a basic principle of representative democracy, the opposing view is that it is unrealistic to expect all representatives to be present at every vote.⁴² Up until 1996, New Zealand parliamentarians commonly used an alternative system called ‘pairing’, but proxy voting has now fully replaced this. Pairing was always a largely unofficial procedure, and the Standing Orders Review Committee recommended it be replaced on the basis that it was better to build

³⁵ NZPD, Vol. 598, 14 February 2002, 14373

³⁶ NZPD, Vol. 559, 20 March 1997, 1094. Wyatt Creech. “Standing Order 147 [1996] was put there for a specific purpose – that is, to deal with conscience votes.”

³⁷ House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 146

³⁸ McGee, *Parliamentary Practice*, 274.

³⁹ Jonathan Hunt, Personal interview, 3 September 2009

⁴⁰ Martin, *The House*, 294-5.

⁴¹ House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 149. Jonathan Hunt, Personal interview, 3 September 2009

⁴² Neither Great Britain nor Australia, for example, have proxy voting but both use pairing.

the reality of absences into the voting procedure, as well as to recognise that pairing in a multi-party system would be impractical.⁴³

In New Zealand, proxy voting effectively exists for both Party Votes and Personal Votes, for during the former the party leader and the whips have a general proxy for all the members of their party. This general proxy does not apply during Personal Votes when whips are not operating, however.⁴⁴ For a member to cast a proxy vote during a Personal Vote, the correct form must be filled out indicating the nature of the mandate being granted, which is then given to a member who is going to be present at the vote.⁴⁵ The member casting the proxy vote need not be a member of the same party as the person walking through the lobby.

The removal of the general proxy from the leaders and whips when the Speaker has announced a Personal Vote is somewhat anomalous, as it removes this power from all parties and not just those treating the matter as a conscience issue. This is, perhaps, a relic of the two party system era. With just two, or at the most three, parties in parliament, it was more difficult to represent the diversity of opinion within parliament, and conscience votes were an opportunity to rectify this for a particular vote. Under MMP, however, the greater number of parties and range of their policy positions means that it is much more likely that some parties will want a conscience vote while others will not. Post-1996, therefore, a Speaker's determination on the subject for the whole House is arguably less appropriate.

Time of Debates

Henry May, one time Government whip, wrote in 1963 that: "The Opposition Party decides what issues will be put to a vote; but the timing of the vote is usually in the hands of the Government."⁴⁶ The timing of debates and especially divisions is therefore a potential source of manipulation available to the party responsible for parliament's order paper. With respect to when debates and votes on conscience issues are to be held, there are two relevant issues.

First, in most cases parliament's sitting hours are set. This enables members to know when they are likely to need to be in Wellington and available for votes. Parliament does not usually sit outside these established hours unless the House is in urgency, but serious problems can face members if these extra sittings include one or more Personal Votes, as it is not always possible for them to attend due to other obligations.⁴⁷ To this extent, extra sittings violate a principle of democratic representation, although it is really only a problem during Personal Votes when individual MPs must represent their own views.

Second, even if normal sitting hours are observed, it is not always possible to know very far in advance exactly when a particular debate, let alone vote, will become the focus of the House. Although the Leader of the House provides a weekly statement of legislative business in the House, bills often take longer than expected and it is not always possible for members to maintain such flexible diaries as to ensure they are in the House when the vote is taken. Conscience votes are not given any particular priority in the legislative schedule, and sometimes have less priority such as when they are members' bills.

⁴³ David Bagnall, Personal interview, 30 August 2007

⁴⁴ Speakers Rulings, 67/5. 1998, Vol. 573, 13392. Kidd

⁴⁵ NZPD, Vol. 573, 24 November 1998, 13392. Speaker's Ruling – Proxy Vote

⁴⁶ May, "The Role of the Whips," 48.

⁴⁷ NZPD, Vol. 495, 6 December 1988, 8575. Racing Amendment Bill, Robert Anderson

If limited notice is given of the timing or subject of a Personal Vote, that member may not be contactable in time to obtain a proxy from them. Although Personal Votes at such short notice are not common, especially on contentious issues, such situations have arisen:

...it was not until the last 2 or 3 days that we knew exactly when the issue was to be debated and voted on. It so happens that one or two National members are away overseas and I have not been able to contact them. Therefore they have not been able to express their views. I am raising this point because I am not sure how we can get around the fact that if a member is away on legitimate leave and a conscience vote comes up, and we cannot contact that member to get a proxy, the member is denied the right to express his or her view.⁴⁸

In the case above, the Speaker acknowledged the validity of the point, but had no specific solution to proffer. He did note, however, that all but two votes were cast during the personal vote, and the outcome would not have altered if the missing members had voted.

One member made a point of notifying members of the likely commencement date and time of the Committee stage of the Human Rights Bill, because it was known that a supplementary order paper (SOP) was to be introduced that would be the focus of an unwhipped vote:

I understand from preliminary discussions that I have had with the Leader of the House that, if we can come to some sort of understanding, the Committee stage of the Human Rights Bill will start at about 9 a.m. on Wednesday. I think that, because the Bill is a conscience issue, this would be a very suitable time to give notice to all members of Parliament so that members can be present to vote.⁴⁹

The same member raised the issue of the timing of conscience vote debates on another occasion:

...I would like to ask the Leader of the House about...the two conscience issues – conscience issues for most parties – coming up. Those are the Sale of Liquor Amendment Bill (No. 2) and the Gaming Law Reform Bill. I wonder whether, as ordinary members of Parliament, we could have some notice of those two Bills so that we can rearrange our schedules to be present for the conscience votes.⁵⁰

In his response to the above request, the Leader of the House reiterated parliamentary best practice, which was to give as much notice as he could, subject to the contingencies of other processes and events.⁵¹

Richard Prebble turned a similar point into a complaint, using the British House of Commons as an example of how to tackle this problem. Prebble's suggestion was threefold – have longer debates, have debates on members' bills at a regular time each week, and have conscience votes themselves at a fixed time so there are no surprises.⁵²

Despite such sentiments being relatively widespread, New Zealand MPs' participation rates during conscience votes are relatively high (Table 7.4). Without proxy votes, however, the proportion of MPs actually voting in person is much lower, and is frequently below 50%. Table 7.4 includes some comparative British figures which show that the voting participation rate of New Zealand MPs, prior to the introduction of proxy voting, was comparable to, or slightly higher than, their British counterparts. Given that participation rates are now much higher than they were before proxy voting was introduced,

⁴⁸ NZPD, Vol. 584, 1 June 2000, 2768-9. Matrimonial Property Amendment Bill, John Carter

⁴⁹ NZPD, Vol. 536, 22 July 1993, 16694. Human Rights Bill, Business of the House – Weekly Statement, Jonathan Hunt

⁵⁰ NZPD, Vol. 577, 27 May 1999, 17007. Business of the House – Weekly Statement, Jonathan Hunt

⁵¹ NZPD, Vol. 577, 27 May 1999, 17007. Business of the House – Weekly Statement, Roger Sowry. See also NZPD, Vol. 535, 6 May 1993, 15229. Electoral Reform Bill, Jonathan Hunt and Don McKinnon

⁵² NZPD, Vol. 601, 11 June 2002, 16907. Richard Prebble

proxy votes have clearly enabled more MPs to participate in the vote than would otherwise have been the case. Cowley speculates that the consideration of members bills in the British House of Commons on Fridays may contribute to the relatively low turnout on these bills⁵³ – New Zealand considers members bills on alternating Wednesdays. To this explanation could be added that the House of Commons' sheer size, 644 members, means a large turnout is perhaps not as possible or as necessary.

Although prior to the MMP era conscience votes were sometimes held at irregular times,⁵⁴ the work of the Business Committee means that it is now unusual for conscience votes to be held without some prior knowledge and communication. McGee reports that to hold a conscience vote without such a communication is highly undesirable:

Matters which are to be treated as conscience issues and are therefore to be the subject of a personal vote will almost invariably have been discussed beforehand by the Business Committee and arrangements made to warn members in advance that the nowadays relatively unfamiliar practice of holding a personal vote is to occur. Members can then arrange to be present for the vote or can issue a proxy so that their position is reflected in the vote. It is regarded as highly undesirable to hold a personal vote without adequate forewarning being given to members that one is to occur.⁵⁵

Notification of the timing of debates is also beneficial to members of the public who wish to follow the debate. Debates, especially on subjects that excite great public interest, that occur at random and/or inconvenient times reduce the likelihood that interested members of the public or interested groups will be able to listen or watch. To this extent, conscience (and other) votes being held at such times raise questions of good governance.⁵⁶ Although modern technology such as the broadcasting of parliament on both radio and television has helped in this regard, the ability for interested parties to observe their representatives at work remains as an important issue.⁵⁷

⁵³ Cowley, "Unbridled Passions?."

⁵⁴ Muldoon, *My Way*, 38.

⁵⁵ McGee, *Parliamentary Practice*, 208.

⁵⁶ *NZPD*, Vol. 405, 1 September 1976, 2181. Health Amendment Bill, Jonathan Hunt

⁵⁷ At one time broadcasting was restricted to certain hours and the broadcasting of extended debates required the approval of the Minister of Broadcasting, although the broadcasting of parliament is now essentially unlimited.

Table 7.4: Members' Participation Rates During Conscience Votes

Issue (Selection Only)	Year ¹	Type of Bill	Reading	Participation ²	MP Turnout ³	Proxy Voting ⁴
NEW ZEALAND						
Shop Trading Hours Act Repeal (Easter Sunday) Amend. Bill	2006	Members	2nd	100%	64%	36%
Manukau City Council (Control of Street Prostitution) Bill	2005	Local	2nd	98%	66%	32%
Civil Union Bill	2004	Gov't	3rd	100%	49%	51%
Care of Children Bill	2003	Gov't	CWH	100%	71%	29%
Death with Dignity Bill	2003	Members	1st	99%	42%	57%
Prostitution Reform Bill	2000	Members	3rd	100%	40%	60%
Sale of Liquor (Health Warnings) Amendment Bill	2000	Members	1st	93%	43%	50%
Casino Control (Moratorium Extension) Bill	2000	Gov't	3rd	88%	35%	53%
Sale of Liquor Amendment Bill (No. 2)	1998	Gov't	CWH	92%	34%	58%
Criminal Investigations (Blood Samples) Bill	1994	Gov't	CWH	57%	57%	
Human Rights Bill	1992	Gov't	CWH	76%	76%	
Smoke-Free Environments Amendment Bill	1991	Gov't	3rd	62%	62%	
Abolition of the Death Penalty Bill	1989	Members	CWH	58%	58%	
Sale of Liquor Bill	1988	Gov't	3rd	81%	81%	
Fencing of Swimming Pools Bill	1986	Members	CWH	54%	54%	
Homosexual Law Reform Bill	1985	Members	3rd	98%	98%	
Adult Adoption Information Bill	1984	Members	2nd	76%	76%	
Status of Unborn Children Bill	1983	Members	1st	85%	85%	
BRITAIN						
Hunting	1997	Members			88%	
Divorce	1996	Gov't			72%	
Age of consent	1994	Gov't			94%	
Capital punishment	1994	Gov't			88%	
Sunday trading	1993	Gov't			94%	
Abortion	1990	Gov't			87%	
Embryo research	1990	Gov't			87%	
War crimes	1990	Gov't			54%	
Euthanasia	1990	Members			24%	
Page three	1988	Members			33%	
Obscene publications	1986	Members			31%	
Seatbelts	1981	Gov't			59%	

Notes: Source of British figures: Cowley, 'Unbridled Passions?', 1998. Some of the British figures are composites of successive votes on a bill.

1 - date of first introduction into the House.

2 - proportion of MPs who voted, including proxy votes.

3 - proportion of MPs who voted in person i.e. excluding proxy votes.

4 - proportion of votes cast as proxy votes.

Allocation of Speaking Order and Speaking Time

During debates that are whipped, the allocation of debating time is done along party lines, with the biggest parties getting the most opportunities to speak and the parties themselves determining which individuals from each party will speak. During conscience votes, however, the allocation of speaking slots is more problematic. The individual (non-party) status of members during conscience votes means that, effectively, there are 120 parties in parliament at this time, each of which is, in theory, entitled to a

representation of its views. Speaking opportunities during debates are limited, however. First, second and third readings on government bills are generally two hour debates with no more than twelve speeches each. For private, members and local bills only seven speeches are allowed for the first reading. Although debates during the Committee of the Whole House stage have no specific time limit and allow each speaker to make up to four contributions each, closure motions are almost always moved before even half of the members have spoken. If every member were to be given an opportunity to express their opinion, the debate would become impractically long. How these speaking slots are allocated is therefore a difficult issue which once prompted Robert Muldoon to quip that “Those who wish to speak will rise in their places and be recognised by some mysterious system known only to Mr Speaker...”⁵⁸

Speakers are very aware of this difficulty. During the third reading of the Prostitution Reform Bill, the Speaker at the time, Jonathan Hunt, stated that:

It is a very difficult job when there are just 12 members who can be called, even if some members want to split their speeches. I intend to call one member from each party in order of size in the House, and the remaining calls will go to the larger parties. I can think of no better or fairer way to do it, and that is the practice I will adopt.⁵⁹

In practice, various factors are and have been employed by Speakers to minimise the inequity of conducting conscience votes under parliamentary rules designed around parties. These include:⁶⁰

- a preference, in the absence of other attenuating circumstances, to give calls to alternate sides of the House;⁶¹
- the relative representation of each side of the debate;⁶²
- the prominence of the member in the debate, and their demonstrated commitment to the issue at hand, especially publicly;⁶³
- any special interest in the issue the member may have;
- the MP's membership on the select committee that considered or will consider the bill;
- the role the member may play as spokesperson for their point of view on the issue;
- the diligence of the member in asking and waiting for a call;⁶⁴
- the order in which members rose to take a call;⁶⁵
- the member's need to refute points made by others directed at them;⁶⁶

⁵⁸ *NZPD*, Vol. 399, 3 July 1975, 2771. Crimes Amendment Bill, Robert Muldoon

⁵⁹ *NZPD*, Vol. 609, 25 June 2003, 6585. Jonathan Hunt

⁶⁰ For useful summaries of these issues, see *NZPD*, Vol. 578, 16 June 1999, 17464, Casino Control (Poll Demand) Amendment Bill, Assistant Speaker (Eric Roy), *NZPD*, Vol. 405, 1 September 1976, 2203, Health Amendment Bill, Mr. Speaker, and the discussion in *NZPD*, Vol. 537, 3 August 1993, 17104-5, Electoral Reform Bill

⁶¹ *NZPD*, Vol. 549, 16 August 1995, 8702, Death With Dignity Bill, Deputy Speaker. *NZPD*, Vol. 537, 3 August 1993, 17095-6, Electoral Reform Bill, Deputy Speaker

⁶² *NZPD*, Vol. 551, 19 October 1995, 9954, Electoral Reform Bill, Mr. Speaker. *NZPD*, Vol. 583, 4 May 2000, 1925, Matrimonial Property Amendment Bill, Mr. Speaker

⁶³ *NZPD*, Vol. 405, 1 September 1976, 2203. Health Amendment Bill, Mr. Speaker

⁶⁴ *NZPD*, Vol. 588, 21 November 2000, 6748. Property (Relationships) Amendment Bill, The Chairperson. Dr Muriel Newman once complained that, although she was diligent in attempting to attract the Speaker's attention, her small stature and soft voice worked against her. *NZPD*, Vol. 588, 21 November 2000, 6748. Property (Relationships) Amendment Bill

⁶⁵ *NZPD*, Vol. 293, 17 November 1950, 4340. Capital Punishment Bill, Mr. Speaker

- any relevant resolutions of the Business Committee on the matter;
- whether or not the member has already had an opportunity to speak;⁶⁷
- the length of parliamentary service, and therefore relative seniority, of the member seeking the call.⁶⁸

Giving members calls according to their party membership in a similar fashion to whipped votes has been the most common resolution used by Speakers.⁶⁹ Although a far from perfect solution, party-based allocation of speaking times during conscience votes seems a reasonable proxy to use, given that most conscience voting is done largely along party lines anyway.

The following exchange in 1974 illustrates that, even in the two-party era, the dilemma of time allocation was real:

Mr SPEAKER: I am in some difficulty because I understand the Whips have made no arrangements for speakers on this Bill. I do not know, therefore, whether any agreement has been made as to who is to be called. I do not even know which members will speak for or against the Bill. ...

Hon. R. D. MULDOON (Leader of the Opposition): Several Opposition members wish to speak, some for the Bill, some against it, and some just to speak. Since there are no arrangements it would be extremely difficult for you to try to alternate between those who are for and those who are against, so I suggest we just follow the traditional practice with calls.⁷⁰

Allocating speaking slots along party lines does not satisfy those who believe that conscience votes are opportunities for members to be free of both party constraints and the machinery of party procedure, however. Conscience issues are, for these people, no place for parties to be involved, and allocating speaking times according to party proportionality defeats their purpose. National MP John Banks was strongly of this opinion during the debate on the Casino Control (Poll Demand) Amendment Bill (1997):

One of the problems that we have here tonight--and it is disturbing--is that this is being reduced to some sort of party-political machinery in process. If that is the aim of the exercise, why have a conscience vote? My conscience tells me that it is a vote for my conscience and it will be exercised accordingly, notwithstanding any party-political machinery that may be at work. ...conscience issues in this House should never be divided by alternating calls from one side of the House to the other, and so on. They should be divided according to individual members, not according to party political positions in the House.⁷¹

The view that parties are inappropriate bases for the allocation of speaking slots during conscience votes was taken to heart by one Speaker of the British House of Commons who, just before the second reading of the 1968-69 Divorce Bill, asked members who wished to join in the debate to tell him privately which side of the debate they were on so that he might be in a position to run a more "balanced" debate by allocating speaking times on the basis of such information.⁷² A similar, though more informal arrangement, was followed in New Zealand in 1989 during the Contraception, Sterilisation, and Abortion Amendment Bill:

Rt. Hon. JONATHAN HUNT: The Bill is a conscience issue. I ask that when you call members to speak on the introduction you have regard to the matter being a conscience vote, and that you

⁶⁶ *NZPD*, Vol. 405, 1 September 1976, 2203. Health Amendment Bill, Mr. Speaker

⁶⁷ *NZPD*, Vol. 598, 20 February 2002, 14549. Shop Trading Hours (Abolition of Restrictions) Bill, The Chairperson

⁶⁸ *NZPD*, Vol. 537, 3 August 1993, 17099, Electoral Reform Bill. See also Lockwood Smith's comments in *NZPD*, Vol. 624, 8 March 2005, 18979-80, Relationships (Statutory References) Bill

⁶⁹ See, for example, *NZPD*, Vol. 622, 2 December 2004, 17386. Civil Union Bill, Mr. Speaker

⁷⁰ *NZPD*, Vol. 392, 24 July 1974, 3160. Crimes Amendment Bill

⁷¹ *NZPD*, Vol. 578, 16 June 1999, 17464-5. Casino Control (Poll Demand) Amendment Bill, John Banks

⁷² *Debates*, House of Commons (Britain), Vol. 758, col. 810

allow so many members to speak in favour and so many against.

Mr SPEAKER: I am not a mind reader, so members will have to indicate their positions to me. I can probably make a good guess, but Parliament cannot be run on that basis. It is a good suggestion. If members want to indicate the position to me – as some have done already – I will know of it, and if the House has time I will try to hear from all of them.⁷³

A variation on this mechanism, involving an element of self-regulation, was suggested by another member:

TREVOR MALLARD: I seek the leave of the House that during the rest of the debate the calls should alternate between those who are supporting the introduction of the Bill and those who are opposing it. That will be done by members notifying Mr Speaker that they want to take the call, rather than alternating between Government and Opposition speakers.

Mr SPEAKER: Is there any objection to that course being followed? There appears to be none.⁷⁴

And later in the same debate, the Speaker announced:

I advise members that those in favour of the introduction of the Bill have 23 minutes remaining of their time. Those members who are against the introduction of the Bill have 29[1/2] minutes remaining.⁷⁵

Of course, such an arrangement is not free from difficulty, as some members are genuinely not sure which side of the debate they are on. Members may wish to decide their position on the basis of the debate itself, or after seeking assurances from the Minister introducing the bill that certain actions will or won't be taken. It is therefore difficult for such members to seek the call on one side or the other. One member made his feelings known during the same debate: "At this stage I am not sure whether I am for the Bill or against it. ... What I am asking, Mr Speaker, is how I seek an allocation of speaking-time?"⁷⁶

To accommodate more speakers and hence alleviate the allocation of calls issue, members may ask leave of the House to make the speeches in the debate shorter, enabling more of them in the same total time:

Hon. WYATT CREECH (Leader of the House): I seek leave to allow members to share the time of the speeches in order to increase the number of speeches, but not to lengthen the debate. There are now five 8-minute speeches. If two members agree to take 4 minutes each, that would be acceptable. I have discussed the matter with other members in the House, and they are quite happy for that to happen.

...

MARK BURTON: To encourage members to allow for that to happen in a proper way, could they be mindful of who else may want to seek the call. If members have 2 or 3 minutes' worth to say, then that is probably a good time to sit down and to allow others to have a say. ...

...

Hon. WYATT CREECH: The members could cooperatively talk to two or three other members and say that they have 8 minutes and that they will share the time amongst the three of them. So three members could make a contribution rather than there being a restriction on the number of speeches. The length of the debate will not be increased.⁷⁷

Alternatively, leave might be sought to simply make the debate longer.

RON MARK: ...I raise the point that New Zealand First has not had a speaker in this debate. I seek leave of the House to allow one more speaking slot at the end of the debate.⁷⁸

⁷³ NZPD, Vol. 502, 19 October 1989, 13324. Contraception, Sterilisation, and Abortion Amendment Bill

⁷⁴ NZPD, Vol. 499, 26 July 1989, 11487. Casino Control Bill. A similar approach was taken in the Casino Control (Moratorium Extension) Bill 2000; see NZPD, Vol. 587, 5 October 2000, 5931, Deputy Speaker

⁷⁵ NZPD, Vol. 499, 26 July 1989, 11492. Casino Control Bill

⁷⁶ NZPD, Vol. 499, 26 July 1989, 11492-3. Casino Control Bill, George Gair

⁷⁷ NZPD, Vol. 562, 13 August 1997, 3837. Casino Control (Poll Demand) Amendment Bill

⁷⁸ NZPD, Vol. 578, 16 June 1999, 17468, Casino Control (Poll Demand) Amendment Bill. See also NZPD, Vol. 587, 5 October 2000, 5944, Casino Control (Moratorium Extension) Bill, Mark Burton

On one occasion a member requested that the total time remain the same but, with the expectation that many of the speeches would be shorter than the allotted ten minutes, that calls continue to be given until the debating time was exhausted rather than limiting the calls to 12 as is usual.⁷⁹

In the MMP era, the issue of speaking time during conscience votes has become more poignant for three reasons. First, a greater number of parties are in parliament, and giving a fair hearing to all parties in an equitable manner is now harder than when there were only two parties. With seven parties in the current (49th) parliament and only 12 speaking slots in most debates, it is entirely possible that some parties may have no members speaking during some conscience debates. In response, the Speaker usually tries to include smaller parties in the debate if possible.

I certainly will give the call as I think is fair and honest. There are, however, only 12 speakers in the second reading. I certainly will not in any way be part of the smaller parties missing out, so that must also come into my decision as to which speaker to call.⁸⁰

Deliberately allocating calls to members of small parties for the purpose of including them could be seen as favouring members of those parties over MPs from larger parties, however, given that members of larger parties would then effectively have less opportunity to speak than those of small parties.

The second reason concern has been heightened during conscience votes since 1996 is that the MMP era has brought to parliament a greater range of views – small parties often represent niche perspectives on issues that used to be subsumed by ‘mainstream’ views in the larger parties. This range of perspectives in parliament generally translates into a greater diversity of views during conscience votes, and giving a reasonable opportunity for this range of views to be heard during debates is almost impossible when, for one thing, there are limited speaking slots available, and, for another, the Speaker is unaware in advance of the views of members. Thus it is entirely possible – practically inevitable – that some views might not be represented in the debate at all.

Third, the MMP era has brought into parliament list MPs who don't represent a specific electorate. Although both list and electorate MPs are treated equally apropos the weight of their vote, it can be argued that electorate MPs have a special responsibility to represent the views of their constituents during conscience debates that list MPs do not. Thus, electorate MPs, it has been argued, have a weightier claim to speaking slots. It would undoubtedly be unconstitutional, however, for more speaking time to be given to some members than others because of their electorate status. In addition, list MPs often represent various interest groups, geographic regions, the national interest or even the interests of their party. Certainly, this was the view of the Assistant Speaker during the debate on the Casino Control (Poll Demand) Amendment Bill (1999) when a member pointed to his status as an electorate MP as one of the reasons he should be given a call: "...it is not fitting to distinguish between list members and constituent members. ... I do not consider that is fitting in this House when calls are being given."⁸¹

The dilemma is further complicated when multiple votes are held during a particular stage of a bill, only some of which are conscience votes. In this situation, the Speaker (or Chair, during the committee

⁷⁹ NZPD, Vol. 587, 5 October 2000, 5931. Casino Control (Moratorium Extension) Bill, Roger Sowry

⁸⁰ NZPD, Vol. 574, 8 December 1998, 14457. Gaming Law Reform Bill, The Assistant Speaker (Geoff Braybrooke)

⁸¹ NZPD, Vol. 578, 16 June 1999, 17464, Casino Control (Poll Demand) Amendment Bill

stage) may take special cognisance of party proportionality for discussion on Party Vote clauses.⁸² Even more difficulty is encountered when some parties treat the debate on a party basis and others do not.

Thus, for a combination of factors the full range of issues may or may not be canvassed during a conscience debate, and only relatively few MPs will be able to contribute to the discussion of conscience issues despite each member being expected to have an interest as individuals. In fact, members themselves sometimes blur the boundary between parties and individuals - during the Casino Control (Poll Demand) Amendment Bill, for example, Jenny Bloxham announced that she would be representing the views of the members in her party if she was given a call, even though it was a conscience vote for her party: "New Zealand First members are exercising a conscience view, and I am here to summarise and represent those views. That is why I am seeking the call for New Zealand First."⁸³

The challenges of allocating speaking opportunities during personal votes do sometimes engender an unprecedented collegiality between members when, for example, members agree to split calls with another member who would otherwise be unlikely to get a call. Thus, a ten minute speech might be split with another member so that they both speak for five minutes each, or even be split three ways. How an individual member decides to use the time allocated to them during their call is entirely up to them, and it is not the Speaker's concern to ensure the member who calls is the member who speaks.⁸⁴ On occasion, calls are even shared between MPs who are members of opposing political parties but are on the same 'side' of a conscience issue.

Debating

Although in theory each MP acts on their own initiative during conscience votes, in practice groups of members often coordinate their arguments as if it were a whipped vote. It is common to hear the collective pronouns during conscience votes, and members also not infrequently refer to their parties during their speeches. References to meta-arguments can also be found, as if a level of partisan co-ordination had occurred.⁸⁵

In reality, of course, it is not unsurprising that members would informally discuss the issue with each other, finding out what others thought and allowing this to influence their own opinions. Their party may even address the key issues in a caucus meeting. When opinions coincide, or come to coincide, it is not surprising that the resulting arguments are coordinated between likeminded members – even when these members are in opposing political parties – in order to maximise their effectiveness in the limited time each member has available. This would be particularly so during debates on complex issues and legislation. Thus, conscience debates often witness the phenomenon of 'collective individuals' or 'proxy parties' that think, act and sound like actual parties.

Some members have been heard, during conscience votes, to talk on behalf of their party when no such entity exists in reality. Steve Maharey, for example, more than once outlined a Labour party position

⁸² *NZPD*, Vol. 598, 20 February 2002, 14540. Shop Trading Hours (Abolition of Restrictions Bill), The Chairperson (Jill Pettis)

⁸³ *NZPD*, Vol. 578, 16 June 1999, 17468-9. Casino Control (Poll Demand) Amendment Bill, Jenny Bloxham

⁸⁴ House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 117(2): "An individual speaking time may be shared between two members of the same party or between two members of different parties if both parties agree."

⁸⁵ *NZPD*, Vol. 590, 13 March 2001, 8128, Property (Relationships) Amendment Bill, Tony Ryall. *NZPD*, Vol. 584, 1 June 2000, 6518-6519, Matrimonial Property Amendment Bill, Tony Ryall

when the vote was actually a conscience vote for his party in both theory and practice.⁸⁶ A National party member replied in kind, acknowledging a corporate Labour party position on the issue, even though it had been acknowledged by both sides as a conscience issue.⁸⁷

Scope of Debates

Although Standing Order 107 empowers the Speaker to terminate a member's speech if it is irrelevant or contains tedious repetition, Speakers exercise discretion in this area. Generally speaking, the scope of debate tends to be wider when the bill is contentious, large and/or complex, covers a wider range of issues, or is not a government bill.⁸⁸

The scope of debates on conscience issues can be especially wide during the clause by clause discussions in the Committee of the Whole House, as well as during private members bills.⁸⁹ Even third reading debates that are the culmination of a long period of consideration can be wider than the Standing Orders generally permit.⁹⁰ Speakers recognise that with 120 potential perspectives in the House instead of the usual seven or eight, it is necessary to allow members to range a little more widely across the subject. This freedom has a number of benefits of particular importance during conscience votes:

- Provision of background context;
- Explication of justifications;
- 'Thinking out loud', or debating the merits of one's position with oneself;
- Discussion of related topics that may impinge upon the issue for some members;
- Responding to the context and justifications that other members have provided;
- Providing a wide range of supporting material;
- The explication of personal and constituent opinion which often necessitates an expression that is less formally scripted and, often, more emotional;
- A somewhat more informal style of delivery.

Because conscience votes are characterised by a relative absence of established procedures, it is common to observe members discussing the merits of both sides of an argument in a single speech. Speeches may, in fact, be more balanced as a result. Sometimes, positions are worked out on the fly during conscience vote debates. Justifications for viewpoints are also often provided by members who wish to explain to their fellow MPs and the public why they will vote the way they will. Sometimes it is possible to discern that members are also explaining, perhaps even justifying, it to themselves.

Members themselves often find the wider scope helpful when listening to other members' contributions:

⁸⁶ *NZPD*, Vol. 556, 26 June 1996, 13457, Shop Trading Hours Act Repeal (Easter) Amendment Bill, Steve Maharey. *NZPD*, Vol. 562, 30 July 1997, 3471, Shop Trading Hours Act Repeal (Easter) Amendment Bill, Steve Maharey

⁸⁷ *NZPD*, Vol. 562, 30 July 1997, 3475. Shop Trading Hours Act Repeal (Easter) Amendment Bill, Max Bradford

⁸⁸ *NZPD*, Vol. 598, 20 February 2002, 14522, 14528-9, Shop Trading Hours (Abolition of Restrictions Bill), The Chairperson (Geoff Braybrooke). See also *NZPD*, Vol. 550, 4 October 1995, 9491, The Temporary Speaker (Peter Hilt), Sale of Liquor (Off-Licence) Amendment Bill

⁸⁹ *NZPD*, Vol. 599, 27 March 2002, 15409-10. Shop Trading Hours (Abolition of Restrictions Bill), The Chairperson (Geoff Braybrooke)

⁹⁰ *NZPD*, Vol. 472, 2 July 1986, 2598. Mr. Deputy Speaker

The [previous] speech was a very interesting and wide-ranging one, and that was great and very helpful, because there is lots going on. I am pleased you [Mr. Speaker] did not pull the member up, because I think his speech was useful. Provided that members understand that we can be a little more lenient in the debate on the title because of the conscience issues etc. associated with it, that is just fine by me.⁹¹

Editions of the standing orders prior to 1996 distinguished little between conscience and whipped votes, but a degree of latitude has always been allowed and common sense has long been applied to their interpretation. There are, and always have been, limits to this scope, however, and the Speaker will restrain members who transgress the boundaries of politeness, blatantly disregard Standing Orders designed to ensure the smooth running of the debate, or stray too far from the topic.⁹²

Repetition

There is usually a greater tolerance of repetition during debates when the debate is unwhipped. During such votes, the focus shifts somewhat from the making of an argument, as is the case during party votes, to providing as many members as possible with the opportunity to make their contribution to the debate. Their views are theirs alone and are being delivered on behalf of themselves rather than their party. The range and diversity of views represented by the 120 MPs mean that a certain repetition of views is inevitable, and members who repeat in their own words the views of another member who has already spoken are usually not prevented from doing so.⁹³

Noise During Debates

Although many parliamentary rules are given a liberal interpretation during conscience votes to accommodate its peculiarities, there are also examples of the rules being tightened for the same purpose. The noise level in the debating chamber during these debates is one such example.

A series of Speakers' Rulings have established that, in normal circumstances, members may engage in quiet discussion with their colleagues while a speaker is talking.⁹⁴ In addition, members may verbally express their reaction to what is being said in a manner that is 'rare, reasonable and relevant,' to which the Hon. Peter Tapsell, when he was Speaker, somewhat informally added "hopefully witty."⁹⁵

During conscience votes, however, restrictions on the noise level are often higher. In the absence of parties to state their case in an orchestrated and, often, repetitive manner, the individual member needs to be given a fair chance to present their views, and other members need to be given a similar opportunity to hear, consider and respond to those views at the appropriate time.⁹⁶

Hon. Jonathan Hunt: This is a conscience issue. It is not appropriate for interjections to be made at this stage of the debate. I hope that the member's views can be heard in silence so that members can listen to them. ...

Mr SPEAKER: The member raises a valid point. The points made in debate should be heard in

⁹¹ *NZPD*, Vol. 598, 20 February 2002, 14522. Shop Trading Hours (Abolition of Restrictions Bill), John Carter

⁹² *NZPD*, Vol. 510, 16 August 1990, 3597. Contraception, Sterilisation, and Abortion Amendment Bill, Mr. Speaker

⁹³ *NZPD*, Vol. 588, 21 November 2000, 6723. Property (Relationships) Amendment Bill, Ron Mark

⁹⁴ For example, Speakers Rulings 57/2: "Strictly speaking, a member is entitled to be heard without interruption, but with the tacit consent of the House the rule has been relaxed in favour of members asking reasonable questions. This latitude is allowed only to enable members to elicit further information, and the proper time to use argument

against the measure under discussion is when they are called on to speak." 1932, Vol. 231, 362. Statham

⁹⁵ Speakers Rulings 57/3 (*NZPD*, Vol. 200, 1923, 1105, Statham). Speakers Rulings 57/3 (*NZPD*, Vol. 245, 1936, 119, Barnard). *NZPD*, Vol. 558, 27 February 1997, 469, as mentioned by the Assistant Speaker, Geoff Braybrooke

⁹⁶ *NZPD*, Vol. 584, 1 June 2000, 6708. Property (Relationships) Amendment Bill, The Chairperson (Geoff Braybrooke)

silence, except for interjections that seek information. This is not a debate in which there ought to be any partisan barracking, except that the parties on this debate's alignment are those that are for and against the Bill or its particular clauses. ... Members may ask to be heard in absolute silence, but in ordinary debate members ought to be heard in silence subject to interjections that seek information. If a member wants to respond to an interjection, that is allowed. If not, other members who are interjecting should cease doing that.⁹⁷

...as this is an important conscience debate I will not allow interjections. I think the speeches must be heard in silence. We must allow people who have differing points of view to put their case, and to put their case as they wish to put it.⁹⁸

MPs have been known to state that they listen to speeches in the House particularly carefully when a conscience vote is being held.⁹⁹

Since 1996, full divisions are generally only conducted when a conscience vote is being held, and, as such, matters of decorum during divisions are particularly relevant to the subject of this thesis. During a division there is inevitably considerable movement of members around the Chamber and the lobbies.

General banter is tolerated at these times provided that it does not get out of hand:

It is accepted that during a division, the rules are somewhat more relaxed and members may move about and talk to each other in a way that would be unacceptable during debate. It is true that a certain amount of banter occurs amongst members at such a time. However, members must be careful not to allow that to get out of hand. In particular, there must be nothing that tends towards verbal intimidation of other members performing their voting duties in a division. While the Speaker will not lightly intervene, he can do so in an appropriate instance, and, ultimately, if the matter continues, it might even constitute a breach of privilege.¹⁰⁰

Closure Motions

Closure motions are moved when a member feels that speeches, usually during the committee stage, are no longer advancing the debate or contributing to the improvement of the bill. If the Chair feels the member moving the motion is doing so precipitously, he or she will deny it and call another member to speak. The factors the Chair may employ to consider the closure motion include:

- The pattern of arguments being presented;
- The repetitiveness of the argument;
- The number of calls that have been taken in total;
- The distribution of calls already given.¹⁰¹

If the Chair feels that closing the debate on that point is appropriate, however, he or she will accept the motion "that the question be now put."¹⁰² This is effectively asking the committee whether they are happy to take the vote on the clause at issue. If there is objection the Chair may continue to take further calls. If there is no objection, however, i.e. if the committee agrees that the vote should be taken, the Chair will then put the question that the clause be agreed to.

⁹⁷ *NZPD*, Vol. 498, 30 May 1989, 10933. Sale of Liquor Bill

⁹⁸ *NZPD*, Vol. 622, 2 December 2004, 17386, Civil Union Bill, Mr. Speaker. See also *NZPD*, Vol. 583, 4 May 2000, 1926, Matrimonial Property Amendment Bill, Mr. Speaker

⁹⁹ *NZPD*, Vol. 510, 4 September 1990, 4192. Contraception, Sterilisation, and Abortion Bill, Trevor de Cleene

¹⁰⁰ *NZPD*, Vol. 487, 29 March 1988, 3140-1. Speaker's Ruling – Disorderly Conduct

¹⁰¹ McGee, *Parliamentary Practice*, 199.

¹⁰² *NZPD*, Vol. 588, 21 November 2000, 6748. Property (Relationships) Amendment Bill, The Chairperson (Geoff Braybrooke)

Conscience votes are generally treated more leniently than party debates in this regard because each member is representing themselves in the debate and, in theory, all members' contributions are as important as any other:

Mr DEPUTY SPEAKER: This being a conscience issue, I do not want to accept the closure motion until it is clear that most members who at least want to contribute to the debate have had an opportunity to do so. I know that the arguments have been very well aired and I have detected a deal of repetition, but since there appears to be only one more speaker...¹⁰³

Mr SPEAKER: At this stage I have no intention of taking the closure, the reason being that I understand that there is a free vote on some aspects of the Bill. For that reason I think that I am entitled to take one or two more speakers than is normally the case.¹⁰⁴

The CHAIRMAN: ... We have been debating this for about an hour and three-quarters. The last speaker... included new material. It was the first time mention was made of much of the Bill outside of the main component. I think this part of the Bill is of major importance, and I do not think it would be right, when there are still members, particularly the Minister, waiting to take the call, for me to take a closure at this time.¹⁰⁵

Motions for closure are often nevertheless made and granted before all members have had the opportunity to contribute. After a certain number of speakers, MPs often tire of the debate themselves and wish to move on to a fresh subject. Thus, their right to speak to every point is not always sought.

The debate has continued for some considerable time – for nearly 3 hours, I think. Nine speakers in all have spoken to the second reading – four from the Government, and five from the Opposition. I have been listening to the debate that has been put forward, and it has become very repetitious. It is not as though new material has been introduced. The Bill is small – it has only two clauses. The points that have been made have been reiterated by the previous speakers. There is opportunity for the member for Christchurch Central to speak, but I suggest that the closure should be taken at this time.¹⁰⁶

Transmission of Information

During whipped votes, party infrastructure is employed to ensure the flow of information is adequate for members to conduct their parliamentary business. Mechanisms employed include memos, networks, meetings, hierarchies, mailing lists, caucusing, and protocols. The whips are key in this flow of information and they make a point of ensuring members are aware of party positions, debating and voting times, and many other issues relevant to the successful functioning of parliament.

During conscience votes, the need for information is almost always greater but the availability of parties to perform this function is usually diminished. When the whips are not being applied and the party corporately decides to step back from the decision making process, the usual networks and channels of information are sometimes also reduced.

There is less motive and, arguably, it is less appropriate for a party's organisational machinery to be employed during conscience votes as diligently as at other times. The involvement of party infrastructure and organisation may be perceived as influencing members' views during conscience votes, and party chiefs may be reticent to involve the party too closely, particularly for members' bills.

The difficulty for parties is heightened when its members are highly divided over an issue. If the party does undertake to assist its members on these occasions, such assistance becomes more of a service

¹⁰³ NZPD, Vol. 510, 4 September 1990, 4200. Contraception, Sterilisation, and Abortion Amendment Bill

¹⁰⁴ NZPD, Vol. 531, 19 November 1992, 12463. Transport Safety Bill

¹⁰⁵ NZPD, Vol. 551, 30 November 1995, 10308-9. Electoral Reform Bill

¹⁰⁶ NZPD, Vol. 515, 4 June 1991, 2085. Smoke-free Environments Amendment Bill, John Carter

to members than a necessity to party functioning, as was the case during the Shop Trading Hours (Abolition of Restrictions) Bill (2002).

Members may want to note that the Shop Trading Hours (Abolition of Restrictions) Bill will be debated in the House next Wednesday, and there will be some conscience issues involved in that. Detailed information will be forwarded to whips today by the chief Government whip. We want to ensure that there is plenty of opportunity for members to be prepared for that, and to be able to organise proxies if they are to be absent from the House. Full information will be available from the chief Government whip, and he will consult the whips of the various parties.¹⁰⁷

It is, therefore, sometimes necessary for members to create alternative, ad hoc and informal structures through which information can be transmitted. In some cases, when cross-party groupings emerge, an ad hoc 'party' with a temporary infrastructure will be established that may involve special caucusing, networking, deputations, telephone, email, fax and text lists that can be used to communicate informally, meetings with interest groups, and small group or one-on-one meetings both between members of the faction and between members and wavering MPs.¹⁰⁸ Nevertheless, the development of an organisational structure outside of official parties is difficult, a task made even harder by the dominance of these parties in the parliamentary system and the long habits of obedient party members.¹⁰⁹

Legislative Drafting

Drafting new legislation is a complex, technical and specialised process and requires the assistance of trained experts to accomplish adequately. Conscience votes are particularly prone to having amendments introduced during the Committee stage that require, but do not always receive, the attention of legislative drafting experts. Often, amendments create consequential implications that can only be properly addressed with the appropriate application of time and skill.¹¹⁰ This aspect of conscience voting prompted Peter Dunne's quip that what he feared was "the advent of bright ideas, because bright ideas dreamed up on the spur of the moment, drafted on the back of an envelope, and submitted as amendments invariably get us into trouble."¹¹¹

The government has access to the Parliamentary Counsel Office as of right, but many conscience votes are Members or Local bills. Recognising the important democratic principle involved in the ability of members, local authorities and private individuals to develop their own legislation and the valuable contribution they often directly or indirectly make to the statute books, the services of the Parliamentary

¹⁰⁷ *NZPD*, Vol. 598, 14 February 2002, 14369. Business Of The House--Weekly Statement, Mark Burton

¹⁰⁸ Barnett, "Moral Leadership."

¹⁰⁹ During the Canadian capital punishment debates of the 1960s and 1970s, for example, when ad hoc organisation was required parliamentary members found it difficult to know where to begin, most often falling back upon the party machinery. "The history of the capital punishment debates illustrates the great difficulty encountered in constructing a viable organization outside the realm of the parties. To the extent that there was any effective organization during these debates, it was an adaptation of party organization. The norm that the party is the center of organization within Parliament was not easily abandoned. Since private members' business will always occupy a minority of House time, there will never be any genuine opportunity for members to develop an entirely new norm about organization. New norms take time to evolve." Pothier, "Parties and Free Votes in the Canadian House of Commons," 92-3. By contrast, Pothier notes that "In a Congressional setting, where party discipline is the exception instead of the rule, the techniques for effective organization outside the realm of the parties have been developed and refined over several decades." Pothier, "Parties and Free Votes in the Canadian House of Commons," 88.

¹¹⁰ *NZPD*, Vol. 436, 9 December 1980, 5771, Sale Of Liquor Amendment Bill, Jim McLay. *NZPD*, Vol. 412, 19 August 1977, 2358, Contraception, Sterilisation, and Abortion Bill, David Thomson. *NZPD*, Vol. 412, 19 August 1977, 2359, Contraception, Sterilisation, and Abortion Bill, Robert Muldoon. *NZPD*, Vol. 332, 18 October 1962, 2162, Sale of Liquor Bill, Ralph Hanan. *NZPD*, Vol. 407, 3 November 1976, 3561, Sale of Liquor Amendment Bill (No.2), David Thomson

¹¹¹ *NZPD*, Vol. 583, 4 May 2000, 1950. Matrimonial Property Amendment Bill

Counsel Office are invariably made available to private members.¹¹² At times, members are actively encouraged to utilise the Office's service well in advance of debate in the House in order to maintain the quality of legislation being proposed or amended.¹¹³

Continuity

The intervention of a general election between stages of a bill often breaks the continuity of members involved in considering the issues, especially when a change of government is the result. In normal circumstances, when a bill is being treated as a party issue, the party itself acts to provide the requisite continuity, but this is not the case when the issue is a conscience vote. There will inevitably be a number of new members who need to become educated about the nature, process and history of the bill, and determine their position on the matter. Sometimes, members who have been integral to the conscience issue proceeding through the House, such as members of the select committee that considered it, retire or fail to be re-elected, creating a loss of knowledge of the bill. For example, the Shop Trading Hours (Abolition of Restrictions) Bill (1999) – later renamed the Shop Trading Hours Act Repeal Act (Abolition of Restrictions) Amendment Bill – was initially introduced by Patricia Schnauer but was transferred to Rodney Hide when she was not re-elected at the following election.

Political parties have the ability to train and educate their members in complex matters as well as provide a ready-made party policy for the member to support. During a conscience vote, however, each member acts, ostensibly, as their own party, and the comparative lack of corporate support at these times makes it both harder for new members to get to grips with the complex issues and history of a bill as well as to resist the temptation to want to relitigate the issue by starting again. This was one of the reasons Muldoon opposed the practice, introduced in the 1970s, of 'carrying over' legislation from one parliament to the next. Parliaments should, Muldoon felt, own their own conception and not pass to another parliament what they have not been able to complete themselves. Others have also grasped the implications of this issue and acted to address it:

I seek leave for Government order of the day No. 5, which is the Gaming Law Reform Bill, to be discharged and for the bill to be referred to the Government Administration Committee for further consideration... This is a bill that was progressed very close to the last election. We have 30 new members in the House, and it is my view that in the spirit of MMP this gives members an opportunity to have involvement in the bill before it is reported back.¹¹⁴

In a similar vein, it is almost equally difficult for MPs to give continuous attention to the whole of a single piece of complex legislation, even when it is held within a single parliamentary term. MPs who receive a partial exposure to such debate may find it difficult to understand the issues and know how to vote.¹¹⁵

Select Committees

Select committees provide a check on the will of the House, fulfil some of the functions of an Upper House, provide an opportunity for members of the public and other interested parties to comment on

¹¹² McGee, *Parliamentary Practice*, 100.

¹¹³ *NZPD*, Vol. 432, 7 August 1980, 2493, Family Proceedings Bill (No.2), Richard Prebble. *NZPD*, Vol. 490, 13 July 1988, 5075, Sale of Liquor Bill, Geoffrey Palmer

¹¹⁴ *NZPD*, Vol. 582, 29 February 2000, 840. Gaming Law Reform Bill: Procedure, Mark Burton

¹¹⁵ *NZPD*, Vol. 498, 30 May 1989, 10964. Sale of Liquor Bill, Robert Tizard

bills, and frequently improve legislation by scrutinising their detail. Almost all bills, including bills receiving conscience votes, are now sent to a select committee.¹¹⁶

Select committees have also become important as a counterbalance to the dominance of parties. Select committees are one of the few places where members from opposing parties not only sit in the same room but also work on a common problem towards shared solutions, even on issues that are whipped. In this context, camaraderie is built, inter-party understanding is promoted, and personal friendships are forged. Although it has been argued that select committees are, in fact, less relevant during conscience votes,¹¹⁷ these personal and professional linkages are often utilised and even enhanced if and when members become part of the same faction when party whips are removed.¹¹⁸ Some have seen in select committees a microcosm of parliament at its best – cooperative, relatively non-political and outcome focused.¹¹⁹

The number of members on each select committee varies and is determined by the Business Committee which attempts to, “so far as reasonably practicable, be proportional to party membership in the House.”¹²⁰ Generally, their size ranges between six and eleven members, with administrative select committees slightly larger. The Business Committee also appoints the members including the chairs which, since 1996, are shared around the parties but with the government party occupying most, though by no means all, the chairs’ positions.¹²¹ In the normal course of events, each party has at least one representative on each select committee. During conscience votes, however, MPs are representing themselves rather than their parties.¹²² The limited membership of select committees means that only a few members are privileged with the opportunity to become intimately familiar with the bill, hear evidence and public submissions and have a significant influence on its content before it is reported back to the House. All other MPs must rely upon their work or wait until the Committee of the Whole House stage to make substantive amendments. One member expressed his concern that:

...the Justice and Electoral Committee...does not have representatives of all political parties on it. That may not be such an issue when we are talking about general issues, but when it comes down to a conscience issue, we have two problems. One is that members of Parliament across the board should be able to see and hear the evidence and hear the submissions, if they are to take on board the views brought by submitters, and if they are to form and adopt an informed position, and vote from that informed position.¹²³

This issue is particularly acute for small parties, which do not always have the membership to even have representation on every select committee,¹²⁴ and during particularly contentious conscience issues such as euthanasia.¹²⁵

Muldoon, when Prime Minister, once recommended that a conscience bill not be referred to a select committee at all on the grounds that:

¹¹⁶ While bills have not always been referred to select committees as a matter of course, select committees have been an integral of the New Zealand legislative process in the modern era since the 1960s. Martin, *The House*, 260.

¹¹⁷ *NZPD*, Vol. 435, 7 November 1980, 4827. Licensing Trusts Amendment Bill, Robert Muldoon

¹¹⁸ *NZPD*, Vol. 537, 3 August 1993, 17240, Electoral Referendum Bill (No.2) and Electoral Bill, Murray McCully

¹¹⁹ *NZPD*, Vol. 549, 17 August 1995, 8750. Racing Amendment Bill, Pauline Gardiner

¹²⁰ House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 181

¹²¹ House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 181

¹²² *NZPD*, Vol. 437, 23 June 1981, 765. Winton Holdings Licensing Bill, Dail Jones

¹²³ *NZPD*, Vol. 584, 1 June 2000, 2764-5, Matrimonial Property Amendment Bill, Ron Mark. See also *NZPD*, Vol. 588, 22 November 2000, 6802, Casino Control (Poll Demand) Amendment Bill, Ron Mark, and *NZPD*, Vol. 584, 1 June 2000, 2763, Matrimonial Property Amendment Bill, Wyatt Creech

¹²⁴ *NZPD*, Vol. 619, 12 August 2004, 14903. Transport Legislation Bill, Deborah Coddington

¹²⁵ *NZPD*, Vol. 549, 16 August 1995, 8705-6. Death with Dignity Bill, Bill English

If the Bill went to a select committee one would assume that the committee would be made up of 10 members, and any further evidence heard would be heard by only the 10 members. All members of Parliament have to make an individual decision on each aspect of the Bill. If the Bill went to a committee 10 members would be fully informed and the remaining members would be in a less favourable position. It is my view – and that view is widely shared by Government members – that people who wish to make representations on the Bill, and who would have made representations to a select committee – and who perhaps made representations to the royal commission – should make their representations to each member of Parliament. It is more difficult to do that, but each member will exercise his vote individually.¹²⁶

Conversely, others have considered the select committee's role as more, rather than less, important during conscience votes.

If the Bill is introduced – and I trust that it will be – it will go to a select committee. The task of the select committee will not be easy. As has been said, there will be many submissions and, given that this is a conscience measure, there may not be much point in the select committee trying to produce definitive answers to the controversial issues such as age and opening hours. But, precisely because the measure is a conscience measure, the role of the select committee is a vital one. It will not only have to report to the House – as all select committees do – on the submissions received, and give the House an understanding of the views of the community arising out of the submissions on the kind of licensing regime New Zealand should have, but, more important, it will also have to report on the legislative options arising out of the submissions in a way that helps rather than hinders the House and, in particular, the Committee of the whole House, to deal with the Bill and any proposal for amendments in an ordered and coherent way.¹²⁷

Yet another view was expressed by a member who argued that, ultimately, conscience votes were matters of opinion, not of fact. What occurred during a select committee was, or should be, of little consequence to parliamentarians who were considering the issues on their merits – it was their responsibility, and not that of 'experts', to determine the right stance to take on conscience issues.¹²⁸ Nevertheless, the limited membership of select committees during conscience votes undoubtedly means that having quality policy analysis and advice at the disposal of MPs is essential.¹²⁹

The selective nature of select committee membership is anomalous but not without precedent. Select committees are effectively sub-committees, established with memberships of such a size to be practical whilst possessing the requisite skills for the task. They are not necessarily required to contain the full range of possible views, and they have been used relatively effectively throughout the world for many decades. In addition, a number of conventions have developed to ensure the influence of select committees is not inordinate during conscience votes.

First, by convention, issues being dealt with by the use of a conscience vote are not usually voted down at select committee stage. Indeed, select committees usually feel they have no mandate to recommend a bill not proceed if for no other reason than that the House has referred the bill to them for serious consideration. At times, a select committee may feel that the House is a better place to consider the matter.¹³⁰ Occasionally, however, a select committee might recommend a bill not proceed on procedural grounds, for example, when a bill is very like another bill being considered or where it is manifestly not going to achieve its objective.

¹²⁶ *NZPD*, Vol. 412, 19 August 1977, 2358. Contraception, Sterilisation, and Abortion Bill, Robert Muldoon

¹²⁷ *NZPD*, Vol. 490, 13 July 1988, 5066. Sale of Liquor Bill, Philip Woollaston

¹²⁸ *NZPD*, Vol. 293, 17 November 1950, 4364. Capital Punishment Bill, Edgar Neale

¹²⁹ *NZPD*, Vol. 652, 10 March 2009, 1803. Sale and Supply of Liquor and Liquor Enforcement Bill, Lianne Dalziel

¹³⁰ *NZPD*, Vol. 562, 30 July 1997, 3472. Shop Trading Hours Act Repeal (Easter) Amendment Bill, Warren Kyd

As members know, the Bill proposes to lower the drinking age to 18 years, and it was introduced and referred to the Statutes Revision Committee in that form. It is understood that members on both sides of the House will enjoy a free vote on this and most other issues contained in the Bill. Because of the nature of the proposal and the strong feelings which it sometimes generates, the committee has decided to report this aspect of the Bill back to the House without any change. I emphasise that this report is delivered regardless of the views of the individual members of the Statutes Revision Committee, who feel safe in the knowledge that the issue will be decided at a later stage by all members of this House.¹³¹

Second, there is a strong convention that select committee decision-making during conscience issues will be accomplished by a consensual approach.¹³² This is not absolute, however, with majority votes sometimes being required when consensus is not possible.¹³³ Further, allegations of undue party influence in select committees during conscience matters are not uncommon.¹³⁴

Third, it is very rare for select committees to make judgements about a conscience bill's worth on moral grounds. Instead, a position of moral neutrality is adopted, with the morality of an issue being referred back to the House.

The [select committee] report states that on the weight of evidence received the subcommittee concluded that there was no justification for excluding sexual orientation from the list of grounds on which discrimination was prohibited. ... However, the subcommittee made no recommendation on the matter, solely – and that is a very critical word – because the inclusion of this ground and that of the presence of organisms in the body that are capable of causing illness was to be the subject of a conscience vote in the House. Because there was a prior understanding that there would be a conscience vote on the issue, the select committee did not report back the Bill with those two provisions in it. If there were to be no such conscience vote on the issue committee members would have included those provisions in the Bill.¹³⁵

The 2008 review of the Standing Orders considered the issue of how select committees treat conscience issues, and wrote that:

Ultimately it is for a select committee to determine a suitable course according to the circumstances of each bill before it. However, we consider it appropriate that select committee members examining a bill involving conscience issues undertake the task with a view to improving the bill in its coherence and workability, so that the House can resolve the broader policy matters with the participation of all members.¹³⁶

David McGee, the former Clerk of the House, has suggested that, if a select committee knows a matter will be considered by a conscience vote when returned to the House, it "is expected to confine itself to recommending drafting amendments rather than substantive amendments and, where appropriate, presenting the House with an intelligible range of alternatives for it to choose from, rather than attempting to impose its own views."¹³⁷

Sometimes select committees, instead of making a recommendation, will merely further the debate by allowing the public to have their say, suggesting only technical improvements to the proposed legislation based on the bill's own stated purpose.

¹³¹ *NZPD*, Vol. 406, 6 October 1976, 2895, Sale of Liquor Amendment Bill (No.2), Jim McLay

¹³² *NZPD*, Vol. 503, 5 December 1989, 13948. Casino Control Bill, Report of Select Committee, Bill Sutton

¹³³ *NZPD*, Vol. 436, 9 December 1980, 5771, Sale Of Liquor Amendment Bill, Jim McLay

¹³⁴ *NZPD*, Vol. 588, 14 November 2000, 6533, Matrimonial Property Amendment Bill, Stephen Franks. *NZPD*, Vol. 591, 21 March 2001, 8441, Property (Relationships) Amendment Bill, Stephen Franks

¹³⁵ *NZPD*, Vol. 537, 27 July 1993, 16910, Human Rights Bill, Lianne Dalziel. See also *NZPD*, Vol. 406, 6 October 1976, 2895, Sale of Liquor Amendment Bill (No.2), Jim McLay

¹³⁶ Standing Orders Committee, "Report of the Standing Orders Committee," (Wellington: NZ Parliament, 2008), 27.

¹³⁷ McGee, *Parliamentary Practice*, 100. See *NZPD*, Vol. 442, 14 October 1981, 4125, Sale of Liquor Amendment Bill, Barry Brill, and *NZPD*, Vol. 436, 9 December 1980, 5771, Sale of Liquor Amendment Bill, Jim McLay

The [select committee] report does not recommend, but puts forward the pros and cons of further possibilities. I believe that the select committee felt that because this was a conscience issue it would [only] hear the submissions and make any technical changes...¹³⁸

The select committee may defer to the House's decision on a point in question but assist the process by preparing the consequential amendments necessary if the decision is contrary to how the bill is drafted:

For convenience, some of the provisions in the Bill have been drafted in a manner which assumes a decision to lower the drinking age. If that provision is rejected by this House, the committee has prepared and has ready for incorporation into the Bill a series of consequential amendments which will be necessary to retain a uniform drinking age of 20 years.¹³⁹

Perhaps the best example of a conscience bill for which the select committee's report contained options rather than recommendations was the Sale of Liquor Amendment Bill (No.2) (1999). This bill proposed liberalising a wide range of liquor laws and presented the select committee with a challenge as to how to make comments on, and improvements to, the bill whilst retaining its neutrality. The select committee explained its approach this way:

These 'conscience type' broad policy issues are very complex in nature and inter-relate with many other issues contained in the bill. As a result we decided not to amend the bill in relation to these issues and instead recommend that the House consider the options as set out in part two. ... The major difficulty we encountered was the fact that the 'conscience type' issues needed to be decided upon before other issues in the bill could be considered. ... Consideration of a number of these issues was infeasible because, without knowing how the House would vote on the 'conscience issues', an unrealistic number of permutations would need to be taken into account. ... We [therefore] urge the House to allow the committee of the whole House to take a theme-based approach to its consideration of the 'conscience type' issues set out in part two of this commentary.¹⁴⁰

The Justice and Law Reform Committee...has chosen not to try to determine a majority view of the select committee and then bind the House on the conscience issues. That would have been a futile exercise, because in the end the so-called conscience issues will be determined by a vote of all the House, and for most members of the House that vote will be cast according to their individual viewpoints, not according to a party whip. What the select committee did do was to make some recommendations on the more mechanical aspects of the Bill, and those recommended changes are now incorporated in the Bill.¹⁴¹

Not all parliamentarians agreed with the select committee's approach however:

Rt Hon. JONATHAN HUNT: [With respect to the select committee's recommended course of action, above] I want to say that...I consider it to be a most unsatisfactory way of dealing with this subject. ... I think that this is the select committee simply abdicating its role as a proper select committee. ... I am disappointed, because I think that in any issue the purpose of a select committee is to sort out amendments to a Bill that the House will then consider.

PHIL GOFF: With respect, I disagree with my colleague on the...issue of how the select committee should have handled this matter. Liquor issues in this House, as members well know, are regarded as a conscience vote. That means more accurately, I think, that every member votes according to his or her individual views on the issue. It would have been quite inappropriate, and, indeed, quite futile, for the select committee to determine a majority of its 10 members – on, say, the basis of 6:4 on a particular issue – and amend the Bill on the basis of six members of the committee, when 120 members of the Committee of the whole House will make the final decision.¹⁴²

¹³⁸ NZPD, Vol. 562, 30 July 1997, 3469. Shop Trading Hours Act Repeal (Easter) Amendment Bill, Katherine O'Regan

¹³⁹ NZPD, Vol. 406, 6 October 1976, 2895. Sale of Liquor Amendment Bill (No.2), Jim McLay

¹⁴⁰ Report of the Justice and Law Reform Committee on the Sale of Liquor Amendment Bill (No.2), *AJHR* No. 211-2, p. i-iii

¹⁴¹ NZPD, Vol. 579, 20 July 1999, 18339. Sale of Liquor Amendment Bill (No.2), Phil Goff

¹⁴² NZPD, Vol. 579, 27 July 1999, 18557-8. Sale of Liquor Amendment Bill (No.2)

For Hunt, select committee debate on a conscience bill is an opportunity to explore the issue more, not less.¹⁴³

Select committees generally take their lead from the House as to whether a matter is a conscience issue.¹⁴⁴ In practice, however, anomalies may arise whereby a select committee may treat an issue as a party matter before it has been declared a conscience issue. Alternatively, the members of a select committee may act as if there were de facto party positions when there are not, based upon their understanding of their colleagues' views. A third possibility is that the select committee makes an explicit decision to conduct themselves as if the issue was a conscience vote, in anticipation that it will be so treated when the bill returns to the House.¹⁴⁵ Regardless, when the bill returns to the House, select committee members are at liberty to vote according to their own conscience, and it is not unheard of for members to vote in the House against recommendations they themselves promoted in the select committee.¹⁴⁶

Select committee meeting times are also governed by the standing orders, which generally discourage meetings during sittings of the House. This means that timetable clashes between select committee meetings and sittings of the House are minimised. Occasionally, however, they are unavoidable.¹⁴⁷ Timetable clashes and absenteeism on official parliamentary business are less critical when the debate is a party issue, as the party is usually represented by more than one member, each of whom is able to represent the party's interests. When it is a conscience issue, however, each member is, ostensibly, responsible for representing his or her own interests personally. Although members, since 1996, have the option of casting proxy votes, it is also important during conscience votes that all members have the opportunity to make a contribution to the debate. That official parliamentary business should be scheduled during conscience debates, even with the leave of the Business Committee, raises a very real question of representation in the context of both the House and the select committee.¹⁴⁸

Committee Stage

Prior to the third reading, and in addition to the select committee process, the House resolves itself into a Committee of the Whole House (CWH) for a clause by clause consideration of the bill. In contrast to the first, second, and third reading debates which have as their purpose the consideration of the aim, intention, purposes and principles of a bill, the purpose of the Committee stage is to give MPs the opportunity to debate the bill's constituent parts in detail. This stage is also the opportunity for members and parties to propose amendments. Sometimes, quite a number of amendments are proposed, each of which are debated and voted upon.

¹⁴³ *NZPD*, Vol. 499, 26 July 1989, 11485. Casino Control Bill, Jonathan Hunt. See also *NZPD*, Vol. 497, 4 May 1989, 10417. Sale of Liquor Bill, George Gair

¹⁴⁴ McGee, *Parliamentary Practice*, 100. See also *NZPD*, Vol. 537, 3 August 1993, 17240, Electoral Reform Bill, Murray McCully. The Electoral Reform Select Committee 'tried to read where the House ultimately wanted to go.'

¹⁴⁵ The Commerce and Marketing Committee, for example, made this decision and wrote it into their report during their consideration of the Casino Control Bill:

"3. Procedural Issues: When the bill was introduced, the Rt. Hon Jonathan Hunt, the then Minister of Tourism, stated that it would be appropriate that the bill be treated as a conscience issue in Parliament and as a result, members [of the Select Committee] have been accorded a free vote." Report of the Commerce and Marketing Committee on the Casino Control Bill, December 1989, *AJHR* 1.1B, para.3

¹⁴⁶ *NZPD*, Vol. 345, 22 October 1965, 3769. Sale of Liquor Amendment Bill, Arnold Nordmeyer

¹⁴⁷ *NZPD*, Vol. 591, 29 March 2001, 8612-3. Property (Relationships) Amendment Bill, John Carter

¹⁴⁸ *NZPD*, Vol. 584, 1 June 2000, 2765, Matrimonial Property Amendment Bill, Ron Mark. *NZPD*, Vol. 503, 22 November 1989, 13700, Merv Wellington

At times, queries have been directed towards the efficacy of a process in which multiple changes may be made to a bill immediately prior to the bill's final reading yet after the select committee's detailed consideration of the bill. The process in which members may propose changes to legislation without a select committee relooking at whether the bill is still internally consistent and achieves its purpose has been described as ad hoc.¹⁴⁹ This concern is particularly pertinent during conscience votes, especially if the conscience issue relates to broad policy rather than technical matters. In normal circumstances, government bills are unlikely to become ad hoc to the same extent because such legislation is usually part of a wider legislative program which is backed by a government majority. Thus, proposed amendments are unlikely to succeed if the government does not support them. In a conscience vote, however, amendments have a greater chance of success because they potentially draw support from across the House. If passed, they may result in changes that satisfy members on particular points but nevertheless fail to cohere either internally with each other or with the bill's policy objective. Parliament may feel good about what it has done, but creating legislation this way is not necessarily good government.¹⁵⁰ One MP explained this issue in the context of liquor legislation:

I believe that anybody considering the present liquor law would see that it is very hard to find any coherent philosophical approach in it. It is also very hard for citizens to know exactly what their legal rights and obligations are, because of the complexity of the law. That complexity is not surprising. It is the result of many years of ad hoc alterations to the law, and that position has been compounded by the fact that traditionally liquor legislation is decided by a conscience vote. Therefore it is very easy for the House to import inconsistencies into legislation under the conditions that prevail when the House is having a free vote. I do not question the fact that a free vote is exercised. I am merely saying that it removes the coherent policy framework under which the House normally debates legislation, and makes it easy to consider clauses in isolation from each other, and, more important perhaps, to consider proposals for amendment to clauses without necessarily bearing in mind their relationship to other clauses and to other amendments that crop up. That problem has arisen in the House, and I trust that it does not happen with this Bill. The confusion arising out of a free vote consideration of amendments in the Committee of the whole House has much to do with the present complexity and confusion in the Sale of Liquor Act. I hope that the Committee of the whole House will give careful attention to the need for coherence, simplicity, and the avoidance of confusion in the liquor law, whatever decisions the House may make on controversial issues such as age and the hours of opening.¹⁵¹

This issue may be difficult to overcome, as amendments during the CWH stage are often iterative, being a response to other amendments made.¹⁵²

Such problems have caused numerous other MPs to point the finger at conscience voting as the problem rather than the solution to controversial issues. One MP was not indirect in expressing his view that "although we may deplore the party system and the Whips we obtain more consistent and logical legislation than when we are just whipping ourselves."¹⁵³ Another MP declared that "In the Committee stage the free-vote procedure is not conducive to good legislation; it is not conducive to good amendment; it is not an effective and efficient way of transacting the business of the House, and I personally believe it is time that this type of procedure was abandoned..."¹⁵⁴ The Rt. Hon. Geoffrey Palmer, then Minister of Justice, when speaking to the Sale of Liquor Bill (1988), was very concerned that the conscience voting mechanism would "destroy its unity and quality." Designed to overcome the

¹⁴⁹ NZPD, Vol. 583, 4 May 2000, 1950. Matrimonial Property Amendment Bill, Peter Dunne

¹⁵⁰ Ricarda Vandervorst, "Parliamentarians' Perspectives on Proportional Representation: Electoral System Change in New Zealand," *Political Science* 55, no. 2 (2004): 33.

¹⁵¹ NZPD, Vol. 490, 13 July 1988, 5066. Sale of Liquor Bill, Phillip Woollaston

¹⁵² NZPD, Vol. 412, 19 August 1977, 2362. Contraception, Sterilisation, and Abortion Bill, George Gair

¹⁵³ NZPD, Vol. 490, 13 July 1988, 5071. Sale of Liquor Bill, Venn Young

¹⁵⁴ NZPD, Vol. 345, 22 October 1965, 3764. Sale of Liquor Amendment Bill, Norman Kirk

complex maze that liquor regulations had become, Palmer was determined that he would not “have a Bill emerging that is a mess.”¹⁵⁵ Nevertheless, Palmer was to be disappointed – the Sale of Liquor Bill (1988) failed to live up to his expectations because of the ad hoc amendments that were introduced, which he was powerless to prevent, during the CWH stage. Palmer subsequently expressed disappointment over this outcome and it provided a strong motivation for him, in his later role as president of the Law Commission, to advocate yet another major rewrite of the liquor laws, this time without the use of the conscience vote.¹⁵⁶

Some innovative approaches can and have been used, however, to address the problem of ad hoc amendments on controversial issues. The most notable example in recent years was that recommended by the Justice and Law Reform Committee about how the CWH should handle the complexity and interrelated nature of the clauses in the Sale of Liquor Amendment Bill (No.2) (1999). Their suggestion was two-fold: 1) to not move through the complex bill sequentially, but to recognise the strong thematic base to the bill and deal with each theme in turn; and 2) conduct the CWH consideration in two stages, enabling an initial selection of options to then be followed, at a later date, by a sequential consideration of the whole bill:

We urge the House to allow the committee of the whole House to take a theme-based approach to its consideration of the ‘conscience type’ issues set out in part two of this commentary. As members will be aware, voting on a bill at committee of the whole House stage is a procedure that involves consideration of the bill in the order of its clauses. The nature of this bill does not lend itself easily to this form of deliberation because a large number of clauses in the bill are interrelated. From past experience and the institutional knowledge of others we are aware that broad ‘conscience type’ policy issues are never dealt with easily in the committee of the whole House, as clause by clause consideration makes it very complicated for members to resolve the major policy elements of the bills. The complex nature of the bill serves to augment our concern that consideration at that later stage will be confusing unless an innovative approach is taken.¹⁵⁷

Further sage advice came from Bill Sutton, who enjoined members to:

...stick to matters relating to the sale of liquor and not attempt to appease their consciences, as it were, or the consciences of those people in their electorates who are not happy with the Bill, by trying to attach to the Bill other matters that do not relate specifically to the sale of liquor. If members attempt to do so they will go a long way towards producing a messy outcome... If members stick to the matters already covered in the Bill and concern themselves with whether provisions should stay in, be deleted, or be amended they will produce a result that is more coherent and more consistent than the existing law.¹⁵⁸

Another response, discussed elsewhere in this chapter under ‘Legislative Drafting’, is the government making freely available Parliamentary Counsel to help draft amendments appropriately.

Hansard and the Journals of the House of Representatives

The official record of parliamentary debates, called New Zealand Parliamentary Debates, does not note that a conscience vote has being held. This can make it difficult for researchers interested in a past debate to locate conscience votes and, when they do, discern the attitude, intentions and expectations of the parties and members involved.

¹⁵⁵ NZPD, Vol. 490, 13 July 1988, 5075. Sale of Liquor Bill, Geoffrey Palmer. Sir Geoffrey Palmer, Personal interview, 17 February 2009

¹⁵⁶ Law Commission, "Alcohol Legislation and the Conscience Vote." Sir Geoffrey Palmer, Personal interview, 17 February 2009

¹⁵⁷ Report of the Justice and Law Reform Committee on the Sale of Liquor Amendment Bill (No.2), No. 211-2, p. i-iii

¹⁵⁸ NZPD, Vol. 498, 30 May 1989, 10985. Sale of Liquor Bill

Since 1996, most conscience votes can be identified relatively easily by their treatment as Personal Votes, but this is not foolproof, as some conscience votes never proceed past the Voice Vote. And before 1996, all votes were procedurally treated similarly whether whipped or not, making it very difficult to understand the context within which such legislation was discussed and voted upon.

Private Members Bills

Not infrequently, members use their privilege as members of parliament to introduce their own legislation, either because it is an issue of particular concern to them or to represent the interests of someone else. There is a long standing convention that bills introduced by private members are treated as conscience votes, although this is not based upon a written rule.¹⁵⁹ This convention developed early in New Zealand's parliamentary history when private members would introduce legislation for which the government – either the executive or, after 1891, the governing party – did not consider to be part of their agenda. Private members bills were also not strongly associated with party voting because, quite simply, they were not usually on issues that were important to the governance of the country. Governments would, often, simply not take much interest in such legislation although it was considered good practice to at least permit these private members bills a first reading. Likewise, the opposition often paid little attention to private members bills for it was only a minority of such bills that were introduced by the opposition party as such. Further, private members legislation has often been used to simply promote a local issue or a matter of concern to the MP concerned and were thus of relatively private interest and/or of narrow application. As a result, many of these bills entered, and exited, the House without attracting the attention of the major parties.¹⁶⁰

By the middle of the twentieth century, the convention that private members bill were non-party matters and would be granted non-party votes had become well-established. Little research has been done on how this convention emerged, but an exchange during the private members' Hoardings Bill (1948) provides a valuable glimpse into how this convention operated:

There are a lot of matters which are not directly concerned with the policy of the Government of the day, or any Government, but which are of general importance to the community, and in which individual members of Parliament can usefully take some share of the responsibility. I suggest that this Bill, which aims at prohibiting hoardings along the countryside, is such a measure. It is not in any sense, and could hardly become, a party measure, but it is something which concerns the welfare of the community as a whole. Whether I am right or wrong in introducing it is, of course, for members to say, but it is a matter of general concern, and something which it is most suitable for individual members in this House to concern themselves with.¹⁶¹

...it has always been the custom to regard the Bills of private members as non-party measures. When a private member has some ideas on a particular matter, and gives expression to those ideas in the form of a Bill, he has the right to expect that his measure will be treated on its merits. Members may not desire to commit themselves fully to his Bill. They may feel, as I do in this case, that a little more information is required about the Bill, but they should certainly consider it in a non-party light.¹⁶²

¹⁵⁹ Michael Cullen mentioned once, however, that there are “unspoken rules about how private members' Bills of conscience are dealt with as they relate to party lines.” Cullen's point was that they have no relation to party positions. *NZPD*, Vol. 472, 2 July 1986, 2589-90. Homosexual Law Reform Bill

¹⁶⁰ Kelson, *The Private Member of Parliament*, see especially pp.67-9.

¹⁶¹ *NZPD*, Vol. 281, 28 July 1948, 997-8. Hoardings Bill, Hamish Wilson

¹⁶² *NZPD*, Vol. 281, 28 July 1948, 1015. Hoardings Bill, Robert MacFarlane

Further, a strong convention existed and continues to exist that private members bills are not voted down before their second reading.

The usual course followed in respect of private Bills is that they are allowed a second reading, usually without a division, on a free vote. That is the customary procedure. ... Such Bills are allowed a second reading and go to the Committee stage, but no further because they cannot possibly go further. The House merely records whether it agrees with the general purposes of the Bill.¹⁶³

Nevertheless, the convention that private members bills are not matters of interest to the government does not mean they are always conscience votes, however. In recent years, only those bills that touch upon sensitivities of conscience or are traditionally non-party matters seem to actually receive conscience votes in a division. Recent examples include the Prostitution Reform Bill (2000), the Death with Dignity Bill (2003), the Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill (2005) and the Misuse of Drugs (Medicinal Cannabis) Amendment Bill (2009).

In the MMP environment, private members bills have become more common, aided by the removal of the prohibition on private members bills that involved a financial appropriation.¹⁶⁴ Instead, the government can now exercise a 'financial veto' to prevent a bill from proceeding, though in practice the government has instead preferred to stop a bill using their numerical strength.¹⁶⁵

Conclusion

Conscience voting exists as an exceptional practice within a system largely designed around parties. The demands of necessity and the passage of nearly twelve decades has enabled informal protocols to develop around the practice, but sometimes these co-exist awkwardly with the formal parliamentary procedures. The review of the Standing Orders necessitated by the introduction of MMP in 1996 has redressed this in part by the introduction of the Personal Vote, the Split Party Vote, the business committee and proxy voting. Doubts nevertheless remain about whether parliamentary procedures are adequate to handle the challenges of conscience voting, particularly during complex issues that require a consistent, coherent and co-ordinated legislative response.

Although the future may see further evolution towards the incorporation of conscience voting into formal parliamentary procedure, the leading role that parties play in determining the use of the conscience vote looks set to continue. The interface between conscience voting and parties is discussed in the next chapter.

¹⁶³ *NZPD*, Vol. 281, 28 July 1948, 1214. Hoardings Bill, Peter Fraser. See also *NZPD*, Vol. 356, 14 August 1968, 1368, 1370, Fair Credit Transactions Bill, Keith Holyoake, John Marshall, and *NZPD*, Vol. 552, 13 December 1995, 10668, Sale Of Liquor (Off-Licence) Amendment Bill, Mike Moore

¹⁶⁴ For a discussion of the challenges of the appropriation rule, see *NZPD*, Vol. 503, 5 December 1989, 14217-20. Contraception, Sterilisation, and Abortion Bill

¹⁶⁵ Martin, *The House*, 332. House of Representatives (New Zealand), *Standing Orders*, September 2008, Standing Order 316

CHAPTER EIGHT: CONSCIENCE VOTING AND PARTIES

Although political parties are ostensibly responsible for the granting of conscience votes to their members, they are not free from constraints on their decision making. Each decision has implications for the party as a whole that must, in turn, be taken into account when making subsequent decisions, thus making parties both purposive agents and actors within a set of institutional rules that are not entirely within their control. The purposes, constraints and implications of conscience voting upon parties are discussed in this chapter.

Granting a Conscience Vote

Ostensibly, a party may declare a conscience vote for one or more of the following reasons:¹

1. An issue is so sensitive to the electorate that it is desirable it be divorced from party politics. There are some issues which are, it is argued, just not party matters. For example, many of the transport safety bills are treated in a non-partisan way and granted conscience votes because transport safety is a matter of such public importance that risking policy compromise is considered undesirable.²
2. It is an issue on which political parties do not, cannot, or should not be expected to have a policy. For example, euthanasia is generally considered an issue beyond the realm of party politics.³
3. The consciences of MPs would be affronted if party whips were applied. For example, one retired MP, a former cabinet minister and an outspoken Christian, has written that he was glad that issues of moral import to Christians such as gambling and homosexuality were usually treated as conscience matters. He implied that without this mechanism he would have been faced with a choice between crossing the floor or compromising his integrity more regularly than he was.⁴
4. There are political or procedural advantages in divorcing the vote from party politics. One MP explained that it was important that certain issues be above politics. In order that the appointment of the Speaker, for example, be above reproach, it is usually treated in a non-partisan manner "so that there can be no question hanging over this vote in the future."⁵

In addition to these overt reasons, a conscience vote may serve a number of political purposes.

5. To accommodate members' personal views in order to avoid them crossing the floor. The Longley Adoption Bill (1984), for example, was a private bill to allow a now divorced couple to

¹ The motivations for granting a conscience vote change over time, so not all these factors necessarily apply equally in each generation. Notably, the era of two-party politics was a very different political context from that which exists now under MMP. Prior to 1996, for example, the two major parties could afford to adopt policies that only loosely represented the majority of voters, and few alternatives to acquiescence to the party line faced rebellious MPs. Since 1996, parties have become much more aware of the respective policy spaces they occupy, and MPs have a wider range of political vehicles to choose from if they wish.

² *NZPD*, Vol. 376, 11 November 1971, 4536, Transport Amendment Bill (No.2), Ronald Bailey. *NZPD*, Vol. 521, 17 December 1991, 6374, Transport Safety Bill, Judith Tizard. *NZPD*, Vol. 453, 12 October 1983, 3055, Transport Amendment Bill (No.4), Ruth Richardson

³ On occasion, parties have had policies on explicitly moral-type issues. In such circumstances, a conscience vote may not be granted.

⁴ Lee, *Faith, Politics and Servant Leadership*, 38.

⁵ *NZPD*, Vol. 558, 13 December 1996, 40. Appointment of Deputy Speaker, Michael Cullen

formally adopt their children, correcting an oversight made by their solicitor seventeen years earlier. Implicit in the bill was a dilemma over the role of parliament – the select committee considered it to not be parliament’s role to correct solicitors’ mistakes, so recommended the bill not be allowed to proceed. A number of MPs felt that compassion should rule the work of parliament, however, and insisted the bill should be passed. After considerable tension had been generated, both the National and Labour parties decided it was not worth risking party disunity and granted their members a conscience vote.

6. To be seen to be taking the high moral ground on an issue. One party may declare a conscience vote on an issue to place themselves in a favourable light with the voting public, and publicly challenge another party to do the same. Thus, the declaration of a conscience vote is sometimes used as a political weapon. For example, Maurice Williamson, when in opposition, challenged the government on the bill making smoking inside public buildings illegal, asserting that by making the vote a party vote the government did not believe that individuals should make their own choices.⁶
7. As a useful way for a party to get controversial legislation through the House without associating itself too much with it. Declaring the issue a conscience matter can serve to put some distance between the party and the issue, even when most or all of the party intends to vote for the proposed legislation.⁷ In an interview with Paul Henry in 2004, solicitor Mai Chen of legal firm Chen and Palmer, a well-known expert in New Zealand public law, agreed with her interviewer that the ‘saving grace’ of the New Zealand government when faced with trying to get both the Civil Unions Bill and the Relationship (Statutory References) Bill through the House in late 2004 was being able to declare them conscience issues.⁸
8. As a way of legitimising controversial legislation that has not previously been announced in an election manifesto. There is an unwritten parliamentary principle that announcing a policy in a pre-election manifesto both legitimises its implementation and removes, or at least lessens, the need to use a conscience vote to achieve this.⁹ Conversely, an unannounced policy is theoretically more likely to require the use of a conscience vote because of its lack of legitimacy with both the public and members of the governing party. One opposition member stated that he believed the use of a conscience vote by the government of the time was “a cute move and, it can be said, answers the criticism that the proposed legislation was not a feature of the election platforms.”¹⁰ Since MMP, however, the need for compromise in forming a coalition government mitigates against this as a strict principle.
9. To garner support from across the House over legislation a party is not sure it will win with a whipped vote. For example, a number of people, including Maori Party co-leader Pita Sharples, urged Prime Minister John Key to make voting on the legislation creating the Auckland ‘supercity’ a conscience vote in the belief that, if so treated, the proposal to incorporate Maori

⁶ NZPD, Vol. 613, 12 November 2003, 9969

⁷ Stephen Franks, Personal interview, 11 August 2007. Franks stated that he believed “Free votes are votes on issues that a party does not wish to be identified too closely with.”

⁸ Mai Chen, “It’s (Not) the Economy Stupid – Lessons from the Us Elections for New Zealand?,” in *Archive Transcript of Radio NZ Interview* (2004).

⁹ NZPD, Vol. 350, 25 May 1967, 861. Sale of Liquor Poll Bill, Norman Kirk

¹⁰ NZPD, Vol. 408, 10 December 1976, 4744. Licensing Trusts Amendment Bill, Robert Tizard

seats into the new Auckland Council would have a better chance of being adopted.¹¹ In a similar vein, Green MP Keith Locke claimed that the Head of State Referenda Bill (2010) would have passed if a conscience vote had been permitted by the major parties.¹² The British Conservative Government also used the conscience vote during the debate over Britain's entry into the Common Market in an effort to counter the likelihood of dissenters from its own party.¹³

10. To kill a bill the government does not wish to continue with, whilst avoiding the embarrassment and criticism of being seen to do so. Although this practice seems less common in recent times, it was used relatively regularly in the early phase of New Zealand party politics, particularly over controversial issues such as prohibition. For example, in 1903 the government was under extraordinary pressure from both sides of the liquor debate and had promised to introduce a liquor bill to address some of their concerns. Not wishing to actually place the proposals on the statute book however, "[a]t the eleventh hour", the Prime Minister "told his party in caucus that the Bill was not to be considered a party question, and, absolved from fear of the party whip, the external influences that had been brought to bear held sway, and the Bill was killed."¹⁴
11. In order to fulfil an election promise to either the public or a coalition partner without actually changing any legislation. David Reevely, writing for the Canadian Capital News Online, alleged that the Canadian "NDP [New Democratic Party] government proposed gay-rights legislation in Ontario, based on one of its 1990 election promises. Bob Rae [NDP's leader] called for a free vote, and despite the NDP's large majority, the bill was defeated. Critics said it was a way of technically fulfilling his promise without really standing behind it."¹⁵
12. The challenge of a small party maintaining its identity whilst in a government coalition has given rise to the suggestion that, in the MMP environment, permitting members of small parties conscience votes as a matter of course may serve to place some procedural and ideological distance between the small party and its larger government partner, as well as ensuring the other government party does not take their vote for granted.¹⁶

Complicating the decision for parties are a number of factors that party managers and, in some cases MPs, may be mindful of, or which may even discourage them from granting a conscience vote.

1. Parties do not normally grant conscience votes when they have a policy on the issue in question, and penalties often attach to members who insist they cast a dissenting vote. Parliamentarians are usually deemed to have committed themselves to their party's policies, and, in theory, a conscience vote should not be necessary when these subjects arise.¹⁷ During

¹¹ "Last Two Chances for Maori Seats," *NZ Herald*, 26 August 2009, A1, "Make Super City Seats a Conscience Vote - Iwi," *NZ Herald Online* 16 September 2009. Nevertheless, the government refused the request for a conscience vote and some of its members denied they would have voted against their party even if a conscience vote had been granted – see "Hide a 'Buffoon' and 'Jerk-Off', Says National's Henare," *NZ Herald Online*, 25 August 2009. See also *NZPD*, Vol. 657, 25 August 2009, 5798-803, Questions to Ministers, 'Auckland, Local Government Reform – Maori Representation on Auckland Council',

¹² *NZPD*, Vol. 662, 21 April 2010, 10374-5, 10384

¹³ Richards, *The Backbenchers*, 68.

¹⁴ Evening Post, 'The Defeat of the Liquor Bill', 12 November 1903, p.4, Grey River Argus, 'Licensing Bill', 14 November 1903, p.2

¹⁵ Reevely, "Free Votes Would Undermine Democracy, Critics Say."

¹⁶ Editorial, "Brave Move Loosens the Reins on Act," *NZ Herald*, 20 March 2009.

¹⁷ In 1975, the National party committed itself, in its election manifesto, to "the introduction of education on moral issues." As a result, certain clauses relating to the teaching of human development and relationships in schools

the early 1990s, the Labour party caucus was concerned when three MPs insisted on voting against both their colleagues and the party's constitution during the Human Rights Bill (1992). The Labour party at the time had a policy on sexual orientation that, under ordinary circumstances, would have led them to cast a party vote. The party was hoping to send a strong message that it stood for equality and opposed discrimination, and was anxious to avoid the appearance of division within its ranks. In the interests of party unity and because it was an election year, the three members were reluctantly granted a conscience vote, though not before the ire of the party was raised.¹⁸ In a similar vein, a party position had been taken by the National party on the News Media Ownership Bill (1965), but one of their members, Sir Leslie Munro, voted against its committal and abstained on a number of other votes. Although Munro made much at the time of his party's stance on the expression of individual conscience,¹⁹ he was nevertheless denied the cabinet post he was expecting after the following election.²⁰ In more recent times, the Greens, an 'MMP-party', have not infrequently voted as a party on issues which have been conscience votes for other parties on the grounds that they have party policies on such issues. During the Marriage (Gender Clarification) Bill (2005), for example, Metiria Turei stated that "The Green Party is opposed to this bill, and we will vote against it as a party. Our party policy requires us to support the extension of all legal partnership arrangements and rights to same-sex couples as are afforded heterosexual couples. ... We are very proud to stand here as a party and say that we support the elimination of discrimination in this country, and we will not support legislation to impose even more discrimination than we already have."²¹

2. The desire for an individual member to express his/her conscience is not usually sufficient to trigger a conscience vote. A private opinion that a conscience vote should be declared is of little consequence on its own. One MP publicly announced that "One of the things that I feel very strongly about is that this issue should not be politicised. As far as I am concerned, it is a conscience vote. The parties have not assumed a position."²² The MP involved was, nevertheless, ignored and she herself duly voted with her party. In a related fashion, one veteran MP explained to younger colleagues that "a conscience vote is not defined as something where some people do not like voting the way they are told to by their party. That is not quite the same thing as a conscience vote. Indeed, members who are here for the first time will come to learn that probably on a number of occasions they will end up voting in a way different from their personal beliefs. That is not a conscience vote."²³

were not whipped, although the rest of the bill was. *NZPD*, Vol. 412, 19 August 1977, 2360. Contraception, Sterilisation, and Abortion Bill, L.W. Gandar. In like manner, Norman Kirk, Leader of the Labour party, commented during the Sale of Liquor Poll Bill 1967 that "Since it was part of the Government's election policy this would seem to remove this from the free vote category, because it is National Party policy that is being implemented." *NZPD*, Vol. 350, 25 May 1967, 861

¹⁸ Maryan Street, Personal interview, 30 August 2007

¹⁹ "As a member of my party, on a matter which I regard as a matter of conscience, I have the privilege of opposing this measure. And that is a privilege. It is not a privilege to be used except on a matter of conscience. I have never seen a member of the Labour Party having this privilege. ... I think it is one of the principal strengths of my party that I am able to do that." *NZPD*, Vol. 345, 28 October 1965, 3921-2

²⁰ Cottrell, "Parliament and Conscience", 28-9, Templeton and Eunson, *Election 1969*, 126-7, Ian Templeton and Keith Eunson, *In the Balance: Election '72* (Dunedin: John McIndoe, 1972), 68-9.

²¹ *NZPD*, Vol. 628, 7 December 2005, 670

²² *NZPD*, Vol. 530, 7 October 1992, 11545. Mixed Member Proportional Representation Referendum Bill, Christine Fletcher

²³ *NZPD*, Vol. 558, 13 December 1996, 38, Appointment of Deputy Speaker, Michael Cullen

3. Conscience votes are not usually granted by the governing party when the outcome of the vote might threaten the government's stability. Thus, votes of no confidence have never conscience votes, and votes on a government's core legislative programme are also not usually unwhipped. Further, bills that the government positively wants passed, for whatever reason, are sometimes granted conscience votes only under 'controlled' conditions. Kelson relates a relevant incident that occurred during the Licensing Amendment Bill (No.2) (1953). As one member "walked towards the 'noes' lobby on the division ... a Government member stated accurately to [another member] that there would be a majority of five." Kelson postulated that, because the government had promised at the previous election that that policy would be implemented, only when "the Prime Minister had counted heads" did he decide to permit a conscience vote.²⁴
4. Controversy on its own is insufficient to ensure a conscience vote is held. Many issues are controversial, but where a government feels strongly on the matter, political capital may be expended by retaining the party whip despite the deleterious consequences. The Supreme Court Bill (2004) that abolished appeals to the Privy Council and established the Supreme Court in New Zealand as this country's highest court was a controversial constitutional amendment. A precedent for making it a conscience vote also existed. Nevertheless, the Labour government at the time was determined to make the change and it was done on a party basis. Similarly, John Key's National government refused to make the private member's bill repealing the Crimes Amendment (Section 59) Act a conscience vote despite evidence suggesting there could be a backlash against the government's stance.²⁵
5. Much dissent does not reach the floor of the House. Parties' first priority is to act cohesively, and a number of intra-party mechanisms are used to prevent disagreements from becoming public or requiring a conscience vote. Both major parties, for example, have run a system of caucus committees since at least the 1940s, with these committees acting as policy forums and a sounding board for ministers and policy spokespeople.²⁶ When sufficient concern exists within these committees or the caucus generally, ministers do sometimes amend, defer or even abandon policy proposals. In the 1940s, Lipson described the caucus of the government party as "an inner legislature. ... It is here, in fact, that legislation is really 'passed.'"²⁷ In the 1960s Mitchell agreed, labelling caucus parliament's first chamber, providing a check upon legislation entering the House, with the House itself being like a second chamber.²⁸ The intriguing allusion of caucus as a chamber of parliament has some validity; it acts to remove differences among its members so that the party can act in unison. In so doing, it may, in fact, prevent much contentious legislation from even arriving on the floor of the House, thus reducing both the occasions where dissent is witnessed and conscience votes are required. One MP in the 1950s admitted that "All legislation is really passed before it ever comes into this Chamber. The caucus

²⁴ Kelson, *The Private Member of Parliament*, 113.

²⁵ John Armstrong, "Staunch PM Braces for Buffeting in Smacking Storm," *NZ Herald*, 27 August 2009, A4.

²⁶ Milne, *Political Parties in New Zealand*.

²⁷ Lipson, *The Politics of Equality*, 319, 40.

²⁸ Mitchell, "Caucus," 3.

of the government party decides...what will pass and what will not pass in this Chamber."²⁹ In 1995, another MP explained that:

the fundamental purpose of debate in this House, is not in fact to persuade each other. That would be a nice thing to think, and on occasions no doubt it does happen. But it does not demean this House at all or its functions to record the obvious, which is that most of the debate that takes place in this House is less designed to persuade each other, and more designed simply and straightforwardly to record the views that each of us individually, or more often our caucuses collectively, have reached.³⁰

On the relatively rare occasions when such agreement cannot be reached, conscience votes can be invoked as a mechanism for handling disagreement in the debating chamber and voting lobbies.

6. At times, even when a party wishes to grant a conscience vote it may be prevented from doing so by its political opponents making it a party vote. In such a scenario, the desire to avoid being perceived as divided or indecisive may be a sufficiently powerful motivator for that party to match the behaviour of the opposing party.³¹ Ralph Hanan once complained that:

On minor matters our party might desire to take a completely free vote, but the Opposition seizes every opportunity to obtain political advantage on all matters, minor and otherwise, and it would not hesitate to make the matter a party issue. ... We know that a minor defeat of the Government in a mere skirmish in debate would be hailed by the Opposition as a resounding victory. ... Naturally, there is a reluctance on the part of a Government to allow that sort of thing to happen.³²

The Risks of Conscience Votes for Parties

Despite it being a largely party-centred mechanism, conscience votes are not risk-free for parties. In the first place, a vote free from the party whip does not necessarily imply a vote free from parties – cross-party factions often form around conscience issues that act in the capacity of parties despite not following traditional political formations. Established political parties may be effectively disbanded during conscience votes, but they are not uncommonly replaced by a de facto party formed around a single issue or even a single piece of legislation.

Second, numerous examples exist of a conscience issue becoming 'attached' to a party despite its attempt to dissociate itself from it. Such was the case for the Labour party which was in government when both the Homosexual Law Reform Bill (1986) and the Prostitution Reform Bill (2000) were introduced. Both of these bills were private members bills and conscience votes but they were widely believed by the public to be Labour legislation. Although neither bill caused the government to fall at the following election, the dangers of being associated with conscience issues are real – another conscience issue introduced by a private member from a non-government party, the Crimes (Substituted Section 59) Amendment Bill (2005), was widely credited as contributing to the fall of the Labour government in 2008.³³

²⁹ *NZPD*, Vol. 303, 28 July 1954, 765. P. Kearins

³⁰ *NZPD*, Vol. 551, 28 November 1995, 10180. Electoral Reform Bill, David Caygill

³¹ See the comments of Robert Anderson, complaining about the effect of Labour applying the whip when National did not. *NZPD*, Vol. 513, 27 March 1991, 1101-2. Proportional Representation Indicative Representation Bill

³² *NZPD*, Vol. 304, 11 August 1954, 1096-7

³³ Stephen Levine and Nigel Roberts, eds., *Key to Victory: The New Zealand General Election of 2008* (Wellington: Victoria University Press, 2010), ONE News, "Goff Apologises for Labour's Past," *Television New Zealand*, 13 September 2009.

Parties may also suffer indirect consequences when individual members become spokespeople for one side of a conscience issue. MPs who are strongly parochial over such an issue may indirectly damage their party's electoral prospects by offending a large proportion of their own constituency and some of this ire may also become attached to their party. Tim Barnett, an outspoken advocate for gay rights and the sponsor of the Prostitution Reform Bill (2000), was asked to desist from introducing any further social legislation after the 2005 election as the party leader felt the damage to the party would be too great given their slim electoral advantage. Prime Minister Muldoon tried to avert this danger during the Contraception, Sterilisation, and Abortion Bill (1977) by warning his caucus that "Whoever speaks will lose votes. You don't have to be a martyr."³⁴

The Value of Conscience Votes to Parties

On the upside, it has been argued that conscience votes can play a vital part in party survival. Viewing parties organically, such a view maintains that a diversity of opinions and perspectives is a necessary part of the party organism; party policy is likely to become stale if too much agreement is achieved. From ferment and debate comes inspiration and regeneration, so if radical or fringe elements in a party are quashed as a matter of course, a party may become politically sterile. Inspiration may derive from the very disagreement that is often so feared in a party, and maintaining a balance between diversity and unity is a key task of party leadership. At times, party members may hold opinions that are so radical and unorthodox that older or more conventional members of the party may have difficulty accepting their view. On issues with high emotional, ethical or religious content, or on issues where the diversity of opinion becomes public, this disagreement may be positively handled through the use of the conscience vote, though on other occasions it can manifest negatively as divisiveness or unsanctioned dissent. Conscience voting can, therefore, play an important role in maintaining the health of a political party by preserving the individuality of its members whilst insulating the party itself from the damaging effects of internal disagreement.³⁵

In the midst of New Zealand's two-party era, Cottrell discussed the role of free votes in party regeneration:

The phenomenon of Governments which 'run out of steam' is becoming characteristic of the New Zealand political scene and it may be healthy for the apple-cart to be upset more often in public. More free votes and crossings of the floor in areas where the traditional principles of the parties are not at odds should lead to more alive Governments and a more effective Parliament without sounding the death-knoll [sic] for the political party system.³⁶

Cottrell was commenting on the impact of alternating but long periods of rule by two major parties, but the opposite problem may lead to similar results in the modern era. The advent of MMP has increased the range of parties and made coalition governance almost inevitable, but, concomitantly, it has decreased the range of views necessarily contained within each party. Members on the extremes of each party have the option of joining another party or forming their own with a much higher expectation than formerly of achieving parliamentary representation. By implication, this reduces the likelihood of dissent within a party and, in turn, deprives the party of an important self-assessment mechanism. In the

³⁴ Templeton, *All Honourable Men*, 89.

³⁵ Maryan Street, Personal interview, 30 August 2007. For examples, see discussions in Templeton and Eunson, *Election 1969*, 126-7, Templeton and Eunson, *In the Balance*, 17.

³⁶ Cottrell, "Parliament and Conscience", 52.

long run, this may affect both the ability of each party to regenerate themselves and the number of conscience votes required.

Even for small MMP parties, the ability to express diverse views and vote accordingly can be an important element in avoiding one of the most common traps these parties have encountered. The tendency for the leader of small parties to dominate can create both the appearance and/or reality that the leader is the party. Rodney Hide, leader of the Act party, made the connection between open debate, conscience voting, and party survival in this statement:

I promote lively debate and the free flow of ideas around our caucus. That makes it exciting and intellectually stimulating. ... And no MP is required to vote the way of other ACT MPs. That's what having a free vote means. We do it that way because we have seen what happens to third parties with leaders who just dictate their party's vote. Those leaders end up thinking they are the party, and those parties don't last. It keeps us all on our toes debating the ideas and the policies of this government. That's us as a caucus.³⁷

According to Hide, voting on policy merit rather than strict party lines is a favourable arrangement that is, in fact, inevitable in a freedom-espousing party such as his.³⁸ By contrast, the Green party strives for consensus, accepting public disagreement only as a last resort. For the Greens, presenting a consistent message and acting in accordance with it is central to their image.³⁹ With consistently less than ten MPs, however, reaching consensus with discussion alone has proved feasible – if and when the caucus grows larger, even the Green party may be forced to accept dissent more often and formalise their procedures for handling it.⁴⁰

As single member parties, United Future and the Progressives currently contribute little to this discussion, although United Future not infrequently cast split party votes between 2002 and 2005 when they had eight MPs. On conscience issues such as the Smoke-free Environments Amendment Bill (2003), leader Peter Dunne tended to take a libertarian stance preferring the non-interference of the state in such matters, while the rest of his caucus was happy to attempt to alter social outcomes through legislation of this kind. The party's view was that, as a party of the political centre, United Future attracted people from a diverse range of viewpoints; it was inevitable and appropriate that this diversity be accommodated through the use of conscience votes and split-party votes.⁴¹ Nevertheless, Gordon Copeland, a senior United Future MP, split from the party in 2007 over his leader's support of the conscience aspect of the Crimes (Substituted Section 59) Amendment Bill (2005), Dunne's purported desire to end the Christian influence within United Future, and his own desire to "follow Christian principles rather than follow the party line."⁴²

For larger parties, conscience votes must be handled carefully. This is especially so for the government party, for the risks are mostly on the government side. While the opposition has little to lose by granting

³⁷ Hide, "Act Is Delivering."

³⁸ Editorial, "Brave Move Loosens the Reins on Act.", Hide, "Act Is Delivering." See also John Boscowen's comments in *NZPD*, Vol. 662, 28 April 2010, 10585. Excise And Excise-Equivalent Duties Table (Tobacco Products) Amendment Bill

³⁹ The party leadership was upset when two of its members forced the party to cast a split-party vote during the Local Government Law Reform Bill 2006, the issue being exceptions to the compulsory micro-chipping of dogs. Jeanette Fitzsimons, Personal interview, 30 April 2009

⁴⁰ Jeanette Fitzsimons, Personal interview, 30 April 2009. Interestingly, Stephen Franks, a former Act MP, also stated the Act party's small size permitted consensus in most cases, although his comments and Hide's statement are not necessarily irreconcilable. Stephen Franks, Personal interview, 11 August 2007

⁴¹ *NZPD*, Vol. 639, 16 May 2007, 9321-2. Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill

⁴² Gordon Copeland, Personal interview, 31 August 2007, Maggie Tait, "United Future MP Quits Party over Smacking Bill," *NZ Herald*, 16 May 2007.

a conscience vote, the governing party risks the perception that it has lost the confidence of the House if it grants a conscience vote and loses. Opposition parties are therefore free to use conscience voting politically and strategically, but the government is more likely to grant a conscience vote only if it has to.

The opportunities that conscience votes offer opposition parties is demonstrated in the events that surrounded the Crimes (Substituted Section 59) Amendment Bill (2005). The opposition National party benefited from this very controversial bill due to the party's leader, John Key, being widely credited with brokering an agreement that both permitted the bill to pass whilst simultaneously appeasing its opponents. Although credit for this solution was actually misplaced, it is a good example of the tendency for controversial bills to attach themselves to government parties whilst providing opportunities for opposition parties to position themselves favourably within the controversy.

The Government and Conscience Votes

Government bills do not usually fail, even when a conscience vote is granted. A government bill has not been defeated on a conscience vote since then Prime Minister Coates introduced the Licensing Amendment (No.2) Bill in 1928 despite both the government and the opposition caucuses being "hopelessly split" on the liquor legislation throughout the century.⁴³ A surprisingly high degree of party cohesion therefore exists even when votes are not whipped, and governments can thus declare a conscience vote knowing that little legislative damage is being risked. Nevertheless, Table 8.1 demonstrates that the likelihood of conscience votes being granted decreases when governments have only slim majorities. Only a quarter of unwhipped government bills have been introduced when the government has had a majority of less than 5. Conversely, a third have been introduced when the majority was greater than 15.

Table 8.1: Proportion of All Conscience Bills by Government Majority

Government Majority	Government Bills	Private Members Bills*	TOTAL
<5	26%	29%	28%
5-9	7%	11%	9%
10-14	33%	21%	26%
15+	35%	39%	37%
TOTAL	100%	100%	100%

* Includes local bills

That a governing party would remove the whip for an issue they themselves want passed seems paradoxical, for, on the surface, it is not in their interests to do so. By granting a conscience vote they are giving away the means by which they can be assured of winning the vote. In effect, the government introduces a bill from which they then retreat, giving away the certainty of their numerical dominance, and the fate of which they leave to the vagaries of individual parliamentarians.

Further, it is not entirely clear in what sense a bill is a government bill if they are not voting as a government on it. Although legislation technically becomes a government bill when introduced by a member of the executive,⁴⁴ the members of the executive themselves are often divided during conscience votes, raising the spectre that cabinet ministers may, and do, vote against legislation

⁴³ Lipson, *The Politics of Equality*, 343.

⁴⁴ See *NZPD*, Vol. 405, 1 September 1976, 2192. Health Amendment Bill, George Gair

introduced by their own government. At the least, such behaviour may seem paradoxical; at worst it could be considered to undermine responsible government. In some countries such as Canada, concern over this point is part of the motivation for the granting of conscience votes to only non-ministerial MPs, members of the executive being under an expectation they will vote for all government legislation.⁴⁵

The practice of the governing party introducing legislation over which they fail to vote as a government has been criticised on occasion. One MP accused the government of permitting unwhipped government legislation to be used as a vehicle for advancing the private agendas of just a few of its more influential members in the face of strong opposition from both inside and outside parliament.⁴⁶ The same MP implied, on another occasion, that the government's use of the conscience vote was a sham in order to appear as if a legitimate policy procedure was being followed.⁴⁷ Other MPs have complained that the government was using the conscience vote to garner support for a government measure,⁴⁸ and that governments use conscience votes to deflect attention from their own policy programs.⁴⁹ Opposition members not infrequently taunt the government for introducing a bill without the courage to make it a party vote. Kearins accused the government in 1953 of having "thrown this Bill on the floor of the House for members to vote as they please on it. ... This is not the way the Government handles its other Bills. ... It is the coward's way out..."⁵⁰ And John Carter attempted to cause the government embarrassment in 2000 by pointing out the anomaly of backbenchers being able to introduce supplementary order papers on their own government's conscience bill.⁵¹

More constructively, one account of why governments grant conscience votes on their own bills stresses the responsibility government ministers have of introducing legislation. Under this view, some bills are only nominally government legislation, attaining this status automatically when a member of the executive dispenses his or her responsibility to introduce it. The government's ownership of such legislation is somewhat weaker than is normal for a government bill, and when a conscience vote is declared, responsibility for that bill is just as automatically transferred from the government to parliament. Thus, a conscience vote transfers decision making power from the government to parliament enabling individual MPs, even the Minister responsible for its introduction, to support or oppose the bill as they see fit. As such, when "Members are entirely free to vote according to their own conscience on this issue[, t]he Government is giving Parliament the right to decide."⁵²

Such logic was used during the Licensing Amendment Bill (1960). On that occasion, the then Minister of Transport, the Hon. J. Mathison, explained that "determining the form of our licensing laws is the responsibility not of the Government but of Parliament. On this important social question the Opposition,

⁴⁵ D'Aquino, *Issues for Reform*, McGrath, "Reform of the House of Commons.", Pothier, "Parties and Free Votes in the Canadian House of Commons."

⁴⁶ *NZPD*, Vol. 503, 5 December 1989, 14212. Contraception, Sterilisation, and Abortion Amendment Bill, Graeme Lee

⁴⁷ *NZPD*, Vol. 499, 26 July 1989, 11486. *NZPD*, Vol. 503, 5 December 1989, 13953-4. Casino Control Bill, Graeme Lee

⁴⁸ *NZPD*, Vol. 479, 7 April 1987, 8364-6, Gaming and Lotteries Amendment Bill, Warren Cooper. *NZPD*, Vol. 503, 5 December 1989, 14322-3, Shop Trading Hours Bill Repeal Act, Philip Burdon

⁴⁹ *NZPD*, Vol. 496, 22 February 1989, 9221. Abolition of the Death Penalty Bill, John Banks

⁵⁰ *NZPD*, Vol. 301, 19 November 1953, 2366, Patrick Kearins. See also *NZPD*, Vol. 191, 20 October 1921, 663, Gaming Amendment Bill

⁵¹ *NZPD*, Vol. 588, 10 October 2000, 5992. Casino Control (Moratorium Extension) Bill

⁵² *NZPD*, Vol. 301, 19 November 1953, 2381. Licensing Amendment Bill (No.2), Sidney Holland

too, has a great responsibility to the people.”⁵³ Mathison’s view was that, although a government minister was procedurally responsible for introducing the bill, the opposition had as much responsibility for the outcome of the legislation as the government did because of its unwhipped status. Mathison went on to further explain that “it is the Government’s responsibility to bring down what might be called the basis of amendments to the licensing laws, but that it is over to Parliament to alter those laws as it thinks fit. ... I shall unhesitatingly support and, if necessary, promote amendments in an endeavour to assist Parliament—not the Government; it is Parliament’s responsibility—in legislation on social questions.”⁵⁴

An alternative explanation of the ‘government conscience bill’ paradox was supplied by Arthur Kinsella in a response to Mathison’s assertions above. Kinsella saw political forces at work that were much more pragmatic that principled: “It appears that he [Mathison] is very much in favour of Parliament dealing with a matter if it is a difficult one for the Government, but not if it is an easy one for the Government.”⁵⁵ Kinsella’s assertion was grounded in the belief that conscience voting was being used by the Government to make hard decisions that the Government itself did not want to be accountable for – once the relevant Minister had introduced it, the Government could then step back and claim it was not their responsibility.

The existence of this paradox of government conscience bills may also be due to the undesirability of the available alternatives. While the governing party as a whole may want the legislation passed, a faction of members may disagree and insist upon the freedom to vote as they wish. In this case, the government may prefer a party vote but be powerless to achieve it. Further, the governing party may acknowledge the paradox and wish to deal with it, but they may feel their hands to be tied by precedent; the expectation that the issue will be a conscience vote may have developed years or even generations previously, the current governing party lacking any real power to alter a procedural pattern rooted in historical conditioning.

Introducing the measure as a private members bill may not be an acceptable alternative to the government conscience vote paradox. A parliamentary expectation exists that legislation that forms part of a government’s policy programme should be introduced by that government, not a private member; the government is responsible for, and is best equipped to draft, bills. It therefore falls to the government to initiate most legislation, even of a moral nature, despite the prospect of parliament as a whole deciding the outcome.

In reality, government legislation is not always introduced because it is part of a government policy agenda. Sometimes the government introduces a bill because there is popular demand for it, because the issue is non-partisan, or because it wishes to test the will of the House on a matter.⁵⁶ Without fulfilling this responsibility, the integrity of government would be curtailed. In addition, because government assent is required when a bill requires an appropriation, the government sometimes feels a responsibility to introduce such legislation even though it is not entirely in support of the measure. Without the assurance of such an appropriation, the bill would, in fact, cease to be a conscience vote

⁵³ *NZPD*, Vol. 325, 26 October 1960, 3258. Licensing Amendment Bill, John Mathison

⁵⁴ *NZPD*, Vol. 325, 26 October 1960, 3259. Licensing Amendment Bill, John Mathison

⁵⁵ *NZPD*, Vol. 325, 26 October 1960, 3268. Licensing Amendment Bill, Arthur Kinsella

⁵⁶ *NZPD*, Vol. 503, 5 December 1989, 13952. Casino Control Bill, Jonathan Hunt

and could be killed by even one member who opposed its passage.⁵⁷ Thus, although a government introducing a conscience issue may seem paradoxical, it is precisely the government's support that, when money is involved, enables a conscience issue to remain a conscience bill. Governments do not necessarily 'own' government legislation – they may have simply agreed to introduce it.

Not only do governments sometimes not vote as a government during conscience votes, but the cabinet minister sponsoring the bill sometimes fails to vote for it as well. The inherent tension between ministerial responsibility and individual freedom during conscience issues occasionally manifests in the extraordinary situation of ministers introducing government legislation that contains one or more measures even they themselves intend to vote against. On occasion, they even disagree with their own bill entirely leading to the paradoxical spectre, notwithstanding the discussion above, of a Westminster government enacting a policy they positively oppose.⁵⁸ Although recent examples are few, several cases may be cited from the second half of the twentieth century.

- Simon Upton, Minister of Health, introduced government legislation banning sponsorship from tobacco companies in 1991 which he then immediately voted against. He explained that "While I have moved that the Bill be introduced, I shall be exercising my right to vote against its enactment. ...it has been well known since day 1 that I do not think that this is an appropriate amendment. However, I do think that the debate is open to some extent. I respect the views of those who would take a different point of view."⁵⁹
- Graeme Lee, Minister of Internal Affairs from 1990-1993, introduced legislation to enable casino licenses to be granted despite being ardently against gambling.
- Graeme Lee also inherited the Gaming and Lotteries Amendment Bill from his ministerial predecessor, Margaret Austin. This legislation provided for the legal introduction of 'instant games' such as Instant Kiwi and, although Lee voted for the bill as a whole, he introduced an amendment to restrict the age of those participating.⁶⁰ He also refused to take a lead role in promoting the legislation in the House.⁶¹
- Jim McLay announced when he was Minister of Justice that "Part II of the [Sale of Liquor Amendment] Bill [1980] makes provision for the lowering of the drinking age to 18 years. ... I should observe immediately that, as one who voted against 18-year-old drinking in 1976, I may well find myself in the somewhat unusual position of introducing a Bill as a Minister of the Crown and then, later, as a private member, exercising a conscience vote against one of its provisions."⁶² Fortunately for McLay, the provision was changed before it came to a vote.

⁵⁷ *NZPD*, Vol. 503, 5 December 1989, 14217-14220, Contraception, Sterilisation, and Abortion Amendment Bill, especially the comments of Jim Bolger. *NZPD*, Vol. 421, 17 May 1978, 48. Contraception, Sterilisation, and Abortion Amendment Bill, *Matiu Rata*.

Formerly, without the assurance of such an appropriation, leave was required to be sought from the whole House for the bill to proceed, and even a single member objecting to the appropriation could prevent it from proceeding. In recent years, a private members bill requiring an appropriation can be introduced, but the government can exercise a financial veto over it.

⁵⁸ *NZPD*, Vol. 345, 22 October 1965, 3771. Sale of Liquor Amendment Bill, Ralph Hanan

⁵⁹ *NZPD*, Vol. 515, 4 June 1991, 2100. Smoke-Free Environments Amendment Bill

⁶⁰ *NZPD*, Vol. 513, 20 March 1993, 950. Graeme Lee

⁶¹ Michael Cullen was magnanimous in stating that "on a conscience matter it is not necessarily the duty of the Minister in whose name the Bill might appear to always take the lead role." *NZPD*, Vol. 518, 22 August 1991, 4355

⁶² *NZPD*, Vol. 433, 25 September 1980, 3697-8. Sale of Liquor Amendment Bill

- Ralph Hanan, Minister of Justice in the National government of the 1960s, introduced into parliament a bill amending the 1908 Crimes Act. Although he personally opposed capital punishment, the National caucus forced him to include a clause retaining its use. During the debate on this Bill, Hanan campaigned vigorously, and successfully, against that provision in his own bill.⁶³
- A similar situation occurred when Thomas Webb, Minister of Justice in the first National government, piloted liberalising liquor legislation through the House despite his admission that “I have been a prohibitionist all my life.” Webb commented on the “trick of fate that has placed the control of the administration of the licensing laws in my hands”, justifying himself by an appeal to honour: “...while I hold the portfolio, I conceive it to be my duty not to allow my own personal opinions [on liquor] to stand in the way of what I believe to be right.” For Webb, doing the right thing involved correcting injustices, even though it was also acceptable to simultaneously hold prohibitionist views. “I conceive it to be my duty to put aside my own personal opinions, to look at this matter dispassionately, and when I do so I feel that I have an obligation and a duty to give the people...a right that I believe has been denied them too long.”⁶⁴
- The 1950 Gaming Amendment Bill was reluctantly introduced by William Bodkin, the then Minister for Internal Affairs, who was basically opposed to gambling though he did not actually vote against the bill.

Cabinet ministers are the focus of pressures not experienced by backbenchers. A member who, as a backbencher, expresses an opinion in one direction may find it expedient to reverse their position, if not their views, when they become a member of the executive. Collective cabinet responsibility proscribes some of the freedom MPs without office enjoy; the advantages of collectivity sometimes outweigh personal freedom when power and prestige are at stake. Graeme Lee, Minister of Internal Affairs from 1990-1993, discovered that a united front and a consistent message are of more importance than personal freedom when the consequences of a policy can be personally ascribed. While a backbencher, he opposed all forms of gambling but when made the minister responsible for, among other things, gambling, he softened his position. Lee “who strongly opposed the introduction of the instant gambling game, said that as minister he had to take a wide view.” This ‘wide view’ involved compromising his personal principles in order to satisfy a larger number and more diverse range of voters.⁶⁵

The scenario of the bill’s sponsor voting against his or her own legislation is not limited to cabinet ministers. MPs frequently take advantage of their ability to move amendments to bills in the Committee stage, especially during conscience votes. It is rare for the mover of an amendment to vote against his or her own amendment, as, unlike for cabinet ministers, moving an amendment is entirely at the MPs’ discretion. Nevertheless, during the 1965 Sale of Liquor Amendment Bill, Allan McCready, a National backbencher, moved an amendment against which he himself voted. He even used it as an occasion to boast: “When it comes to a free vote I challenge any member of the Opposition to do what I did. I moved

⁶³ See Nordmeyer’s comments on Hanan’s position in *NZPD*, Vol. 328, 13 September 1961, 2209. Crimes Bill

⁶⁴ *NZPD*, Vol. 301, 19 November 1953, 2348. Thomas Webb

⁶⁵ “Lottery Showdown Looming in Caucus,” *NZ Herald*, 24 November 1990, s.1, p.3.

an amendment against my own Government's Bill, called for a division, and voted on the other side. That is the freedom members of the National Party have."⁶⁶

The Politicisation and Constitutionality of Conscience Voting

The relative freedom, or perceived lack thereof, of MPs within a party is not infrequently used to either promote one's own party or taunt the opposition respectively. For example, during the Electoral Reform Bill (1995), the smaller parties declared that their members had a conscience vote on the issue whilst accusing the larger parties of whipping the vote to their own benefit. In response, the larger parties pointed out that while members of the smaller parties ostensibly had a conscience vote, none of their members were actually planning to vote separate from their colleagues, thus diminishing the impact of their argument.⁶⁷

Ralph Hanan, a senior National cabinet minister in the 1960s, while expressing his pride in National's liberal attitude towards conscience vote, noted the deleterious impact of the politicisation of conscience votes on legislative outcomes:

Although constitutionally a Government would not be required to resign, the practice has crept in of an Opposition claiming a great victory where it has defeated a Government on a minor matter. Naturally, there is a reluctance on the part of a Government to allow that sort of thing to happen. That tends to make Members on this side of the House stick together. [Consequently,] the new principle I would like to see established, that is, more freedom on non-party issues, will not really gain much vogue until the Opposition agrees with the Government that matters not going to the root of party policy are to be treated on a non-party basis. I hope that day will come. Such an innovation might well enrich and improve the priceless democratic system which we have inherited.⁶⁸

Hanan's accusation, directed as it was towards the opposition Labour party, may have itself been politically motivated but his point is no doubt a valid one – in an environment in which party votes are the norm and two or more parties wish as a matter of priority to assume the government benches, conscience voting is unlikely to become more established without a degree of agreement around what does and doesn't constitute a vote of confidence. Hanan was "firmly convinced that the greatest contribution we can all make to the successful working of democracy would be to establish a general practice that, in all matters not directly related to the declared policy of the party, free votes be encouraged in this House, where possible."⁶⁹

If Hanan's suggestion that conscience votes be held more regularly on issues with no direct connection to party policies were adopted, conscience issues would no doubt increase in frequency. There is a more fundamental assumption underlying Hanan's argument, however. Party politics involves presenting a manifesto of policies to electors at election time, with the elected government having been elected on the basis of this policy platform. Some scholars believe that democratic governance:

is a system which brings government action into line with popular preferences through party competition and voting choice in elections. In this process manifestos and platforms play a central part, giving voters an indication of what parties would do if elected and thus offering them a basis for informed policy choice. The essential democratic requirements for an electoral

⁶⁶ NZPD, Vol. 345, 22 October 1965, 3768. Sale of Liquor Amendment Bill, Allan McCready

⁶⁷ NZPD, Vol. 551, 28 November 1995, 10180. Electoral Reform Bill, David Caygill

⁶⁸ NZPD, Vol. 304, 11 August 1954, 1096, Ralph Hanan. See also a discussion of this same issue in Kelson, *The Private Member of Parliament*, 81.

⁶⁹ NZPD, Vol. 304, 11 August 1954, 1096. Ralph Hanan

mandate policy are that...once elected the party will do more or less what it promised to do when in government.⁷⁰

Richard Prebble, a former cabinet minister and former leader of the Act party, once expressed his doubts about “whether the free vote system can be justified” at all. Deciding in the negative, Prebble asserted that “we [i.e. parliamentarians] have no mandate to make a decision” on conscience issues because such matters were not included in party manifestos which formed the basis of their election in the first place. MPs should take seriously the contract between electors and electees that is at the heart of parliamentary democracy and refer matters that affect everyone in personal ways such as is common with conscience issues to the people via referenda or some other mechanism. Rather than considering that citizens “are not competent to decide” conscience issues, MPs should grant them the respect to allow them to be heard because otherwise conscience issues such as abortion will recur until members “face up to the issue that the real reason we have failed is because we, as a Parliament, have decided that members of the public are not competent to decide in this area.”⁷¹

On the face of it, these considerations rule out parties acting independently from an electoral mandate on all but the most serious of issues.⁷² Indeed, there is evidence that what parties promise in their manifestos and equivalent documents before an election is strongly related to what governments do after the election.⁷³ If this is indeed so, electors can vote for parties with a reasonable degree of confidence that, if their party is elected, they will get what they vote for.

It is clear that not all issues that governments deal with are or can be contained within manifestos, however. Enacting a legislative programme that departs from, or is not included in, the election manifesto raises constitutional questions about a government’s mandate. When departures or additions from stated intentions are required, a mechanism must therefore be invoked to facilitate this in a constitutional manner. Notwithstanding that referenda, opinion polling and constituent feedback have been frequently suggested to seek a mandate for such action mid-term,⁷⁴ and conscience voting may also be seen as a way for a party to deal with the issue without abrogating their mandate, the traditional response to the need for freedom in policy making has been Burkean in nature – that governments act in the capacity of trustees of the people’s interests and use their expertise to not only respond to issues as they arise but also effect change as they see fit. Voters, on this view, elect not so much a vehicle for delivering a pre-announced programme but an entity that it may trust to deliver outcomes in line with their own values. The link between election pledges and programmatic action may still be evident in

⁷⁰ Budge et al., *Mapping Policy Preferences*, 8-9.

⁷¹ *NZPD*, Vol. 417, 31 May 1978, 4980-2. Contraception, Sterilisation, and Abortion Amendment Bill

⁷² This was a view Muldoon asserted he ascribed to. A 1961 proposal that New Zealand join the International Monetary Fund and the World Bank was not in the National party election manifesto. Muldoon recalled being “not at all happy as I felt that we should have had it in our election policy.” In a reflection of the freedom he had as a National party member and his own self-confidence, he announced to the National caucus that he would vote against them, though later he changed his mind. Muldoon, *The Rise and Fall of a Young Turk*, 53-55. It has been contended however, that Muldoon built a ‘fortress Cabinet’ that was insulated from both caucus and public opinion – see Chapman, “Political Culture.”

⁷³ Klingemann, Hofferbert, and Budge, *Parties, Policies, and Democracy*, Rallings, “Ideology, Strategy and Party Change.” New Zealand studies have been conducted by Matthew Gibbons, “Election Programmes in New Zealand Politics, 1911-1996” (University of Waikato, 2000), N. McCluskey, “The Enactment of Party Pledges in New Zealand” (paper presented at the New Zealand Political Studies Association, Wellington, 2008).

⁷⁴ For example *NZPD*, Vol. 622, 2 December 2004, 17404-5, Wayne Mapp (referenda); *NZPD*, Vol. 466, 23 October 1985, 7599, Ann Hercus (polling); *NZPD*, Vol. 345, 22 October 1965, Sale of Liquor Amendment Bill, 3764-5, Norman Kirk and 3772, Ralph Hanan

these outcomes – indeed, it would be surprising if it did not – but a trustee relationship between party and voter frees the former from a narrow view of mandate.

The problem with this latter approach is that the trustee argument only applies when the government is acting as a party. The withdrawal of parties from the legislative decision-making process does not release parliament from the need to maintain a legislative mandate, it simply transfers it from the party to the individual member. Abundant evidence – discussed elsewhere in this study – exists that electors vote for parties, not individuals, so in some respects it is harder for MPs as individuals to obtain such a mandate. The party-based nature of voting during general elections means that the legislative mandate attaches to the party, not the MP, so individual members, during conscience votes, have even less mandate than do parties on issues that were not discussed during the general election. Electors vote for parties and their manifestos, not individual MPs with personal agendas.⁷⁵ A question may therefore be asked as to whether a government is, in fact, abdicating its responsibility in making an issue a conscience vote, especially in the modern era in which parties are elected *qua* parties.

Given these concerns, it is paradoxical that the very effect of deviating from a policy manifesto is to increase the likelihood a conscience vote will be required. As parties tacitly recognise they have no mandate to act in such circumstances, conscience voting may be used to distance themselves from any ensuing controversy. Conversely, a pre-announced policy seems to provide a reason for the party whip to be applied, even on issues that are traditionally controversial.⁷⁶ Thus, paradoxically, although conscience voting itself is questionable in its constitutionality, it increases in likelihood as the constitutionality of extra-manifesto government action comes into question.

In addition, bills that are introduced by private members and which are given conscience votes are doubly questionable in this context, as a mandate has been granted to neither to introduction of the bill nor the conscience vote it receives.

Overall, therefore, the legislative mandate remains doubtful at best when parties withdraw from the issue and give each individual member a conscience vote. Far from conscience voting providing a solution to the need for governments to maintain an electoral mandate, it may be very much part of the problem.

Deciding a Conscience Vote Will Be Granted

Historically, the practice of conscience voting has not differed significantly between the two major parties in New Zealand's parliament, although it is generally accepted that Labour's discipline has been more formalised than the National party's.⁷⁷ Milne believed that while the discipline of the Labour Party in the first half of the twentieth century was somewhat stricter than that of the National party, this did not make their voting patterns significantly divergent. Chapman also believed that National's cohesion was due to a loyalty to caucus that was "less formally cemented but almost always followed."⁷⁸

Originally, Labour's strict party cohesion was due less to the need for a disciplinary mechanism than the concept that MPs representing the labour movement should submit to a collective opinion.⁷⁹ Labour's

⁷⁵ NZPD, Vol. 408, 10 December 1976, 4744. Licensing Trusts Amendment Bill, Robert Tizard

⁷⁶ NZPD, Vol. 350, 25 May 1967, 861. Sale of Liquor Poll Act, Norman Kirk

⁷⁷ Jackson, *The Dilemma of Parliament*, 54, Milne, *Political Parties in New Zealand*.

⁷⁸ Chapman, "Political Culture," 21.

⁷⁹ Jackson, *The Dilemma of Parliament*, 46.

trade-union origins held solidarity and loyalty as higher principles than freedom, for internal unity was their strength,⁸⁰ although Milne also suggests that Labour's discipline was, in practice, only slightly tighter than National's. Kelson believed that another contributing factor was the parliamentary wing's forming before the wider party was established. The extra-parliamentary party became an extension of a tight-knit band of MPs who worked closely together, being able to agree on policy issues between themselves.⁸¹ Discipline as such was largely unnecessary in the early years, and early literature even warned against the party becoming over-disciplined:

...we do not favour the shackling of Labor members to the extent that their manhood and independence of action are lost, for if a Labour member were to become a mere registering machine, and unable to function freely as a human being, he would be of little use to Labor. The right principle to adopt is to confine the energies of Labor members within the limits mentioned [party arena; platform, organisation, and propaganda], allowing them the same right of personal initiative, and opinion, and action that the rank and file possess, so long as these are consistent with their pledges and duties to the Party.⁸²

In general, the Labour party has been more prepared to adopt formal party policies on conscience issues than has the National party. The party, for example, adopted a policy on abolishing capital punishment relatively early in the twentieth century, has worked towards the legalisation of homosexuality since the 1970s, and has a party policy on further relaxation of Easter trading laws. The National party, on the other hand, has had no formal party policy on most conscience issues. It did, however, adopt a policy on the reintroduction of capital punishment in their 1949 election manifesto, although, even then, their manifesto also contained a commitment to grant their members a conscience vote on the issue.

Labour's solidarity has been displayed numerous times even during conscience votes, such as when they voted en bloc against clause 14 of the Transport Amendment Bill (No. 4) (1983), which involved the issue of random breath testing. This instance was derisively seized upon by members of the National party as proof that 'Rule 242' in Labour's constitution, far from merely ensuring caucus decisions were adhered to by all members, in effect "forbids any Labour member to exercise a sincere conscience vote unless it is a collective conscience vote."⁸³ This seemed all the more likely to National members because the then Leader of the Opposition, David Lange, had, on an earlier occasion and on another matter, made a statement that Labour would "take a consistent stand but it will be, in effect, a collective conscience vote."⁸⁴ This statement appeared to National members as an admission that Labour members were not free to vote as they chose but were bound by a 'party conscience,' nullifying the benefits of free voting.

One Labour MP commented in 1950 that "although the National Party might be the only party with a free vote, yet he was proud to belong to a party that had a conscience."⁸⁵ This statement was widely interpreted to mean that Labour members didn't need to exercise a free vote because the party itself

⁸⁰ Lipson, *The Politics of Equality*, 249-50.

⁸¹ Kelson, *The Private Member of Parliament*, 27.

⁸² "Labor Members and Their Status," *The Maoriland Worker*, 11 August 1920, 2.

⁸³ *NZPD*, Vol. 454, 27 October 1983, 3449-3452

⁸⁴ *NZPD*, Vol. 454, 27 October 1983, 3451. The statement was made in an Alcoholic Liquor Advisory Council newsletter.

⁸⁵ "But no free vote" teased a National member in response. *NZPD*, Vol. 293, 17 November 1950, 4339. Capital Punishment Bill, Warren Freer, Patrick Webb

had a conscience they could all partake of collectively.⁸⁶ One MP, upon being challenged to define the so-called 'collective conscience vote' during the same bill stated that "The opinion of members was canvassed systematically, and on the basis of that free decision when members were told they were absolutely free, they arrived at a collective unanimity." Government MPs retorted that this was merely "brainwashing", to which the Labour member replied that achieving unanimity

is a fairly normal position when Opposition members deliberate on such matters. The truth is that, freely, voluntarily, and with no tie whatsoever, we arrived informally at a collective opinion on this procedure. Therefore, our leader rightly said that we had collectively, on the basis of our own free consciences, arrived at a position that would be consistent. ... Opposition members have a common purpose. They are responsible, and they know that when the public interest is at stake and a conscience matter is raised on which they all see eye to eye, their leader will have no difficulty in intimating the position on which they all freely stand.⁸⁷

Not to be outdone, a Government MP replied that it "was a sad day for the conscience vote in Parliament. ... [Labour actions were] a good example of Pentecost in reverse: Opposition members went into their caucus speaking with many tongues and came out speaking with one!"⁸⁸

The suggestion that there is a party or collective conscience implies that there is a higher principle in policy and decision-making than the individual member's opinion. In Labour's case as mentioned above, this principle was one of solidarity. Higher principles are not confined to the Labour party, however. The Act party, for example, presents itself as a 'party of principle', their formative philosophy being individual liberty and personal responsibility. Act has claimed that this manifests in the freedom caucus members have to express their personal views both in the caucus room and the voting lobbies.⁸⁹ The Green party presents itself similarly, promoting the principle of sustainability through both their policies and conduct, being prepared, for example, to stay out of government rather than compromise this principle.

Some other parties have denied that a collective conscience operates within their rank, preferring instead to emphasise their complete freedom from restraint.⁹⁰ The concept is also sometimes used as a political tool to taunt opposing parties with, as was demonstrated by a former NZ First MP who accused the party always having had a collective conscience – "it was called Winston Peters".⁹¹

Ralph Hanan, the National minister previously quoted, had an almost celestial view of his own party's position on conscience votes: "...under the National Party's constitution a Member is the sole judge of which way he votes on an issue not affecting the declared policy of the party. If he embarrasses his own team then, of course, he is accountable to the people who elected him. It is not generally understood by the people how truly democratic the National Party constitution is." The "splendid democratic National Party constitution" was a stark contrast to the sordid practice of Labour members being "rigidly tied to

⁸⁶ Milne, *Political Parties in New Zealand*, 137-8.

⁸⁷ *NZPD*, Vol. 451, 29 July 1983, 947-8

⁸⁸ *NZPD*, Vol. 454, 2 November 1983, 3580-1. Dail Jones

⁸⁹ "ACT MPs are all strong minded individualists with opinions of their own. I encourage that. I promote lively debate and the free flow of ideas around our caucus. That makes it exciting and intellectually stimulating. ... Plus each of our MPs has a free vote. The only votes they are obligated to provide are on confidence and supply, because that was our agreement with National. Apart from that, we discuss as a caucus the way we'll vote. And no MP is required to vote the way of other ACT MPs. That's what having a free vote means." Hide, "Act Is Delivering." John Boscowen, Act MP, has reiterated this theme: "I consider David Garrett and myself to be very lucky. We have come into Parliament and we represent a very small party, but it is a party that does not whip its members. ... We have often had a split vote, as we did this evening. ... I am very grateful for Rodney [Hide], because he has to go to the media and explain why the ACT Party has a vote. He is prepared to do that so that I have the ability and the right to stand up and state the comments I am making this evening." *NZPD*, Vol. 662, 28 April 2010, 10585

⁹⁰ For example, see *NZPD*, Vol. 479, 7 April 1987, 8373-4. Gaming and Lotteries Amendment Bill, Jack Elder

⁹¹ *NZPD*, Vol. 579, 27 July 1999, 18608. Sale of Liquor Amendment Bill (No.2), Rana Waitai

the party machine” and waging “unceasing warfare [for the mere purpose of] striving at all times to get the Government out”. But if National members were permitted to vote independently from their party, there is little evidence that they used it. From 1950 to 1972, National members crossed the floor over just four bills – only slightly more frequently than Labour members.⁹² During the late 1970s and early 1980s, however, National party members crossing the floor included Ruth Richardson, Derek Quigley, Dail Jones, Mike Minogue and Marilyn Waring, the combined effect of which was to force a snap general election in 1984, an election the National party lost. In later decades, National MPs such as Michael Laws and Winston Peters also crossed the floor. Overall, however, these occasions have been exceptional, and National MPs have continued to assert the greater personal freedom in their party. Retiring National member Katherine Rich asserted that “those who defend a members' right to vote according to his or her conscience would be those to the right [of the political spectrum]”.⁹³

In recent years, the procedure for actually deciding a conscience vote will be granted has not differed significantly between the major parties. Both National party and Labour party representatives have stated that free and open caucus discussion on issues sometimes results in disagreements, the outcome of which may be the granting of a conscience vote. On occasion, however, requests for the removal of the party whip are denied over matters the party has a policy on.

In small parties, consensus is much easier to achieve, so conscience votes are required far less frequently. Former Act MP Stephen Franks has stated that the relatively small size of the Act party had always made it easy to either find agreement or agree to disagree in an informal and amicable manner.⁹⁴ And former Green co-leader Jeanette Fitzsimons speculated on the increasing difficulty and greater formalisation of party procedure that would be required if and when the Green party grew in parliamentary representation. Up to now, Green MPs have managed to achieve a very high level of cohesion on even contentious issues because of their strong social policy platform, few MPs, and their status on the opposition benches.⁹⁵

In 2007, at a time when they had two parliamentarians, United Future decided to promote the greater use of referenda in deciding conscience issues. This was in response to concern that:

... bills that were voted on largely as a conscience issue and were of high public interest were often passed by tiny majorities. ... Although we do not support the purists' view of binding citizens initiated referenda, we do believe that a strong case can be made for this Parliament, if it believes that it truly represents the New Zealand public, to allow for binding referenda on issues that receive questionable support in Parliament. We have set a 60 percent benchmark to protect the integrity of the process, so that decisions can be binding only when voter turnout and voter support are equally clear. ... it is fitting, in a democratic society, that those privileged to enter the House of Representatives should see their role as one where they promote the ability of citizens to better engage in the democratic process, where practicable. [This initiative] ... is something we are now going to employ with all bills that are voted on by way of conscience. It is our party policy.⁹⁶

From 1996 to 2008, the NZ First party also adopted a policy of submitting contentious conscience issues to referenda. Reflecting their admiration of the Swiss system of governance, the party frequently encouraged parliament to initiate a binding referendum on constitutional issues such as electoral reform

⁹² Cottrell, "Parliament and Conscience", 23-32.

⁹³ Claire Trevett, "Career Spent Taking the Moral High Road," *NZ Herald*, 24 September 2008, A16.

⁹⁴ Stephen Franks, Personal interview, 11 August 2007

⁹⁵ Jeanette Fitzsimons, Personal interview, 30 April 2009

⁹⁶ *NZPD*, Vol. 637, 14 March 2007, 8005-6. Crimes (Substituted Section 59) Amendment Bill, Judy Turner

and issues such as civil unions that changed the values of society.⁹⁷ In part, NZ First's policy can be seen as a reflection of their own propensity to split on a range of issues – they not infrequently handled diversity of opinion within their own party through the use of split-party votes and had a relatively liberal attitude towards conscience voting.⁹⁸ Deciding contentious matters with a referendum releases both the party and its MPs from taking full responsibility for their policy, although this is not to suggest this was NZ First's motivation for their policy.⁹⁹

The delegate model of representation reflected in the referenda policies of NZ First and United Future can be contrasted with the trustee model of those who believe MPs have been elected to make decisions using their own integrity. In response to the outline of United Future's policy in the quote above, the Green party explained why they would not be supporting any amendment to conduct a referenda to decide contentious issues:

We believe that trying to put in a clause asking for a referendum as part of a bill undermines the parliamentary process and the sovereignty of Parliament. Members have a job to do. Whatever political background we come from and whatever party we are from, we were elected to represent our party and to represent the voters who voted for us at the last election. At times that can be difficult. On really intense issues such as this, it can get very difficult. But this is the place where we work these things out, and we have to have the courage of our convictions on these difficult issues; it does not matter where we are coming from on them. It is the job of members of Parliament to show leadership, not to run away from difficult issues...¹⁰⁰

The Green party position considers conscience voting as part of a suite of mechanisms parliament possesses to make good decisions on behalf of those who are disenfranchised. Other mechanisms include the select committee process, public submissions, lobbying, research staff, expert witnesses, the advice of government departments and debate in the House.

The people responsible for actually making the decision to grant a conscience vote varies little from party to party and from issue to issue. In most cases it is the party leaders and whips who make the call, although it may equally, on some issues, be a cabinet minister, cabinet generally, a select committee chair, the caucus as a whole, a senior party member such as the party president, or a combination of them. However, the decision is often made for the party by historical precedent, expectation or public opinion.

The frequency with which conscience bills are introduced shows only a moderate difference between the two major parties. National governments have introduced government conscience bills at an average of 1.2 per year since 1938, and for Labour governments the comparable rate is 0.9 per year. Private members conscience bills are introduced at twice the rate during Labour government, however. Some indication of why this difference might exist rests in the type of bills introduced during each party's tenure on the government benches (Tables 8.3 and 8.4).

⁹⁷ *NZPD*, Vol. 635, 8 November 2006, 6330, Brian Donnelly. *NZPD*, Vol. 622, 2 December 2004, 17392-3, Civil Union Bill, Dail Jones. *NZPD*, Vol. 632, 24 June 2006, 13955, Relationships (Statutory References) Bill

⁹⁸ For example Craig McNair's comments in *NZPD*, Vol. 612, 15 October 2003, 9227. Smoke-Free Environments Amendment Bill

⁹⁹ On occasion, a policy of submitting contentious issues to the electorate in national referenda has been adopted by the larger parties also. See *NZPD*, Vol. 345, 22 October 1965, 3764-5. Sale of Liquor Amendment Bill, Norman Kirk

¹⁰⁰ *NZPD*, Vol. 637, 14 March 2007, 8006-7. Sue Bradford, Crimes (Substituted Section 59) Amendment Bill

Table 8.2: Conscience Bills Introduced by Government in Power, 1938-2010

Government	Years in power	Gov't Bills		Private Members*		Total Bills	
		Number	Average per year	Number	Average per year	Number	Average per year
National	41	51	1.2	20	0.5	71	1.7
Labour	31	27	0.9	31	1.0	58	1.9
Total	72	78	1.1	51	0.7	129	1.8

Note: Table only includes data from the advent of two party politics in 1938 until 2010. Since 1996, the government has been defined as which major party led the coalition.

* Includes local bills.

A much greater proportion of alcohol conscience bills have been introduced during National governments, although National occupied the government benches during the principal liquor liberalising period of the 1960s. A greater number and proportion of health and safety and abortion conscience bills have also been introduced during National's tenure in government. Conversely, Labour governments have seen more shop trading hours and crime and punishment legislation introduced, along with all of the conscience legislation on homosexuality and prostitution. Overall, although some difference does exist between the two major parties in both frequency and type of conscience bills introduced, the differences are not so stark as to represent a very different approach to either conscience voting or governance. The differences that do exist can be at least partially explained by the decades each respective party dominated the government benches coinciding with the particular issues of the day, and by the basic policy consensus between the two parties over this period leading to little variation in governance approaches.

Table 8.3: Topic of Conscience Voting Bills by Government in Power When Introduced, 1938-2010

Topic	Gov't in Power When Bill Introduced					
	Number of Bills Introduced			Percent of Bills Introduced		
	Labour	National	Total	Labour	National	Total
Alcohol	12	26	38	21%	37%	29%
Gambling	7	7	14	12%	10%	11%
Marriage/Family/Children	6	7	13	10%	10%	10%
Health and Safety	4	8	12	7%	11%	9%
Shop Trading Hours	6	4	10	10%	6%	8%
Crime and Punishment	5	3	8	9%	4%	6%
Abortion	2	5	7	3%	7%	5%
Homosexuality	4		4	7%	0%	3%
Business/Employment	2	1	3	3%	1%	2%
Rights (Human and Animal)	2	1	3	3%	1%	2%
Constitutional Reform	1	1	2	2%	1%	2%
Electoral Reform		2	2	0%	3%	2%
Euthanasia	1	1	2	2%	1%	2%
Governance and Infrastructure		2	2	0%	3%	2%
Miscellaneous	2		2	3%	0%	2%
Prostitution	2		2	3%	0%	2%
Treaty of Waitangi Settlement	2		2	3%	0%	2%
Censorship		1	1	0%	1%	1%
Drugs		1	1	0%	1%	1%
Religious Instruction		1	1	0%	1%	1%
Total	58	71	129	100%	100%	100%

Notes: Table only includes data from the advent of two party politics in 1938 until 2010. Since 1996, the government has been defined as which major party led the coalition.
Table includes both government and private members bills.

Conclusion

Although parties find conscience voting useful in certain circumstances, there are dangers for parties in its use, and constitutional questions remain over the mandate of individual MPs to make decisions when electors voted for them as members of a party. Nevertheless, the contentiousness of conscience issues can lead parties to prefer, not unnaturally, to distance themselves from the debate, or at least the outcome. The view that "conscience votes are votes on issues that a party does not wish to be identified too closely with"¹⁰¹ stems from a recognition that, first, the integrity of the party is paramount¹⁰² and, second, that the conscience voting mechanism enables a party to deal with a legislative subject without taking responsibility for the outcome.¹⁰³

¹⁰¹ Stephen Franks, Personal interview, 11 August 2007

¹⁰² Jackson, "Caucus - the Anti-Parliament System?."

¹⁰³ Cowley, "Unbridled Passions?."

Table 8.4: Topic of Conscience Voting Bills by Type of Bill by Government in Power When Introduced, 1938-2010

Topic	Type of Bill						Total
	Government			Private Members			
	Labour	National	Total	Labour	National	Total	
Alcohol	7	21	28	5	5	10	38
Gambling	5	6	11	2	1	3	14
Marriage/Family/Children	2	5	7	4	2	6	13
Health and Safety	1	7	8	3	1	4	12
Shop Trading Hours	2		2	4	4	8	10
Crime and Punishment	2	3	5	3		3	8
Abortion	1	3	4	1	2	3	7
Homosexuality	2		2	2		2	4
Business/Employment			0	2	1	3	3
Rights (Human and Animal)	1	1	2	1		1	3
Constitutional Reform		1	1	1		1	2
Electoral Reform		2	2			0	2
Euthanasia			0	1	1	2	2
Governance and Infrastructure			0		2	2	2
Miscellaneous	2		2			0	2
Prostitution			0	2		2	2
Treaty of Waitangi Settlement	2		2			0	2
Censorship		1	1			0	1
Drugs			0		1	1	1
Religious Instruction		1	1			0	1
Total	27	51	78	31	20	51	129

Notes: Table only includes data from the advent of two party politics in 1938 until 2010. Since 1996, the government has been defined as which major party led the coalition.

The anomalous circumstances created by the issues discussed in this chapter suggest that there may be a case for initiating a third type of legislation, a 'Conscience Bill,' which would reflect government policy without fully being a government bill. In addition to government bills and private members bills, the conscience bill could be invoked by either a government or a private member who wishes to introduce legislation on a matter that is either not government policy or is so contentious as to not be owned by the government. The conscience bill would explicitly flag to MPs, interest groups, the media and the public that the bill is being considered by parliament as a whole without considerations of party, and is therefore not owned by any party as such. Some of the effects of this additional classification may be to:

- Remove the paradox of a government introducing a bill which they fail to fully own;
- Lower the expectation that defeat on such a conscience bill represents a lack of confidence of parliament in the government. Because the bill would be owned by parliament rather than by a party, 'defeat' would not be an issue for the government, and questions of confidence would not arise;
- Avoid the failure rate of private members bills on otherwise worthwhile matters. Although the 'conscience bill' would be similar to a private members bill, the expectation that parliament would own such bills would mean that parties would not vote as parties or en bloc;

- Eliminate, or lessen, the politicisation of parliamentary debates and votes which, on occasion, work to the detriment of otherwise good policy proposals;
- Legitimise legislative decisions through parliament as a whole owning the decision;
- Reduce the likelihood that subsequent governments will reverse the legislative outcome;
- Improve the respectability of, and interest of the public in, parliamentary processes.

Some restrictions on 'conscience bills' would need to be imposed under such a proposal, such as it not being permitted to be inconsistent with an existing or proposed government policy program, and there would have to be a mechanism to decide whether an appropriation would be needed and/or granted. Provided such stipulations were met, however, a 'conscience bill', as opposed to a government or a private members bill, may assist good legislative outcomes in situations where one of the parties is tempted or is forced to act in a party political manner.

CHAPTER NINE: CONSCIENCE VOTING AND MPS

Prior to the actual decision to remove the whip, party considerations are dominant, but once the decision has been made to conduct a conscience vote the role of the individual MP assumes greater prominence. This chapter discusses the issues and tensions facing MPs once their voting decision becomes their own.

The Embattled MP

The centrality of the individual MP during conscience votes brings with it both challenges and risks, and the exercise of a conscience vote can be occupationally dangerous for the member. Although parties can, to a certain extent, shift political danger from themselves to MPs by granting a conscience vote, MPs have no such recourse. The buck, as it were, stops with the member during conscience votes, whether they like it or not. Given that conscience issues are not uncommonly extremely contentious, it is inevitable that MPs will lose the support of some of their constituents no matter what their voting decision.¹

The legacy of high party cohesion is that during conscience votes the MP is thrust, willingly or otherwise, into a role to which he or she is largely unaccustomed. The system of tight caucusing seen in New Zealand for many decades has traditionally been so predominant that, as Hollis, a commentator on the British House of Commons, once described it, "it would really be simpler and more economical to keep a flock of tame sheep and from time to time drive them through the division lobbies in the appropriate numbers."² It has even been described as anti-parliamentarian because politicians have "lost the ability to cope effectively with free votes and now positively dislike such experiences."³ From a loyal party follower, the member, during conscience votes, becomes a decision-maker; from a marketer of party policy, s/he becomes an opinion-former; after being conditioned to think collectively, the member is suddenly expected to think as an individual; and from enjoying the safety of the party they are part of, they must now be accountable for their own decisions. The obedient sheep that Hollis envisaged party members to usually be must now adopt a measure of independence and act with initiative.⁴ To create further difficulty, members must become servants to their party once again immediately after the conscience vote is over.

Compounding the problem for members is the reality that conscience votes often involve issues for which opinion, rather than fact, is decisive – the rightness of a policy position on most conscience issues is a matter of opinion rather than technical correctness.⁵ Further, the responsibility of MPs to make informed decisions is amplified because their decision-making affects not only their own lives but also the lives, behaviour, and sensibilities of many others in, often, a very personal way. Further, opinions on conscience issues may be held by anyone and these opinions are often very strongly held – there is, therefore, no position an MP can adopt to avoid controversy.

¹ NZPD, Vol. 495, 6 December 1988, 8568. Racing Amendment Bill, Robin Gray

² Hollis, *Can Parliament Survive?*, 64.

³ Jackson, "Caucus - the Anti-Parliament System?," 163.

⁴ Hollis, *Can Parliament Survive?*, 64.

⁵ NZPD, Vol. 293, 17 November 1950, 4364. Edgar Neale

The complexity of the issues and the legislation involved can be overwhelming. It is not unusual for members to be confused about which lobby to vote in,⁶ and it is not unheard of for members to even vote contrary to their intentions. Bob Tizard, former Labour MP and cabinet minister, was fond of relating a story, previously mentioned, about a member who, during a liquor debate in 1960, “voted to have dancing in public bars, then within half an hour he voted to exclude women from public bars.”⁷ Tizard extracted a maxim from this and other examples: “...no Whips, no instructions, no sense.”⁸

The exercise of conscience is therefore a double-edged sword – members are given the ability to exercise their personal conscience over a number of important issues, but only when a high probability of offence to many is likely. Thus, like conscience voting itself, personal conscience subsists uneasily within the parliamentary environment and is usually only seen on those anomalous occasions when it is in the interests of parties to permit it.⁹ These tensions not infrequently create uncertainty and confusion for members, and under such stress MPs not unnaturally look to a range of sources for guidance.¹⁰ MPs, like everyone else, inevitably imbibe the general opinions of society from a number of sources, and these in themselves are influential in decision making. More specific sources of advice may also be sought out as particular issues arise. These sources, which can be classified as 1) Political, 2) Technical, and 3) Personal, are discussed below.

Political

The opinion of constituents

MPs' sensitivity to their constituents' opinions may be influenced by their view of their responsibilities towards those who voted for them, the size of their electoral majority and their perceived margin of safety, their constituents' influence, wealth or access to the media, the importance of their constituents to their party's wider constituent base, the presence of an anticipated electoral challenger, and whether or not it is election year.

Most of the Summer Time Bills in the first half of the twentieth century were conscience votes solely because MPs who represented rural electorates were feeling strong pressure from their constituents to vote against it. At times, constituents may even expect their representative to put aside their own conscience and simply vote according to the wishes of those they represent. During one of the abortion

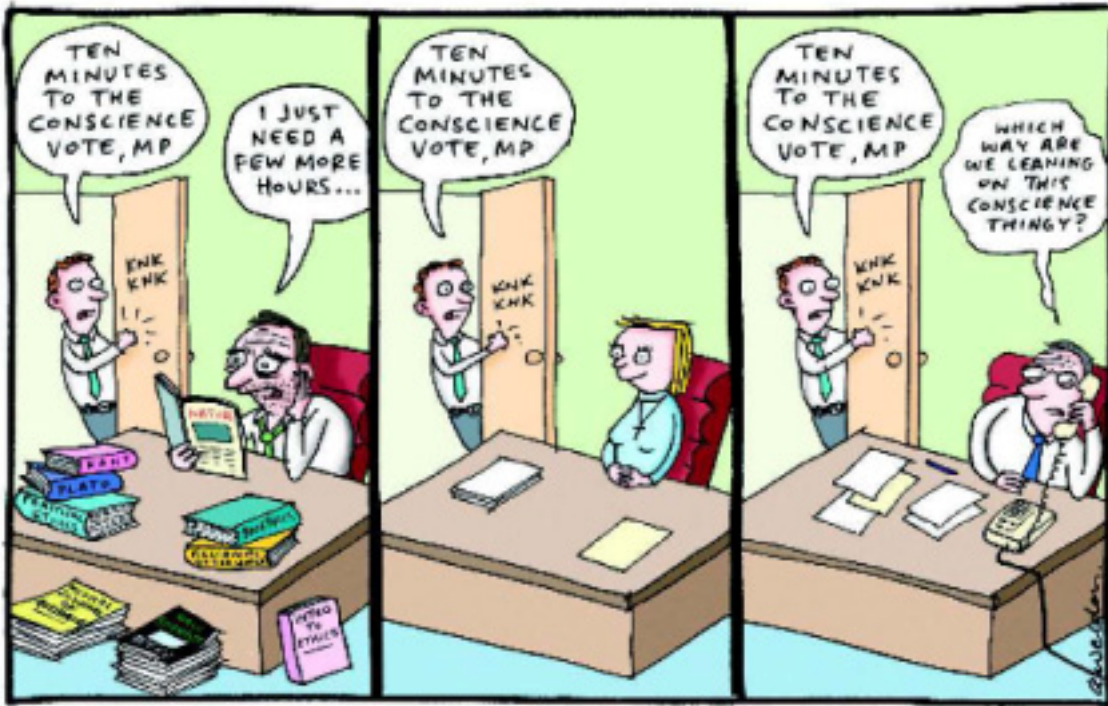
⁶ NZPD, Vol. 532, 8 December 1992, 13000, Graham Thorne. NZPD, Vol. 537, 3 August 1993, 17175, Electoral Reform Bill, Lockwood Smith. NZPD, Vol. 447, 8 October 1982, 3911, Sale of Liquor Amendment Bill (No.2), Norman Jones

⁷ NZPD, Vol. 498, 30 May 1989, 10964, Sale of Liquor Bill. See also NZPD, Vol. 436, 9 December 1980, 5777, Sale of Liquor Amendment Bill

⁸ NZPD, Vol. 436, 9 December 1980, 5777. Sale of Liquor Amendment Bill

⁹ Undismayed, one MP was confident the individualism politicians brought with them into the House would re-emerge from under the cloak of party: "A member may stand for a party, stand on a party platform, espouse a party manifesto, and be elected on a party ticket, but as individuals all members bring with them their individualism. ... It is entirely that parameter, that boundary of individualism, that will determine how each of us views the matter before the House and how each of us will cast his or her vote. The nature of the [conscience] Bill forces us to square up as individuals..." NZPD, Vol. 466, 16 October 1985, 7437, Homosexual Law Reform Bill, William Austin

¹⁰ Cottrell reported in 1974 that NZ MPs of that era were also unsure of themselves when freed from the strictures, but also the safety, of the party whip. Although no empirical data exists, this uncertainty is likely to be greater in the 21st century, as social problems are now likely to be more frequent and complex. Cottrell, "Parliament and Conscience", 44.



Source: *The Age*¹¹

debates, one MP received a telegram from a constituent which read: "Re Dr Wall's amendment Bill, consult your electorate and not your conscience."¹² Problems do exist in representing constituent opinion, however, and these are well explained by one MP for whom acting upon the view of one's constituents was not only nonsensical but dangerous.

...it is spurious to suggest that the conscience of a few people in the electorate is the conscience of members of Parliament or the conscience of the country. If a member consults his or her electorate, how many people does he or she consult? Does one consult everybody? If one consults a majority of all those electors, is the member's conscience being exercised or that of the electorate? What about the conscience of the minority who do not agree with the majority? In the Wanganui example we had the incredible position in which about 500 voters were polled from at least 22,000 or 23,000 registered voters. From that number the majority – say, 300, or 1.4 percent of those people registered on the roll – indicated support or opposition to the amendments. Will the conscience of a member of Parliament be governed by 1.4 percent of the electorate? One has to ask: "What about the other 98.6 percent of the electorate? Does their view or their conscience not come into it?"¹³

Representing the opinion of constituents is rarely a simply matter: "We say we will have a vote of conscience on behalf of our electorates, but how can we represent the divided conscience of an electorate? This is absolute arrogance, and, of course, it cannot be done. We can only stand by our prejudices, or our principles, and leave our electors to decide which is the most important and the most relevant."¹⁴ Another MP described the problem this way: "Every one of us will have received a pile of letters. On the left hand we will have a pile of letters telling us to vote for this legislation, and on the other hand we will have a pile of letters telling us not to. One of the things I have learnt in 5 years in this House is that the size of the pile of letters does not necessarily reflect the will of the electorate."¹⁵ Another MP found a way to reconcile constituent opinion and his own conscience for himself: "Each of

¹¹ "Biotech Leaders Can Still Honour Ethics," *The Age*, 3 April 2007.

¹² *NZPD*, Vol. 396, 23 April 1975, 826. Hospitals Amendment Bill, Allen Highet

¹³ *NZPD*, Vol. 537, 27 July 1993, 16943-4. Human Rights Bill, Jim Anderton

¹⁴ *NZPD*, Vol. 397, 29 April 1975, 914. Hospitals Amendment Bill, Mike Moore

¹⁵ *NZPD*, Vol. 579, 20 July 1999, 18347. Sale of Liquor Amendment Bill (No.2), Janet Mackay

us has a responsibility to his electorate, and we have a responsibility to our own consciences. If we do not exercise the latter, then we let down the former.”¹⁶

A tension between the views of different types of constituents was experienced by Ashraf Choudhary, New Zealand’s first Muslim MP. Choudhary felt huge pressure from the Muslim community to oppose the Prostitution Reform Bill (2000). Equal pressure was being exerted by constituents in his city of residence, however, who were urging him to support it. The tension was eventually resolved by his decision to abstain from the vote, in doing so permitting the Bill to become law whilst simultaneously offending both groups of constituents.¹⁷

Despite these problems, there are a plethora of examples of MPs being swayed by the opinion of their constituents. John Key, for example, initially supported the Prostitution Reform Bill (2000) but voted against its third reading because he was visited by some constituents who asked him to vote against it, and he “started to think that in the end, he was a representative of the people.”¹⁸ Phil Goff once stated that he felt “the term ‘conscience vote’ is something of a misnomer, because I believe that I also have a responsibility to the people who elected me to Parliament to represent their viewpoints.”¹⁹

Perception of their role

How a member views their role as a parliamentarian, especially with respect to their relationship with their party and their electorate, will unconsciously influence them as they make their voting decision. Burke’s model of the role of representatives illustrates the two basic positions.²⁰ First, representatives may act as *delegates*, registering the preference of their constituents on matters where decisions are required and, where possible, deferring to the will of the majority. This paradigm rests upon Locke’s notion of government being by the consent of the governed. Adherents of this view commonly look favourably on referendums. Wayne Mapp, during the Civil Union Bill (2004), for example, asked:

Who should decide? ... Should it be the 120 members of Parliament, or should it be the people of New Zealand? I believe that, when put like that, the answer is clear: it should be the people of New Zealand. Our democracy is evolving. In the early 1990s there was the initiative for citizens initiated referenda. ... It is now time to move this issue forward. The people of New Zealand ought to have the right to decide whether there should be civil unions, whether brothels should be legalised, whether the drinking age should be 18 or 20, and whether they want casinos in their communities. Those are things about which people can use their common-sense and life experience to make the decisions. They are questions that are readily capable of being put forward as referenda. ... Many MPs will argue that we are here to exercise our judgment, not merely to act as delegates. On most issues, that is correct. But there are particular issues—and conscience issues more than any others—that generate huge interest in the community. ... The

¹⁶ *NZPD*, Vol. 397, 24 April 1975, 851. Hospitals Amendment Bill, Venn Young

¹⁷ Another source is adamant, however, that Choudhary’s party leader, a supporter of the Bill, had played a large role in encouraging him to abstain because she knew it would ultimately advantage her own position. Jonathan Hunt, Personal interview, 3 September 2009

¹⁸ “I’m More Liberal Than I Look,” *NZ Herald*, 26 July 2008, B5.

¹⁹ *NZPD*, Vol. 579, 20 July 1999, 18339. Sale of Liquor Amendment Bill (No.2)

²⁰ Burke outlined these positions in his Address to the Electors of Bristol in 1774, and has been widely quoted on the subject ever since. Although this is not specifically a thesis on the relationship between MPs and constituents, it is worth quoting Michael Cullen who was responding to those who quote Burke to support their positions on the subject. Cullen pointed out that Burke lived in “a world in which women did not have the vote, nor did most men. Thus most of what Burke said bears very little relationship to Parliament in the late twentieth century. While I realise that he wrote and spoke very well, he did so in a different language, in a different culture, in a different time, and with very little meaning for New Zealand in the 1990s.” Vol. 537, *NZPD*, Vol. 537, 3 August 1993, 17136-7. Electoral Reform Bill

public is quite capable of making an informed decision, and it is time that this Parliament gave the public that right.²¹

With the dominance of parties in modern politics, few examples of the delegate model are now to be found except during conscience votes.²²

The second, preferred, model is that representatives may act as *trustees*, using their own integrity in all matters, independent of the views of those who voted them into office. Under this view, the member gives some credence to the views of his or her constituents but maintains a focus on what is good for the nation as a whole. Decisions are therefore made by the representative with reference to his or her conscience and judgement with the interests of all in mind. Burke himself believed that the trustee model was the preferred option, and he was by no means alone in his view that the elected owed the voters his judgment as well as his labours. Political philosophers of the time feared that giving too much power to the voters would produce despotic power,²³ would lead to the tyranny of the majority²⁴ and “would substitute government by ignorance and brute numbers for government by discussion.”²⁵ A similar debate over the representative’s role continues today, although many current MPs appear to prefer acting as trustees rather than delegates during conscience votes. Darren Hughes answered Wayne Mapp’s views on referendums, quoted above, by arguing in the following manner:

... imagine if it were said that there ought to be a referendum about giving women the right to vote, when the entire electorate was made up of male voters or when the entire Parliament was made up of men who said: “No, this is far too important. Let’s have a referendum on it.” I suspect that that referendum would have been lost. I do not think that we would have ever freed the slaves by a referendum. I do not think that we would have ever done a whole lot of things around referenda, so Parliament has to make the call on those kinds of decisions and show the leadership that is necessary for minority groups.²⁶

Harry Duynhoven, a Labour MP and cabinet minister, informed the author that “anyone who did not have sufficient background experience or beliefs to actually determine what their own conscience should be had no place in parliament. ... people choose a Member of Parliament (in an electorate) to make the best value judgments they can.”²⁷ Other MPs have expressed a similar attitude.²⁸

Although conscience voting does not formally alter the relationship between constituents and representatives, it tends to encourage the MP to consider their role as a delegate of the people rather than as a trustee of their interests as mediated by their party.²⁹

Political peer pressure

The pressure to impress political colleagues and superiors by matching their behaviour can be strong. The attraction of acting independently is balanced against the benefits of garnering favour by acting in concert with those who are influential in the MP’s political life. Although some conscience votes do split parties into roughly equal portions, many unwhipped divisions result in a voting pattern that appears not dissimilar from what it would have been if whips had been operating. Although some assert that party

²¹ NZPD, Vol. 622, 2 December 2004, 17404-5

²² Pattie, Johnston, and Stuart, “Voting without Party?,” 171.

²³ Walter Bagehot, *The English Constitution* (London: Collins, 1963).

²⁴ John Stuart Mill, *Considerations on Representative Government* (1861).

²⁵ Richard Crossman, “Introduction,” in *The English Constitution* (London: Collins, 1963), 7.

²⁶ NZPD, Vol. 622, 7 December 2004, 17457. Civil Union Bill

²⁷ Harry Duynhoven, Personal communication, 11 July 2005

²⁸ Phil Goff, Personal interview, 10 June 2005, Pansy Wong, Personal communication, 17 June 2005. NZPD, Vol. 466, 9 October 1985, 7261. Homosexual Law Reform Bill, Robert Muldoon

²⁹ Barker and Levine, “The Individual Parliamentary Member and Institutional Change,” 109.

colleagues voting similarly on such issues merely reflects the similarity of their basic philosophic values, others question whether conscience votes are really free at all.³⁰ The latter view rests upon a belief that pressure from political colleagues produces a kind of informal whipping of party colleagues that is as equally powerful as the formal whip. Voting in the opposing lobby from colleagues necessitates the adherence of MPs to very strong principles, and “devoting themselves to urgent public business elsewhere at the time the Bill comes before the House” is sometimes the preferred option.³¹ The reality of this pressure led one astute observer to comment that “the only true exercise of a conscience vote was a secret ballot.”³²

Instances of negative peer pressure are not difficult to find. One observer of the third reading of the Prostitution Reform Bill stated that she witnessed a stream of Labour colleagues approach Harry Duynhoven, both during the debate and in the minutes before the vote itself, with the apparent intention of changing his intended vote. Duynhoven nevertheless resisted this pressure and voted against most of his colleagues.³³ A National MP stated that some Labour MPs had confided in him that “they had been intimidated into voting for the Prostitution Reform Bill by none other than the Prime Minister with the words: ‘If you don’t vote for this, you’re not going to go any further [with your parliamentary career].’”³⁴ Former Labour Minister of Immigration Philip Taito Field complained that his opposition to the liberalisation of laws on homosexuality was very unpopular within his party and provided an incentive for his party to subsequently oust him. After stating his opposition to his party’s policy on the Marriage Bill (2005), he was harangued by a senior colleague, then given the message that “If you think you’re going to be a minister again, think again.”³⁵

Examples of intra-party pressure are also to be found in other countries. Pothier has observed how a series of four capital punishment debates in the Canadian House of Commons during the 1960s and 1970s provoked a factional response that was highly sophisticated in its organisation. These issue-specific parties provided havens for those with strong social views one way or the other and a vehicle for expressing them, but members were not necessarily safe from covert influence from within their political party.³⁶ During the 2006 RU486 abortion debate in Australia a range of techniques were employed by some to influence the outcome – the threat of retribution at electorate pre-selections, the re-insertion of partisanship through pleading the damage to the party, threats to influence the outcome of an election by interest groups bloc voting against a sitting MP who failed to vote the ‘right’ way, and framing the debate in murderous terms.³⁷ In Britain during the debates on gun control after the 1997 election, “Labour MPs received a message on their electronic message pagers telling them to vote aye. This was

³⁰ Members of both major parties stated to the author that the consciences of individual MPs are respected during conscience issues, and that MPs are genuinely free to vote as they please when the whip is removed. Phil Goff, Personal interview, 10 June 2005, Simon Power, Telephone interview, 14 June 2004, Maryan Street, Personal interview, 30 August 2007

³¹ *NZPD*, Vol. 479, 1 April 1987, 8228. Fencing of Swimming Pools Bill, John Terris

³² *NZPD*, Vol. 498, 30 May 1989, 10980. Sale of Liquor Bill, Venn Young. The MP was relating the comments of his mother.

³³ Amanda McGrail, Personal interview, 10 June 2005

³⁴ *NZPD*, Vol. 618, 24 June 2004, 13929-30. Civil Union Bill, Brian Connell

³⁵ Ian Wishart, "Battle Field: The Fight of His Political Career," *Investigate*, August 2007, 24-26.

³⁶ Pothier, "Parties and Free Votes in the Canadian House of Commons."

³⁷ Onselen and Errington, "With Consciences to the Fore."

then followed, after a short interval, by a message which read: 'Correction. Free Vote'. Many Labour MPs took the hint."³⁸

Peer pressure may also come from outside caucus. For example, the views of an electorate committee may be particularly influential where the committee is responsible for candidate selection, or the MP may have made commitments to party members during the candidate selection process that s/he feels they must honour. Even if no promises have been made, the feeling that they are disappointing party members can may be sufficiently powerful to sway the MP's vote.

Political commentator David Farrar has also suggested that the political and inter-personal dynamics between senior party figures may have a bearing on the view of the entire caucus. In an opinion piece about Labour party president Andrew Little, Farrar writes that Little is an active and savvy political operator and, combined with the softer leadership style of Goff, has exerted an unprecedented influence on the party. "It has been a long time since a party president has had such influence on not just the organisation, but on the caucus." Farrar suggests that the significance of this influence was observed during the first reading of Todd McClay's Shop Trading Hours Act 1990 Repeal (Easter Sunday Local Choice) Amendment Bill (2009):

In the past many Labour MPs had voted (especially at first reading) for bills to change the status quo. In 2006 27 Labour MPs voted for a [similar] bill by Steve Chadwick. In 2007 15 Labour MPs voted for a bill by Jacqui Dean. But this week every single Labour MP (except Steve Chadwick) block voted against Todd McClay's bill to allow local authorities to determine policy for local shops. What could turn a traditional conscience vote into an effective party? Surely it is no coincidence that Andrew Little is the party president and chairs the committee that determines list rankings. The majority of Labour MPs are List MPs and their survival depends on keeping Mr Little happy. So not one of them (bar Chadwick who could not survive locally if she voted against) dared to anger the unions and allow the public to have their say on the bill at select committee hearings.³⁹

A former MP has listed a number of reasons for weakness in the face of peer pressure. Cowardice (a buckling at the thought that one may be opposing the majority of one's colleagues), lies (direct pressure applied by other MPs to intimidate and influence), ambition (a desire for promotion and a consequent reluctance to be seen as too 'independent'), loneliness (a natural desire for camaraderie and a distaste for being in the minority or even on one's own), fatigue (a tiring of fighting the majority or the 'establishment'), and procrastination (the thought that opposition now is fruitless and one can effect change more effectively when one is in cabinet) may all contribute at various times to a group mentality and submissive voting behaviour.⁴⁰

Political peer pressure isn't necessarily always negative however. The party leader, minister in charge of the legislation, or even colleagues are sources of information and advice on matters that may be beyond the expertise of the individual member. This perspective was provided in a debate during the Sale of Liquor Amendment Bill (1965). An opposition MP had attempted to needle the government by challenging the way the National party was conducting its free vote: "If in fact Government members were having a free vote, it was surprising the number of times the way that vote was cast seemed to have been influenced by prompting or a hint from the Minister or the Prime Minister." Instead of denying it, the Minister, Ralph Hanan, agreed. He painted this in a positive light by arguing that on the basis of

³⁸ Cowley, "Conscience and Parliament," 181.

³⁹ David Farrar, "The Rise and Rise of Andrew Little," *National Business Review*, 10 December 2009.

⁴⁰ Waring, "Contract or Conscience?."

superior expertise, “those who have studied the legislation have to give a lead. ... It is true that as Minister, with advice on technical matters available to me from my officers attending in the House, it is my duty, and it is appropriate for me, to guide the House as to what I think should be done.”⁴¹

Interest groups

Pressure from any number of interest groups may influence an MP's decision as to how they vote. These interest groups are often powerful, passionate, well-organised, persuasive and may be different for each conscience vote.

Interest groups, think tanks and lobbyists are active in ensuring politicians have little choice in the information they receive. Some commentators have even suggested that in advanced democratic systems like New Zealand the task of governing is largely one of mediating the conflicting interests of sectors of society. In the 1960s, Austin Mitchell, referring to Robert Dahl's pluralist model, presented a model of the state as having become predominantly a mediator between various sectional pressure groups. This was also the basis of Richard Mulgan's commentary of New Zealand politics.⁴² In this process, interest groups play a crucial role in representing the interests of their members to politicians, who then in turn making voting decisions on the basis of this information. This dialectic is a continuous process that occurs whether an issue is whipped or unwhipped, but the relative contentiousness of conscience issues and the autonomy of MPs during these votes makes it more likely interest groups will play a more prominent role and that a greater intensity of lobbying will occur at these times.⁴³

Bollinger believed that lobbying activity during the liquor legislation throughout the 1960s – both resulting in, and as a result of, their conscience vote status – was exceptionally high. Senior government members were said to be very concerned about its influence during the 1960 Licensing Amendment Bill, and their concern may have been well founded as a number of amendments favourable to the liquor industry were made before the bill was passed.⁴⁴ The *Christchurch Press* noted that the passage of the 1962 Sale of Liquor Bill had been “distinguished by the amount of patent lobbying, perhaps unprecedented, which has been conducted virtually on the floor of the House by outside parties.” The paper had earlier commented that the liquor trade's “concern with the bill is understandable, but frequent consultations with members in the lobbies could hardly be dismissed as casual meetings with old friends. Several times last week it was noted that members attended promptly on signals from the visitors' benches, and at least once there appeared to be explaining to do when the vote did not go entirely to the reasonable hopes of the hotel trade.”⁴⁵ A 1988 study of liquor legislation reported that a lobbyist representing the liquor trade was to be found in the actual debating chamber “giving directions to the Minister of Justice on how to vote on the issues” during the Committee stage of the 1976 Sale of Liquor Amendment Bill.⁴⁶ The same study noted a widespread respect, though not necessarily approval, for the effectiveness of the Liquor Industry Council in lobbying MPs in the 1970s.⁴⁷ Throughout this

⁴¹ *NZPD*, Vol. 345, 22 October 1965, 3765, 3771. Norman Kirk, Ralph Hanan

⁴² Austin Mitchell, as reported by Templeton and Eunson, *Election 1969*, 129. Mulgan, *Politics in New Zealand*. For New Zealand, this conceptualisation is described by Jack Vowles, “Capturing the State,” in *First World Interest Groups: A Comparative Perspective*, ed. C.S. Thomas (Westport: Greenwood Press, 1993).

⁴³ *NZPD*, Vol. 329, 16 November 1961, 3603. Licensing Amendment Bill, Cyril Harker

⁴⁴ Conrad Bollinger, *Grog's Own Country*, 2nd Edition ed. (Auckland: Minerva, 1967), 92-3.

⁴⁵ “Liquor Bill Not yet Through,” *The Press*, 8 November 1962, 12, “Quiet Omission from Sale of Liquor Bill,” *The Press*, 5 November 1962, 14.

⁴⁶ Stace, *A History of the Liquor Legislation in New Zealand*, 464.

⁴⁷ *Ibid.*, 464-5.

period, at the request of individual members and with the approval of the Speaker, parliamentary facilities were sometimes made available to external interest groups in order that they might serve MPs better, providing 'advice' to any parliamentarian who might request it.⁴⁸

Reports like the above easily conjure the image of a lone MP under tremendous pressure, deprived of the protective cloak of their party and trying to cope with an avalanche of information clamouring for their attention. Certainly, conscience votes provide unprecedented opportunities for lobbyists to have their interests heard. Lobbying also raises questions of whether interest groups are adequately accountable for the outcomes they promote, and whether or not they are actually representative of the groups they claim to act on behalf of.⁴⁹

The rise of interest groups and the increasingly bitter public debates that have resulted have contributed to both the number and intensity of conscience votes, as parties have sought to distance themselves from debates they perceived as too politically costly to contest. The introduction of MMP was expected by some to increase the level of lobbying MPs experienced even further – the greater number of parliamentary parties would, even during the 'normal' course of events, encourage interest groups to extend their skill sets in an attempt to influence the coalitions that were constructed on each issue,⁵⁰ and unwhipped votes would expose MPs to the greater capacity professional lobbyists would consequently possess to the greatest extent.⁵¹

The Prostitution Reform Bill, first introduced in 2000 but not passed into law until 2003, provides a good example of a conscience issue involving a battle of ideas between interest groups. This three year period gave ample opportunity for the protagonists to build coalitions and present their cases to whomever would listen. Some unusual alliances were formed as a result of these respective groups sharing common objectives but differing motives. Those supporting the Prostitution Reform Bill included the NZ Prostitutes Collective, the Family Planning Association, the Wellington Independent Rape Crisis, the YWCA, the NZ Aids Foundation, the Maori Women's Welfare League, and the Council of Trade Unions. Those opposing the Bill included Maxim Institute, the Muslim community, a number of churches, and some feminist groups. Not all protagonists saw themselves as lobbyists, preferring the word advocates, but those who were proactive were engaged in the act of influencing policy outcomes. The Prostitutes Collective, for example, had been working towards law change for the sex industry since the late 1980s and the Prostitution Reform Bill was the culmination of that campaigning. The Collective had no formal lobbying strategy for that Bill but took whatever opportunities came their way including taking on the mantle of the lead organisation supporting the legislation. Media attention on their organisation therefore increased markedly when the bill came before parliament and the media became the major vehicle for communicating their message. By their own assessment, this promotional activity did make a

⁴⁸ *NZPD*, Vol. 436, 9 December 1980, 5786. Sale of Liquor Amendment Bill, Gerard Wall

⁴⁹ One Australian study suggested that lobbying activity be regulated through a range of means including compulsory registration of lobbyists and the use of a website of information. This would, it was suggested, ensure that the activity of lobbyists can be monitored and legislative decisions potentially traced to lobbying activities. Australasian Study of Parliament Group, *Be Honest, Minister! Restoring Honest Government in Australia* (2007).

⁵⁰ Steve Evans, "Under MMP the Lobbyist Will Be King," *The Independent*, 9 June 1995.

⁵¹ Editorial, "Alcohol Reform Too Important for Conscience Voting." Jonathan Hunt, Personal interview, 3 September 2009. See also Warhurst, "Conscience Voting," 581-2.

difference to the debate, bringing the issues facing the sex industry into the open, raising awareness and normalising the industry to an extent not previously experienced.⁵²

The most vocal organisation opposing the Prostitution Reform Bill was Maxim Institute, who the Prostitutes Collective admitted ran a 'slick campaign that included lots of media contact and the use of very charismatic individuals.'⁵³ Maxim Institute aimed to generate debate within the public domain on the subject and influence the outcome by force of both logic and numbers. Though more limited in their resources than their opponents seemed to believe, the Institute developed a strategy to achieve this aim that included techniques such as using regular radio slots to discuss the issue, commissioning opinion polls, helping bring to New Zealand international experts on the social effects of prostitution, collating international research and making it widely available, encouraging the public to make submissions in opposition to the Bill, developing networks with organisations who were similarly opposed, individually meeting around 60 MPs, mobilising community groups and constituents to put pressure on MPs, and prompting the *Assignment* television programme to shoot a documentary on the subject. Although the legislative outcome was not what the Maxim Institute had hoped for, they believed their efforts had influenced the votes of several MPs, and had also contributed to defeat of the Death with Dignity Bill (2003) during its first reading as a result of many MPs not wishing to provoke further acrimonious public debate and lobbying pressure.⁵⁴

While the removal of party whips may present increased opportunities for lobbyists, the risks also appear to be greater. Counterproductive lobbying seems to have been Janet Mackay's experience during the Prostitution Reform Bill debate, given her complaint in her online newsletter about some of the tactics and arguments used by its opponents. While she considered lobbying to be an essential part of government, those who conducted themselves in an inappropriate manner appeared to do themselves a disservice:

Conscience votes in Parliament always attract huge interest. If the conscience vote is to do with sex you can guarantee that your e-mail will be clogged up for days and there will be a mountain of correspondence on your desk. I am not complaining. Lobbying is part of business as usual in Parliament but as someone who voted against the Prostitution Bill proceeding to committee stages in the House I have to say the most compelling arguments to vote in favour of the Bill came not from my colleagues but from some of the extremists opposed to the legislation.⁵⁵

The impacts of lobbying are also borne by the quality of the resulting legislation, as lobbyists understand the best way to influence an outcome in their favour is during the Committee stage. Unfortunately, this often fails to produce coordinated legislation that is in the best interests of all.

I am very concerned that the matter is being dealt with on a conscience vote basis, because I believe that it has the potential to replace the present shambles with a new shambles, particularly when the House gets to the Committee stage. With all kinds of bright ideas, spur of the moment decisions are made about likely clauses for inclusion. In that regard I issue a warning to all members to be very careful in consideration of the Bill about being seduced by bright-eyed causes and brilliant ideas from lobby groups that ought to see their light of day in the Committee stage. If that kind of thing happens – if the lunatic fringe that is all too alive and well in the alcohol field is let loose on the Bill – then all of the work that has been done by the ...working party, by the Minister, by his officials, and by all members who participate in the

⁵² Catherine Healey, Personal interview, 14 June 2005

⁵³ Catherine Healey, Personal interview, 14 June 2005

⁵⁴ Amanda McGrail, Personal interview, 10 June 2005

⁵⁵ Webpage for Janet Mackay, MP, found at www.labour.org.nz, downloaded 15 June 2005

debate this evening will be disastrously destroyed, and the present shambles will be replaced by an even worse shambles.⁵⁶

It would appear that conscience votes are a fertile field for lobbyists and interest groups, but are nonetheless demanding of political savvy on the part of both lobbyists and parliamentarians.

Lobbying isn't confined to external interests – it also arises from within parliament itself, and when it does it can sometimes get ugly. It is not unusual for MPs to form themselves into 'caucuses' on a particular bill, reaching across the party divide to redraw the battle lines with the result that parliament's conservative elements may be pitted against those more liberal members regardless of party ideology. On issues that warrant maintaining an ongoing policy vigilance, leadership structures, avenues for communication, publicity and lobbying may all be highly co-ordinated, and ways are found to apply pressure. The controversies over the Prostitution Reform Bill (2000) and the Civil Unions Bill (2004) resulted in very well-organised campaigns within parliament. The early abortion debates in the 1970s also led to the creation of such structures, sometimes leading to major ructions within parties. George Gair, a cabinet minister and the most effective parliamentary strategist in the pro-abortion lobby, incensed his leader, the socially conservative Muldoon, with his efforts. Antipathy turned into a deep dislike, and for years after the two colleagues refused to speak to each other.⁵⁷ The liquor debates of the 1960s and 1970s also witnessed the operation of "informal whips" that acted to provide some measure of co-ordination on what were complex issues and an often confusing series of conscience votes.⁵⁸

Precedent

The need to appear consistent sometimes influences how parliamentarians will vote. How they, their colleagues, or those they respect voted on a previous but similar piece of legislation may influence an MP to vote the same way again. Former Prime Minister Muldoon recounts being told after the 1961 capital punishment conscience vote that then Prime Minister Keith Holyoake "would have voted against it except that some years earlier he had voted for its reintroduction and felt he could not switch his vote." Muldoon's own assessment was that "Many of the older members had already voted for capital punishment on an earlier occasion and, regardless of any subsequent softening of their feeling, were not likely to change."⁵⁹

Technical

Science / Research

An MP may favour 'rational' conclusions that result from 'scientific' endeavour by denying, minimising or merely ignoring the religious or ethical dimensions to the issues they are confronted with.⁶⁰ Such advice may emanate from academia, public research bodies or the scientific community generally. During the Smoke-free Environments legislation of the 1990s and 2000s, for example, some MPs referred to the scientific 'facts' about the health impacts of smoking in making their voting decisions, despite others

⁵⁶ NZPD, Vol. 490, 13 July 1988, 5073-4. Sale of Liquor Bill, Peter Dunne

⁵⁷ Gustafson, *The First 50 Years*, 134.

⁵⁸ Stace, *A History of the Liquor Legislation in New Zealand*, 465.

⁵⁹ Muldoon, *The Rise and Fall of a Young Turk*, 49, 51.

⁶⁰ Vodanovich, "Religion and Legitimation in New Zealand," 53. Vodanovich believes that there has been a widespread pattern replacing "substantive rationality, embodied in religion and 'traditional' belief systems, [with] scientific rationality" in New Zealand since the 1960s.

remonstrating that the key issue was that the state was exceeding its power by removing from smokers the freedom to smoke where they liked.⁶¹

The opinion of elites or experts

Certain key people and organisations throughout society can be particularly influential in shaping public opinion on specific moral, ethical or social matters. These elites may present themselves – rightly or wrongly – as experts in the field, and may include academics, civil servants, civic leaders, business people, music or movie stars, leading scientists, popular religious leaders, think tanks or politicians themselves. For example, David Lange, Prime Minister from 1984-1989, wrote that during conscience votes he was reluctant to impose his views on people who were far more knowledgeable than he was, and so was likely to give considerable weight to their views.⁶² Likewise, Jim McLay once stated he would “be taking into account the expert opinions” in making his decision on a liquor bill,⁶³ and another MP recognised the authoritative voice of a relevant Royal Commission on the issue confronting him.⁶⁴ The views of experts and elites may influence MPs directly or, because MPs are sensitive to public opinion, indirectly. Lobby groups and political parties often use this fact to their advantage as seen, for example, when Maxim Institute brought a number of international experts to New Zealand to speak against the proposed Prostitution Reform Bill in 2003 in an effort to influence both public opinion and the opinions of parliamentarians.

Think Tanks and Institutes

Studies conducted by specialist research organisations, independent institutes and research-focussed pressure groups may be influential. While these groups may conduct primary research of their own, they also often collate secondary material from a wide range of sources and attempt to present it in a cogent and persuasive manner. This research is also often used to influence public opinion, thus applying indirect pressure to MPs.

Personal

Personal peer pressure

The pressure to conform to the expectations and behaviour of those around us is a powerful force, and MPs are not exempt. These people may include friends, family, colleagues, acquaintances, strangers or even society generally.

Ideology

Any number of ideologies may colour an MP’s judgment e.g. liberalism, conservatism, socialism, feminism, capitalism, environmentalism, libertarianism. These ideologies create a particular view for those holding them of how society should organise itself, and determine whether or not they believe

⁶¹ For example, the Green party argued that the Smoke-free Environments Amendment Bill 1999 “is dealing with a major public health issue, not a moral issue”. Sue Kedgley, “Press Release: Conscience Vote a Smokescreen,” (Green Party, 2003).

⁶² Lange, *My Life*, 113.

⁶³ *NZPD*, Vol. 407, 3 November 1976, 3572. Sale of Liquor Amendment Bill (No.2)

⁶⁴ *NZPD*, Vol. 405, 1 September 1976, 1801. Health Amendment Bill, Richard Walls

society will benefit from the legislation at hand. Reformist MPs, for example, may go back to first principles to guide them, such as the protection of the vulnerable⁶⁵ or limiting the size of government.⁶⁶

Sectoral interests

Some MPs may be motivated by a priority they place on a particular sector of society. Examples could include the business community, the environment, minority groups, women or the poor. The member may or may not be a member of the group they wish to advance, but may have a sympathy for them that stems from their personal experience, observation, hearsay and/or their worldview.

Self-interest

An MP may expect, intend or hope to profit personally from the decision they make. While such profit may be financial, it could also relate to their personal views or preferred lifestyle. For example, an alcoholic may benefit from the passing of legislation on liquor, a homosexual from legislation relating to civil unions, and a gambler from laws legalising casinos. For example, one MP who was diagnosed with terminal cancer dedicated himself to introducing a Death with Dignity Bill, enlisting the aid of his parliamentary friends to continue the legislative campaign when he was too sick to continue as a parliamentarian himself.⁶⁷

In a different vein, throughout the twentieth century parliamentarians were known to indulge in the questionable practice of partaking of the largesse of the liquor trade during adjournments in liquor licensing debates.⁶⁸ The liquor trade saw it as well worth their while to ply MPs with the subject of the controversy, hosting all manner of functions for the decision makers which were almost always well-attended.⁶⁹ The office fridges of MPs reportedly continue to be well-stocked by the liquor companies.⁷⁰

Conscience

Members' personal values and principles may act as an inner guide in how to act during conscience votes. For example, National MP Roger Sowry spoke of his concern "to make a decision that I can live with – a decision that is based on my own conscience, and to vote and stand according to my principles."⁷¹ Then Alliance party leader Jim Anderton was strongly of the view that conscience was the only principle that should be employed in parliamentary decision making, especially during conscience votes. He explained it thus:

When conscience votes are exercised in the House I think it is important that the conscience of the member be exercised. If the member was on his or her own in the electorate and every single person in the electorate believed that that person should vote in some way and the member's conscience prevented him or her from doing that, that member would be bound to vote according to his or her own conscience if that was the issue here. ...some people stood up in conscience at various times when it was not only unpopular but also positively dangerous. One could actually get oneself killed, and some people did. Yet we talk about conscience as

⁶⁵ For example, *NZPD*, Vol. 471, 4 June 1986, 1944. Fencing of Swimming Pools Bill, Ruth Richardson

⁶⁶ For example, *NZPD*, Vol. 471, 4 June 1986, 1946-7. Fencing of Swimming Pools Bill, Doug Graham

⁶⁷ Cam Campion, *Death With Dignity Bill* (1995). The bill was championed by Campion's close friend, Michael Laws.

⁶⁸ Doug Kidd, Personal interview, 17 February 2009

⁶⁹ Weekend Review, *National Business Review*, 23 March 1989, W2.

⁷⁰ Deborah Coddington, "All-Night Boozing Will Fuel World Cup Madness," *NZ Herald*, 2 May 2010, Deborah Coddington, "Heads in the Sand While Our Kids Are on the Booze," *NZ Herald*, 16 May 2010.

⁷¹ *NZPD*, Vol. 537, 27 July 1993, 16976. Human Rights Bill, Roger Sowry

though it is some type of popularity poll that one takes with a minority of electors to determine how one would vote.⁷²

Personal conscience was also sufficiently strong for National MP David Carter to ignore the results of an electorate survey and risk a loss at the following election. "If I do not return to the House after the next election, at least I will be comfortable with the fact that tonight I have voted as my conscience allows."⁷³ And Labour MP Michael Cullen explained that he regretted having once made a promise to abide by the opinions of his constituents over the abortion issue: "...when it comes to a matter of conscience, one must stand in this place and stand by one's conscience and, if necessary, die with dignity at the following election on the basis of that conscience."⁷⁴

A few MPs have attempted to embrace the tension between, on the one hand, a vote being unwhipped and, on the other hand, MPs regularly voting along party lines by asserting that a 'collective conscience' operates within their party. It is far from certain whether the members of a party can hold a conscience collectively either at a philosophic or a practical level, but for some it has become a convenient way of explaining why party members vote together during conscience votes.

Religion

For MPs who are religious, the beseeching of divine guidance is not uncommon. Ross Robertson, for example, recognised that debate over the Death with Dignity Bill (1995) was "a time to humbly beseech, as we do in the Speaker's prayer, the guidance of almighty God for our deliberations."⁷⁵ Many MPs have said similar things at various times, although the voting decisions of overtly religious MPs have not necessarily coincided with each other.⁷⁶

Pragmatism

In the absence of other determining factors, it may be a pragmatic view of what works that drives decision making. Judy Turner, then deputy leader of the United Future party, once argued that people who were attracted to centrist parties such as hers tended to be pragmatic people because of the diversity of opinions they brought with them. This led to them valuing the role of conscience and utilising the conscience vote more frequently.⁷⁷

Bribery or blackmail

Although it is believed to be rare in New Zealand, bribes of various sorts, either financial, sexual, promised favours or of another sort, may influence voting behaviour.⁷⁸ Kelson believed, in relation to voting during the Auckland Metropolitan Drainage Amendment Bill (1951), that it was "not inconceivable that one or two votes for the amendment may have been in the 'favour-to-a-friend' category by MPs not

⁷² NZPD, Vol. 537, 27 July 1993, 16944. Human Rights Bill, Jim Anderton

⁷³ NZPD, Vol. 549, 16 August 1995, 8715. Death with Dignity Bill, David Carter

⁷⁴ NZPD, Vol. 549, 16 August 1995, 8716. Death with Dignity Bill, Michael Cullen

⁷⁵ NZPD, Vol. 549, 16 August 1995, 8707

⁷⁶ MPs who have made explicit appeals to divine guidance have included Eric Roy, Richard Prebble, Geoff Braybrooke, Doug Graham, Merv Wellington, Jenny Shipley, Jack Marshall, Whitu Tirikatene-Sullivan, and Lance Adams-Schneider.

⁷⁷ NZPD, Vol. 639, 16 May 2007, 9321-2. Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill

⁷⁸ David McGee, *Parliamentary Practice in New Zealand*, 2nd ed. (Wellington: Dunmore Publishing, 1994), 497.

otherwise concerned with the matter."⁷⁹ Similarly, blackmail could be present in certain cases where MPs have compromised themselves in various ways.

At a personal level, individual parliamentarians often have formal connections or sympathies with certain industries or sectors of society which, not unnaturally, predispose them to favouritism. One commentator provided a simile for this very scenario: "if your neighbour is annoying you in some respect (say, stinking garbage), if he gives you a lot of strawberries or some produce from his garden, it puts you in a position where it is difficult to complain about the garbage."⁸⁰ In this manner, MPs' drinking habits have been frequently commented upon during the long-running liquor battles,⁸¹ and suspicion has been expressed from some quarters that liquor legislation was being considered "in a miasma of whisky fumes" and that "decisions affecting the whole national life were in effect being made at a drunken party."⁸²

In the early years of the debates over prohibition, attempts to directly influence individual MPs were not uncommon, even at times crossing a line into bribery. Not all MPs are, or were, corruptible however. Bollinger cites an episode worth repeating in full:

A Bill providing for a poll with a 55-45 percent majority came in 1910. The trade was faced with possible extinction at the first poll conducted in terms of such a measure, so it was imperative that the measure be repealed or amended. Trade agents, according to a lady who had good cause to know, began "swarming the lobbies". She was the wife of a Reform Party M.P., Mr C. K. Wilson. Years later she recorded how her husband was approached by a Mr J. Wall, his most influential supporter at the previous election, who suggested that he should change his mind about supporting the measure, but Wilson simply answered: "I've promised". Next day Wall returned "with a definite proposal—the Trade would pay all his election expenses for the coming encounter. They would guarantee he would get in. They would spend money and do the job much better than he could do it.... However," recalled Mrs Wilson, "my husband was incorruptible...

"The next day the offer had risen—election expenses plus two hundred pounds.

"Nothing doing...

"Each day as he came in to lunch we asked him with our eyes what the latest offer amounted to. He would put up three fingers, then four, then five. In a few days it had risen to eight hundred pounds plus election expenses."

Wall had suggested that Wilson should not go through the embarrassing performance of actually casting his vote against the Bill he had promised to support—though he offered various plausible excuses he could offer for doing so. He had suggested that Wilson could "just go to Te Kuiti [his home town] and miss the train on Tuesday night so that you'll miss the division."

Wilson did not accept even the £800, which was as high as the offer ever went. "The next day no fingers were shown. They had found cheaper support...

"It was known for certain that there was at least a majority of two who had given election promises to support the Bill. When the night came, there was a majority of five against it. Three members had surprisingly missed their trains. One particularly ardent Prohibitionist who, with his wife, had lived through the whole three sessions of that Parliament at an expensive hotel, had paid the proprietor never a penny. It was common knowledge that his creditors were anxiously awaiting the close of the House so that they might take proceedings against him. He was not only able to pay his debts but to buy himself a flourishing bicycle business, thus ending a short but profitable political career."⁸³

⁷⁹ Kelson, "Voting in the New Zealand House of Representatives," 109-10.

⁸⁰ Bollinger, *Grog's Own Country*, 159. Christoffel also notes the formal connections between some parliamentarians and the liquor trade: "...brewery head Arthur Myers was a MHR from 1911 to 1921", although "[i]t should be noted that Meyers [sic] always abstained in votes on liquor issues." Christoffel, "Removing Temptation", 53.

⁸¹ For example, Liquor Alliance General Secretary Tom Quayle was criticised by National's Deputy Chief Whip for commenting on MPs' alleged drinking habits. John McKay, "Fight the Good Fight," (New Zealand: New Zealand Film Archives, Reference Number: F18007, 1980?).

⁸² Bollinger, *Grog's Own Country*, 22.

⁸³ *Ibid.*, 78-9.

The Dilemma of the MP

The removal of the party whip often confronts the parliamentarian with questions that are difficult to avoid. MP's are forced to think, at least for themselves, about questions such as their role as an MP, who they actually represent, their responsibilities to various people and groups, questions about the role of the state and morality, whether their conscience, the conscience of the electorate, or the conscience of those most affected by the legislation should be pre-eminent, and even whether they have a mandate to make decisions at all.

Issues with underlying tensions and which are related to matters with wide applicability and an emotive content generate an uncertainty with which politicians sometimes feel they are ill-equipped to cope. Although for the most part MPs use one of the above sources to justify their decision and find conscience votes rewarding, members sometimes employ an avoidance strategy and take refuge in Abstention.⁸⁴

It is not uncommon for members to absent themselves from the vote during a conscience issue.⁸⁵ Although prior to 1996 no formal procedure for abstentions existed, MPs found creative ways to engineer their absence from the House during the vote.⁸⁶ Members who intended to abstain did not always mention their intention during debates, preferring to not draw attention to the outcome of their dilemma. One member who did, however, was Francis O'Flynn, who explained that:

...the member for Porirua has given us notice of his intention to move an amendment. As is obvious from what I have already said, I sympathise with the objective he has in mind, but I feel his amendment would be far too sweeping. ... What should I do? After the most anxious thought I have reached the conclusion that, in those circumstances, I can conscientiously follow only one course—that is simply and deliberately to abstain from voting at all.⁸⁷

Venn Young also explained, and perhaps also regretted, his abstaining during a vote on the Abolition of the Death Penalty Bill (1989): "When the Bill was introduced I took the unsatisfactory path of abstaining from voting because I was not clear enough in my opinion about the way I should vote."⁸⁸

Sometimes, whole parties have abstained from voting because they are in a dilemma over how to vote. The Act Party, for example, abstained in its entirety during one vote of the Wanganui District Council (Prohibition of Gang Insignia) Bill (2007), a reflection of the tension they were experiencing between a distaste of social legislation that inhibited personal freedoms and a recognition of the need to combat increasing intimidation of innocent citizens by patched gang members.

Although former Prime Minister Robert Muldoon once described abstaining as "competent,"⁸⁹ abstaining – either formally or by merely being absent – in response to difficult decisions is not generally respected amongst parliamentarians as it is held to represent a lack of backbone in the member to do his or her

⁸⁴ In New Zealand since 1996, abstention has been distinguished from absenteeism, and involves the actual casting of a vote. Prior to 1996, staying away from the debating chamber entirely was the only way to avoid the vote. Such abstentions were not recorded in the journals of the house. Since the advent of the Abstention vote in 1996, however, Abstentions are now officially recorded. In the British context, Richards observed that MPs sometimes used abstentions due to uncertainty or to avoid offence, although technically he was referring to absenteeism. Richards, *Parliament and Conscience*, 28.

⁸⁵ NZPD, Vol. 396, 23 April 1975, 816. Hospitals Act, Robert Muldoon

⁸⁶ Although now dated, Kelson provides a brief discussion of the issue of Abstentions, and provides some, at times amusing, examples from the 1947-1954 period. Kelson, *The Private Member of Parliament*, 115.

⁸⁷ NZPD, Vol. 399, 3 July 1975, 2784. Crimes Amendment Bill

⁸⁸ NZPD, Vol. 503, 22 November 1989, 13699

⁸⁹ NZPD, Vol. 396, 23 April 1975, 816. Hospitals Act, Robert Muldoon

job properly despite the difficulties involved.⁹⁰ George Gair, for example, was very reluctant to abstain because “an abstention would [merely] pass the responsibility over to others.”⁹¹ Ashraf Choudhary had less qualms, and was labelled as “the great abstainer” for his part in the passing of the already mentioned Prostitution Reform Bill (2000) as a result.⁹² And Winston Peters was once critical of another MP who, during his speech, supposedly came down on both sides during their speech, ended up “firmly in the middle.”⁹³

Private Members Bills

MPs do, occasionally, have the opportunity to be proactive in setting the parliamentary agenda through the use of the private members bill. Since 1983,⁹⁴ 13% of private members bills have been conscience votes, and more than half (54%) of conscience votes have been private members bills. As such, a close relationship of long standing exists between conscience voting and private members bills.

Table 9.1: Statistical Summary of Conscience Voting and Private Members Bills Since 1983

% Government Bills that are Conscience Votes	2.2%
% Private Members Bills that are Conscience Votes	13%
% Conscience Votes that are Government Bills	46%
% Conscience Votes that are Private Members Bills	54%

Note: Calculations exclude local bills

As party discipline increased in the early 20th century, MPs came to recognise the special role of the private members bill in preserving a measure of autonomy for the individual MP.⁹⁵ This autonomy stems from both the ability of the member themselves introducing their own legislation as well as the relatively high proportion of private members bills that receive conscience votes. Although not often successfully passing into law, an additional benefit was their not infrequent success in applying pressure to the government to introduce its own legislation on the subject. As early as 1891 it was recognised that, although the private members’ Licensing Acts Amendment Bill had no hope of passing, “What we have to do in these social matters is to agitate, agitate, agitate.”⁹⁶ Many bills – both whipped and unwhipped – attest to the success of the strategy. Sir Robert Stout successfully adopted such a strategy when pressing for liquor prohibition. His Licensing Bill (1893) was rejected, but only because the government promised to quickly introduce its own Alcoholic Liquors Sale Control Bill. The Summer Time Bill (1933) prompted the government to introduce its own legislation later that same year introducing daylight saving;⁹⁷ the Historic Places Bill (1954) led to the government introducing its own legislation to protect New Zealand’s cultural treasures; the Decimal Coinage Bill was introduced annually from 1950 to 1956 until the government decided the time had arrived to introduce its own decimalisation legislation; the Fair Credit Transactions Bill (1968) was introduced to “encourage the Government to take some action”,⁹⁸ the private members’ Criminal Investigations Bill (1988) was, ironically, initially obstructed by the

⁹⁰ “...abstention was always seen as...a bit of a cop-out...” Waring, “Contract or Conscience?.”

⁹¹ *NZPD*, Vol. 472, 9 July 1986, 2811. Homosexual Law Reform Bill

⁹² *NZPD*, Vol. 612, 15 October 2003, 9227. Smoke-Free Environments Amendment Bill, Craig McNair

⁹³ For example, *NZPD*, Vol. 498, 30 May 1989, 11035. Sale of Liquor Bill

⁹⁴ It is only since 1983 that the official records have distinguished between a government bill and a private member’s bill.

⁹⁵ Kelson, *The Private Member of Parliament*.

⁹⁶ *NZPD*, Vol. 72, 22 July 1891, 421

⁹⁷ See *NZPD*, Vol. 281, 28 July 1948, 1023

⁹⁸ *NZPD*, Vol. 355, 7 July 1968, 549. Fair Credit Transactions Bill, Michael Connelly

minister who was eventually forced to introduce his own version;⁹⁹ the Casino Control Bill (1989) was partly a response to a private members bill introduced the previous year “to get New Zealanders to think about the issue”;¹⁰⁰ and many bills such as the Broadcasting (Liquor Advertising) Bill (1992), the Sale of Liquor (Health Warnings) Amendment Bill (2000) and the Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill (2005) have raised awareness of the dangers of their subject matter and the need for government attention.

Underlying the objective of pressuring the government to act is the recognition that some issues require positive government support; the resources, certainty and relative longevity of a government makes government legislation a much more appropriate vehicle for addressing large issues such as liquor reform or gambling. As early as 1891, MP William Rolleston argued that the government needed to act as a government on the liquor question if real progress was to be made: “...a Bill coming from the representatives of one side of the question...or from the other, will not be satisfactory. ... As affecting the whole community, we ought to call upon the Government to deal with it.”¹⁰¹

Ironically, the role of the private members bill in inducing the government to act is the very reason some commentators have criticised it as a nineteenth century anachronism. Under this view, private members bills rarely become law without government support, and if an issue was important enough to warrant legislation it should be the government that produces it.¹⁰² The cynic’s perspective is that the trivia so often the subject of such bills means that parliamentary time is often wasted. Further, private members bills allow “back-benchers to have glorious and irresponsible freedom to force through changes in the basic fabric of our social life.”¹⁰³ Parties themselves dislike both private members bills and amendments to government bills introduced by private members because they potentially lose control of the outcome and are often left with the consequences.¹⁰⁴ Sir Ivor Jennings, however, the famous British constitutional expert, came to believe that “The fact that much Government legislation is either vote-catching or of a departmental character renders desirable the provision of time for other measures.” And, in a similar vein, Lloyd George expressed a view that private members bills gave parliament a chance to discuss new ideas and topics that would otherwise be missed.¹⁰⁵

Although an important tool in an activist’s armoury, a private members bill is a difficult thing to shepherd through parliament, especially one that involves a controversial social issue. Although the interest in private members bills and their overall success rate has increased since the introduction of MMP, gone are the days when, prior to the First World War, private members bills enjoyed a success rate similar to government bills.¹⁰⁶ The knowledge that one is very unlikely to succeed must discourage many from

⁹⁹ *NZPD*, Vol. 549, 9 August 1995, 8579. Criminal Investigations (Blood Samples) Bill, Ross Meurant

¹⁰⁰ *NZPD*, Vol. 499, 26 July 1989, 11488. Casino Control Bill, Warren Cooper. See also the contribution from Jonathan Hunt in the same debate, p.11482.

¹⁰¹ *NZPD*, Vol. 72, 22 July 1891, 416

¹⁰² Laski, *Parliamentary Government in England*, 166. *NZPD*, Vol. 523, 8 April 1992, 7702, Sale of Liquor (Off-Licence) Amendment Bill, Richard Prebble. "I have no doubt that if vineyards were open on Sundays they would make significant sales to the public. I am not necessarily opposed to that, but if that is what the Bill is all about it raises some interesting social issues, and that is not a matter for a private member's Bill; it is a matter for the Government. If the Government thinks that it is a sufficiently important matter it can introduce it, then we can listen to the arguments, but not by way of a private member's Bill."

¹⁰³ Richards, *Parliament and Conscience*, 197-8.

¹⁰⁴ *NZPD*, Vol. 507, 30 May 1990, 1882. Proportional Representation Indicative Referendum Bill, John Terris

¹⁰⁵ Parliament of Great Britain, "Procedure on Public Business, Special Report," (1930-1), q.893, (161) viii.

¹⁰⁶ McGee, *Parliamentary Practice*, 307, Raukura Spindler, "Members' Bills in the New Zealand Parliament," *Political Science* 61, no. 1 (2009).

even attempting it, and for those who do there awaits the trying prospect that the bill may split not only one's party but also the community. Other challenges include getting the bill onto parliament's order paper in the first place,¹⁰⁷ continuously explaining and defending the bill's contents and implications in the face of vociferous opposition, receiving an overwhelming amount of correspondence, much of it negative and/or abusive, and the likelihood that one's political career will forever be associated with the issue. All this must be done without the support network and camaraderie automatically available to members of the executive. To persevere through this, the private member must feel a great conviction for the contribution the bill will make to society and a passion to step outside what is safe in favour of what they feel is right.¹⁰⁸ On more than one occasion, the then Prime Minister, perceiving the difficulty members of his caucus were facing, gave them the support of his encouragement:

...I want to commend the member for Porirua [Gerard Wall] for his fortitude over a long period in this matter. Those of us who have held office in the political life of this country know the pressures to which we are subjected when we are the focal point of public interest in a matter of great public concern. For most of us, as Ministers in a Government, we have the support of our colleagues around us, but for the private member introducing a highly controversial Bill, on a matter on which the country and the people are seriously divided and on which there is great public concern and interest, the personal pressures to which he is subjected are almost intolerable. We have a member on this side of the House who during the past year has been through the same experience, and I commend the member for Porirua for his fortitude and tell him that his colleagues on both sides of the House, regardless of their views on the matter, will feel for him at this time.¹⁰⁹

I commend the member for Egmont...for bringing in a measure such as this for our consideration. He has been under a very heavy burden for the last 12 months. A private member bringing in a Bill in this controversial area has to carry all of the pressure that a Minister in charge of a controversial Government Bill has to carry, but without having his colleagues around him to help sustain him and help fight his battles; and the pressures are much greater and much harder to bear for a private member. I believe that this Parliament over the years will be the better for the introduction of private members' Bills in this field of what one must call social legislation.¹¹⁰

Despite the challenges private members face, a few notable examples exist of major controversial social legislation being brought on to the statute books as a result of private members' legislation. Sue Bradford incurred considerable opposition after introducing the Crimes (Abolition Of Force As A Justification For Child Discipline) Amendment Bill in 2005, which became the Crimes (Substituted Section 59) Amendment Bill after it was adopted by the government. Jonathan Hunt first introduced his Adult Adoption Information Bill first in 1978, eventually succeeding in its becoming law in 1985 only after his party gained the government benches. Tim Barnett's Prostitution Reform Bill, already mentioned above, was unique in a number of ways. First, it was one of the very few private members' bills that was successful in making its way on to the statute books without government support. Second, it took longer than usual to get there – it wasn't until 2003 until it became law. And third, it was one of the closest debates in parliamentary history, passing its third reading by only just one vote, with an abstention being determinative of the outcome. And, although they were unsuccessful in getting past their first readings,

¹⁰⁷ In New Zealand private members bills are drawn from a ballot, and only four are permitted at the first reading stage at any one time. Once on the order paper, however, it is conventional for private members bills to be given a first reading so as to permit the bill to be referred to a select committee, although it is almost as equally common for members who vote for their introduction to oppose their further progression. *NZPD*, Vol. 552, 13 December 1995, 10668. Sale of Liquor (Off-Licence) Amendment Bill, Mike Moore

¹⁰⁸ Barnett, "Moral Leadership."

¹⁰⁹ *NZPD*, Vol. 396, 23 April 1975, 816. Hospitals Amendment Bill

¹¹⁰ *NZPD*, Vol. 399, 3 July 1975, 2772. Crimes Amendment Bill

two members successfully raised the profile of the euthanasia debate when they introduced Death with Dignity Bills – Michael Laws in 1995 and Peter Brown in 2003.

In a conversation with the author, one MP hypothesised that Labour MPs may invoke a greater number of private members conscience votes than National MPs because they introduce more socially progressive legislation – legislation of a conservative nature is probably less contentious and therefore is less likely to require a conscience vote.¹¹¹ The data, however, does not seem to entirely support this. Table 9.2 shows that, at a party level, the reverse of the hypothesis seems to be true. Although Labour MPs do introduce more private members conscience bills, National MPs have introduced 8 liberal and 5 conservative private members bills since 1938, whereas Labour MPs have introduced 10 conservative and just 7 liberal bills. Further, private members bills of a conservative and a liberal nature are equally common overall.

Table 9.2: Party Membership of MPs Introducing Private Members Bills by Nature of Legislation Since 1938

Sponsor's Party	Conservative Legislation ¹	Liberal Legislation ²	Neither Conservative nor Liberal ³	TOTALS
Greens	1	2		3
Alliance	2			2
Progressives	2			2
Labour	10	7	3	20
United Future	1			1
NZ First	3	2		5
National & Labour ⁴		1		1
National	5	8	1	14
Act		3		3
TOTALS	24	23	4	51

¹ Conservative legislation is legislation that seeks to preserve or restore traditional values, and/or restrict personal freedom to achieve a greater good e.g. the Marriage (Gender Clarification) Bill (2005).

² Liberal legislation is legislation that is directed towards achieving a greater level of personal freedom, in particular the dismantling of social or economic constraints.

³ Some bills cannot be classified on a conservative-liberal scale e.g. Proportional Representation Indicative Referendum Bill (1990).

⁴ One bill was jointly sponsored by a National and a Labour party MP.

One possible explanation for this counter-intuitive pattern is that bills that go counter to the usual or expected party position are the very ones that require conscience votes – legislation on subjects that are more in line with traditional party positions, even on contentious subjects, may simply not appear in this data because no conscience vote was needed. Conscience vote bills may thus at least partly represent a set of exceptional legislation that illustrate the action of parties and MPs when unconventional behaviour is observed from within caucus.

75% of private members bills introduced by Labour members are done so during Labour governments, whilst private members bills introduced by National MPs demonstrate the opposite pattern, albeit more weakly (Table 9.3). Thus, despite being exceptional, private members conscience bills are nevertheless likely to be treated more sympathetically by governments that include the sponsor, at least with respect to its introduction. There may also be a momentum effect whereas individual members of governments

¹¹¹ Maryan Street, Personal interview, 30 August 2007

may be induced to introduce legislation of their own in concert with the activity of their executive colleagues.

Table 9.3: Party Membership of MPs Introducing Private Members Bills by Government in Power Since 1938

	Government in Power		TOTALS
	National	Labour	
Greens	2	1	3
Alliance	1	1	2
Progressives		2	2
Labour	5	15	20
United Future		1	1
NZ First	1	4	5
National & Labour ¹	1		1
National	8	6	14
Act	3		3
TOTALS	21	30	51

¹ One bill was jointly sponsored by a National and a Labour party MP.

Conclusion

The challenges MPs face during conscience votes are principally due to the range of interests they could represent in their decision, many of which compete with each other. MPs' unique role in representing others during votes for which they are ostensibly permitted to exercise their own conscience produces a dilemma that leaves many longing for the sanctuary of the whipped vote. For the MP, conscience voting is paradoxical – while they are free to exercise their own conscience, the tensions this produces make the vote far from free.

CHAPTER TEN: CONCLUSION

This study has surveyed conscience voting from several perspectives. First, it discussed academia's current understanding of the subject, and considered a number of conceptual perspectives that can be brought to bear to strengthen it. Second, the role of conscience voting in the exercise of democracy in New Zealand was considered, noting the various arguments both for and against its use. Third, the historical antecedents of conscience voting were investigated in order to further illumine the nature of the mechanism and the reasons for why it exists as it does. Fourth, the procedural anomalies associated with conducting a largely informal voting procedure within a set of formal parliamentary rules were canvassed. And fifth, the implications of conscience voting on both political parties and individual MPs were discussed.

The nature of this study has primarily been exploratory – the purpose has not been to develop hypotheses that can be definitively tested. Instead, concepts have been unpacked, antecedents traced, contexts discussed, and implications suggested. As such, this conclusion addresses the principal research question and notes some of the most important themes that have emerged.

Empirical Findings

The long association between some social issues and conscience voting is indicative of the broad desirability of conscience votes, at least with respect to these issues, as well as the tendency for certain parliamentary procedures to become entrenched over time. Particularly with respect to alcohol and gambling, the expectation that a conscience vote will be held when these matters arise is very strong – the ability of parties to limit or control how such issues are treated is severely limited, leading to the conclusion that conscience voting is as much a parliamentary, as it is a party, mechanism. Both alcohol and gambling issues have consistently been receiving conscience votes for around 120 years, more than long enough to develop a procedural precedent. Nevertheless, the fact that not all alcohol or gambling bills are granted conscience votes suggests that conscience voting is still, at least partly, a party issue and that the demesne of 'conscience issues' does not necessarily encompass every legislative instance of even these issues. Whatever its status at the parliamentary level, conscience voting also remains a party mechanism for handling dissent, either imagined or real, on specific pieces of legislation.

The parliamentary expectation that certain matters will be granted conscience votes also applies to other subjects that are commonly, though imprecisely, regarded as being under the rubric of 'conscience issues'. The unwritten and, usually, unspoken culture that parliamentarians imbibe when they are elected includes an understanding of what are, generally, matters beyond the proper mandate of parties themselves to decide. When such a matter arises, the expectation that it will be, or suspicion that it should be, a conscience vote is activated. Even for newer MMP parties such as the Greens who do often have official party policies on conscience matters, it is difficult to consistently maintain the party whip when such matters are before parliament. Despite the Greens being a relatively small party with progressive policies and a consensual approach to decision making resulting in the party achieving the highest level of cohesion of any multi-MP party in parliament, they have still split on issues like the compulsory microchipping of all dogs and the electronic monitoring of parolees.

The level of entrenchment conscience voting as a parliamentary mechanism has achieved has combined with the increasing complexity and diversity of society and the retreat of organised religion from the public square since the 1960s to result in a widening of very rapid subjects being treated with conscience votes. Newer subjects include certain issues of justice, travel documentation, animal welfare, employment relations, electoral reform, the public display of gang insignia and even taxation. As a result, the proportion of parliamentary votes that are conscience votes has now reached 5%, 10 times what it was in the middle of the twentieth century. Although in total these conscience votes are roughly equally divided between government and private members bills, the former has been becoming much more common than the latter in recent decades, almost the exact reverse of the situation in the first half of the twentieth century. The assumption that conscience votes are basically synonymous with private members bills is, therefore, no longer valid. As a result, the assumption that conscience votes are destined to fail in parliament is also incorrect – 89% of government conscience votes are successful in becoming legislation and the increasing frequency of government conscience votes means that the overall success rate for conscience votes has also been rising. Conscience voting is no longer merely an avenue for dissent, but an increasingly common and respected mechanism for passing legislation.

The close link between government sponsored conscience votes and their success in reaching the statute book raises questions about the nature of the government's involvement in votes that are supposedly free from party interference. As noted in Chapter Eight, however, conscience votes sponsored by the government are usually part of a wider policy agenda that at least most government members will have bought into when they either joined the party or were elected into office. There is, therefore, a high correlation between how MPs vote and their party membership with a consequent impact upon the success of government sponsored conscience votes.

The Historical Antecedents of Conscience Voting

The combination of forces that lead to conscience votes being invoked today have their antecedents in a number of identifiable factors. The formation of the Liberal party in the 1890s was gradual, and for several years its cohesion was precarious. The ability to remove the party whip was essential to the survival of that party as a political force. At that time, religious sentiment was strong and cut across, rather than down, party divisions because of the presence of several social issues that were so contentious that parties found it advisable to adopt no specific policy on them. The 'problems' of liquor and gambling and the questions of female enfranchisement and religious education divided parliament at the time and, in the case of liquor and gambling, has continued to do so. This period of New Zealand politics proved that contentious issues could co-exist with party government, but only because parties acknowledged that their practical jurisdiction over such issues was limited.

Chapter Five identified certain political conditions that are important in fostering free voting: a big parliamentary majority and/or a large caucus; a party structure that allows local electorate committees to be influential in candidate selection; the existence of a significant extra-parliamentary interest group or groups that are well-organised and well-resourced; an historic precedent that party discipline for an issue, or a type of issue, is removed; the emergence of a controversial issue that potentially affects everyone; a parliamentary system that has the pursuit of power at its centre; the expectation that the loss of a parliamentary division is commensurate with a vote of no confidence; and a media that is eager

to raise consciousness of both the issue at hand and how parties are responding to it. These remain as valid today as they did in the 1890s.

Conscience voting has evolved over the last century, and has now become a parliamentary mechanism with a momentum of its own. The historical inertia generated by conscience voting with respect to both its subject matter and its operation make it a practice that is unlikely to cease in the near future. So entrenched in parliamentary politics has conscience voting become that parties no longer have a free hand in which issues are whipped and which are not – conscience voting is bigger than parties themselves. History records that, almost without exception, once a matter becomes recognised as a conscience issue, it will remain so for the foreseeable future – only when conscience issues cease to come before parliament do they cease to be treated with conscience votes. Adding to this in the present day is the growing expectation amongst MPs that intra-party disagreements can and will be tolerated by the use of the conscience vote. MPs themselves, in fact, have a vested interest in the retention of the conscience vote lest they lose one of the last vestiges of importance they currently retain.¹ Further, its existence in convention rather than formal rules means that no-one actually ‘owns’ the practice, making it harder, not easier, to purposively alter.

Implications for Conscience Voting into the Future

The evolution of conscience voting is not complete, however, and a number of issues can be identified that will shape it going forward. One of the most important is the emergence of split party voting, discussed in Chapter Seven, which has already noticeably reduced party cohesion and may yet decrease it further. A caucus that decides it needs to exercise a split party vote has recognised its own divided nature but has also chosen a technique for handling that dissent that has a much lower profile than the traditional conscience vote. Split party voting has grown rapidly since its emergence in 1996, and now accounts for more than half of all conscience votes. There is evidence that split party voting has also increased the range of non-party issues. For example, the vote on the increase in tobacco excise was recently a split party vote, despite excise and such like financial matters not traditionally being treated as unwhipped matters. This suggests that party dissent and its comfortable accommodation with a split party vote is becoming normalised. The implication of this in the future may be a continued increase in sanctioned party dissension through the use of the split party vote, either as well as, or at the expense of, the conscience vote.

Although not frequently the subject of discussion or media attention, abstentions – both officially sanctioned and those that represent dissent – have become more viable as an outlet for intra-party disagreement since 1996. Although it has always been possible for MPs to absent themselves from parliamentary votes, this was usually only done if a ‘pair’ could be found from the opposing party. Now, the choices for MPs who are uncomfortable with their party’s positions are much broader. Not only can a formal Abstention can be cast during a division, but a recalcitrant MP can also simply have their vote omitted from their party’s total during a Party Vote. This provides a low-risk and convenient way for both

¹ One study on liquor legislation reported that, although “There was very little support for the retention of the conscience vote, ...a number observed that they were not optimistic about the development of party policies. Members of Parliament, they added, seemed too jealous of their current status.” Stace, *A History of the Liquor Legislation in New Zealand*, 463-4.

parties and MPs to deal with dissent, and may already be replacing the use of conscience voting in some instances.

Another important pattern emerging that may impact upon conscience voting in the future is the apparently increasing fluidity of parties, particularly as it relates to members dissenting. Chapter Eight noted how conscience voting can play a vital part in party survival. The diversity of opinions and perspectives that conscience voting encourages within a party helps to keep party policy fresh by ensuring that alternative views have an outlet for expression. With the assistance of the conscience vote, internal disagreement can be positive for a party. Nevertheless, the post-MMP ability for members to break away from their parties and form their own party has raised the prospect that party whips may be forced to become more flexible. Winston Peters, Peter Dunne, Tariana Turia and Jim Anderton are all testimony to this reality, and some parties' increasing propensity to employ split-party voting also suggests that a more flexible approach to discipline may have already arrived.

MMP has raised the possibility that in future years New Zealand's parliament may see minor parties with an explicitly moral basis represented, which will add an additional dynamic to how moral issues are handled. Parties that specifically seek to pass 'moral legislation' e.g. limiting marriage to heterosexuals only, will likely have party-policies on these matters which are traditionally conscience votes. If the party seeking this legislation is in coalition with the government, they may also seek to extract promises from their larger partner that they will also vote the same way. There may, under these circumstances, be a further increase in the number of moral issues dealt with by parliament as these morally-based parties seek to push their agenda. Equally, however, there may be a decrease in conscience voting as a result of such parties having explicit party policies on conscience issues. Currently, there are no specifically moralistic parties in parliament, although United Future, with its once significant caucus of Christian sympathisers and its roots in the Christian Democrats of the late 1990s, has probably come the closest.

The long term implications for the increase in socially and politically contentious bills observed in New Zealand in the last decade may be to encourage the development of skills in extra-party organisation. Such a circumstance would generate similar conditions to that in the scenario posed by Pothier:

If responsible government were to be combined with a relaxation of party discipline as a matter of course, the probable result would be a substantial change in the nature of organization within Parliament. ...each party would have to develop the organizational ability to identify the positions of individual members, in order to know where the persuasion efforts were most needed. Such a development would require that considerably more time and effort be devoted to organization within Parliament than is now the case.²

While the basis of conscience voting is political, its operation is heavily influenced by the norms, debates, and standards prevalent within society. The topics treated by conscience votes have widened over time, reflecting the evolution of society and the changing role of the state. There is every likelihood that the subjects and practice of conscience voting will change further in the future as both society and government continue to evolve.

Many of the more recent conscience voting subjects are likely to be one-off issues, such as the altering of travel documentation for New Zealanders travelling overseas and the increase of the excise tax on tobacco. Others, however, such as changes to shop trading hours and the further liberalisation of abortion and homosexuality, have been recurring now for at least three decades and are likely to

² Pothier, "Parties and Free Votes in the Canadian House of Commons," 94.

continue to do so. Questions surrounding euthanasia, human assisted reproductive technology and the care of children are also likely to arise more, rather than less, regularly. Genetic modification and stem cell research may also become increasingly important as conscience issues,³ and Studlar has noted animal rights as a morality policy to watch.⁴

How is Conscience Voting to be Understood?

Although at the most basic level conscience voting may be defined as the freedom of parliamentarians to vote as they wish unfettered by the strictures of party discipline, this is merely a procedural definition that says nothing about what conscience voting actually represents to each group involved. This study has consistently sought to see conscience voting as a parliamentary concept rather than just a voting procedure and, viewed through this lens, conscience voting means something quite different depending upon the perspective taken. For example, political parties will view it quite differently to members of the public, the government's considerations will be quite different from those of opposition parties, and parties will have quite different motivations from those of their MPs. In addition, placing unwhipped voting within an historical context makes it clearer to perceive that, in many ways, conscience voting is no longer even a party-centred procedure – it became progressively established as a parliamentary convention in its own right throughout the twentieth century.

Rather than reducing conscience voting to a single definition or idea, the purpose of this study has been to expand the way conscience voting is perceived by, first, noting its status as a concept and not just a practice, and, second, by providing some conceptual tools through which to view the kaleidoscope that is conscience voting. Each one of the conceptual frameworks discussed in Chapter Three presents conscience voting in a different light. The conceptual insights provided by morality theory are helpful in focusing attention upon the way in which the nature of the subject influences the institutional procedure and the nature of the debate it receives. Culture theory provides a framework that helps to embed conscience voting within the cultural practices, tensions and dynamism of society. Questions of law and morality recognise the significant legal-moral tensions that both result in conscience voting and that conscience voting perpetuates. The juxtaposition of public values, the public square and New Political Culture have led to conscience voting contributing to the political management of significant social change. Historical institutionalism is a powerful set of tools that sees the present practice of conscience voting as mediated by past practice. And the lens of pragmatism reminds us that conscience voting exists within a frameset that maintains political survival as one of its principal objectives.

In this milieu, it is little wonder that the subjects of conscience votes can seem arbitrary. But conscience issues are the end result of a multiplicity of forces, processes and decisions that must first be understood if the collection of subjects is to seem comprehensible. These are not disentangled by the examination of voting patterns alone – explaining the subjects of conscience votes involves a journey into a conceptual realm, and it is here that future research on conscience issues needs to direct most of its attention.

From a procedural perspective, conscience voting has two aspects. First, there are a number of issues pertaining to how a conscience issue proceeds through the House and becomes law. In this regard the

³ Lindsey, "Conscience Voting in New Zealand".

⁴ Studlar, "The Public Clash of Private Values."

role of the individual MP is significant and, collectively, members' actions determine the outcome of the legislation. At a strategic level, however, the decision about whether or not to invoke conscience voting rests with parties rather than individual MPs. In making such a decision, it is the shape of the political landscape subsequent to the conscience vote that is the pre-eminent concern for party managers. Thus, a conscience vote is unlikely to be granted if it compromises a party's ability to govern effectively, or, in the case of the opposition, if it jeopardises its image as a government in waiting. Conversely, a conscience vote may well be granted if the issue is contentious, outside the conventional gambit of party manifestos, risks member rebellion or is politically dangerous for any other reason. Hence, although MPs play an important procedural role in the act of casting a conscience vote, at the strategic level the interests of MPs are systematically subordinated to that of their party. Parties are not as magnanimous as they may sound in granting MPs a conscience vote – conscience votes are essentially a pragmatic response to the potential for party disunity, and they frequently serve to shift the problem from themselves to MPs.

It is around this second, strategic, level that most of the issues surrounding conscience voting as a parliamentary concept revolve. The historical account of conscience voting revolves around the early parties' need for survival and, latterly, parties' desire to manage their image. The protection of MPs' conscience is a largely coincidental benefit and, as a focus of study, only becomes important subsequent to the decision to grant a conscience vote. In sum, at the procedural level conscience votes have little to do with the conscience of MPs but rather serve the interests of parties by ensuring that the latter do not become mired in controversial issues that may split their caucus and damage their public image.⁵

Even once a conscience vote has been granted, MPs are in a difficult position. The transition from parliament being a collection of independent MPs linked together in the manner of cadres to a fully fledged system of party government created a tension for MPs over who they actually represented. Chapter Nine discussed how, although conscience voting nominally restores the link between constituent and representative, a range of other considerations clamour for the attention of the MP who seeks to make an independent decision. Whose conscience is to be considered – the voters, the MPs, society generally? What weight should be given to the voice of 'experts' over the mere opinion of those uninitiated into the complexities of the issue in question? How will the decision affect the consciences of New Zealanders, especially given they have not been given the opportunity to partake in the decision? To what extent will an independent vote damage the MP's career prospects? Such questions make the function of an MP more, not less, complex during conscience votes.

The Role of Conscience Voting in New Zealand's Parliamentary Democracy

History demonstrates that while employing conscience votes to address contentious issues may be useful in preserving party cohesion, it is not necessarily a method designed to make progress on the issue itself. In the first place, conscience votes permit, even encourage, MPs to fall back on personal opinion rather than strive for consensus. The determination of fact in such matters is paradoxical, in that if the determination of objective fact were possible it would probably not need a conscience vote.

⁵ Editorial, "Alcohol Reform Too Important for Conscience Voting." Also see discussions of these ideas in Flavelle and Kaye, "Party Discipline.", Hobby, "The Crack of the Whip?", Lemco, "The Fusion of Powers, Party Discipline, and the Canadian Parliament.", Pothier, "Parties and Free Votes in the Canadian House of Commons."

Further, such debates are saturated with strongly held opinions, and these views are often brought to conscience debates prior to the presentation of any evidence. In addition, information presented as 'evidence' during conscience debates often amounts to little more than opinion.⁶

It is, perhaps, a little concerning that conscience should play such a small role in conscience voting. Conscience provides a link between policy decisions and the values of society. Values reflect the way we want society to be, and, without their playing an important role in decision making, policy making will inevitably serve the interests of an elite. Conscience voting, abstracted from personal conscience, runs the risk of becoming self-serving, captured by strong and/or loud interest groups, a popularity contest for MPs with their electorates, or it may simply allow the majority to rule in a tyrannical fashion.

Nevertheless, it can equally be argued that conscience votes make parliament – the place of 'big talk' – more central to legislative decision-making, and thus provide an unprecedented opportunity for MPs, interest groups and the public generally to have a greater say in legislation than is ordinarily the case.

Cowley once asserted that "the current practice of treating conscience issues as a breed apart deserves questioning."⁷ For some aspects of conscience voting, treating them as unique does indeed seem pointless. Conscience should be no more a feature of conscience votes than it is for any other vote, and all decisions made by elected officials should, in theory, be made soberly and with due regard to their impact on both the MP and the citizen.⁸ One of the sub-texts of this thesis is that there is no unifying principle ring-fencing the subjects of conscience votes from other types of votes and it is difficult to avoid the conclusion that either all issues should be treated with conscience votes or no issues need be so treated. Those arguing the former usually appeal to purist notions of representative democracy to justify their assertion that conscience voting should be used more often, while those supporting the latter conclusion generally maintain the value of parties in passing complex legislation that forms part of a coherent policy programme.

Nevertheless, the very controversial issues that are the focus of many conscience votes and their propensity to address society's social and moral fabric have led to calls for parliament to maintain its unique treatment of conscience matters. Conscience issues, it is argued, are not on a par with economic concerns. Legalising euthanasia, for example, should not be treated in the same way as if it were an amendment to trade tariffs. The lack of parliament's procedural integrity during conscience votes, concerns about the representativeness and accountability of parliamentarians, doubts over whether individual MPs have the ability to make informed decisions on such subjects, and questions over whether parliament even has a mandate to pass such laws has prompted suggestions as to how the public's interests can be better protected.

One such suggestion has been that a 60% parliamentary majority be used during conscience votes rather than the current simple majority of 50%. The suggestion was originally made in 2003 by Sir Michael Hardie-Boys, the then Governor General, in response to dismay that the Prostitution Reform Bill was passed on a single abstention. It was made again by an MP during the Crimes (Substituted Section

⁶ *NZPD*, Vol. 293, 17 November 1950, 4364. Mr. Neale

⁷ Cowley, "Unbridled Passions?," 85.

⁸ For example, the Hon. Richard Prebble was of this view: "I do not like the phrase 'conscience vote'. I think that it is better to describe the vote that we are having today as a 'non-Whipped' vote or a free vote. Every member uses his or her conscience on all votes---I hope." *NZPD*, Vol. 531, 19 November 1992, 12445, Transport Safety Bill (1991)

59) Amendment Bill, popularly known as the Anti-Smacking Bill.⁹ An alternative suggestion is that a bare 50% majority be permitted only after an indicative referendum on the subject has been held. This would enable citizens to express their views, participate in the decision-making process, and better accept the decision once it has been made. As a further benefit, the integrity of parliament and parliamentarians would be preserved if the decision were seen to be coming from citizens themselves. This position was vigorously promoted by the NZ First party when it had parliamentary representation.¹⁰

The inadequacy of parliamentary procedures in accommodating unwhipped votes is a reflection of the failure of the standing orders to recognise the uniqueness and contribution of conscience voting to the New Zealand style of democracy. Political systems evolve, and the rules governing them need to evolve with them. Further, questions must be asked about whether not only the rules but parliament's institutions have become outmoded for the job they are required to perform. Decisions in the interests of a society that has experienced an increase in social and moral legislation as a result of a diversifying and increasingly complex society may not best be served by a system that is adversarial, continues to be dominated by the executive, gives relatively little weight to direct democracy, has a lack of diversity in representativeness of members, only grants a conscience vote when other options are exhausted, and which pays no attention to improving the decision-making skill of MPs when the whip is removed.

As early as 1948, Lipson commented perceptively that "There can be no question that neither the personnel nor the structure of this parliament is fitted for the tasks it will have to shoulder in these post-war decades."¹¹ In 1969, Austin Mitchell questioned the inadequacy of parliamentary rules to handle the socio-cultural currents as they were reshaping politics then – the same question can be asked now, and probably with greater urgency. Mitchell also noted that part of the problem seemed to be New Zealand's hybrid style of parliament. He believed that New Zealand was essentially running a political system with American overtones, such as the concept of the separation of church and state, through a British model of parliament that was designed for a class-based society.¹² Mitchell didn't mention the influence of the indigenous culture on the New Zealand political system such as the presence of Maori seats. And, more recently, the German-style MMP electoral system has been fused onto the entire system. The combined result of this hybridisation has been to create a political system unique in its operation but achieved more by default than design.

With respect to conscience voting, in 1977 MP Russell Marshall commented during the particularly contentious debate on the Contraception, Sterilisation, and Abortion Bill that "this debate highlights the deficiencies of the forms of the House, which in my view...are now out of date for adequately considering legislation. I feel that we are insufficiently geared to handle properly even the straightforward Government legislation before the House, and...we spend a great deal of time amending legislation. The situation is highlighted even more when we come to controversial legislation such as this, with conscience votes, in which there are no Whips and no particular Government or party line."¹³

⁹ *NZPD*, Vol. 637, 14 March 2007, 8017. Gordon Copeland

¹⁰ *NZPD*, Vol. 618, 24 June 2004, 13946. Civil Unions Bill, Brian Donnelly. Judy Turner, a United Future MP, sought to delay the adoption of the bill by introducing amendments to the effect that it would not be passed until either 60% of MPs had voted in favour of it, or 60% of the public had voted for it in a referendum. Both amendments were negated during the Committee stage.

¹¹ Lipson, *The Politics of Equality*, 364.

¹² Mitchell, *Politics and People in New Zealand*, 61.

¹³ *NZPD*, Vol. 414, 11 October 1977, 3574

Although it must be noted that the amendments to the standing orders conducted prior to the introduction of MMP imposed on New Zealand's parliamentary rules a measure of design and internal cohesion, a system specifically designed to accommodate conscience issues and unwhipped voting would undoubtedly differ in a number of ways from the current arrangements. In the first place, parliament's blindness to parties would not be countenanced – parties are involved in almost everything in parliament, and conscience voting will always be anomalous unless this is fully recognised. Second, the rules pertaining to debating, voting and associated activities would address the many anomalies noted in Chapter Seven. Third, some consideration may be given to giving parliament itself a greater prominence in deciding the subjects of conscience votes, instead of the current practice of ostensibly leaving the decision to parties. The challenge under the current system is that conscience issues are not infrequently politicised because their granting is, itself, a largely party issue. By removing the decision entirely or partially from the party political process, either by predefining a certain number of issues as conscience issues or by simply allowing parliament as a whole to determine whether whips should be removed, the issue would not then be subject to party politics, resulting in a greater level of certainty for MPs over their policy responsibilities.

Fourth, the tensions created by the involvement of parties in conscience issues suggest that there may be a role for a 'conscience bill' in addition to the government bill and the members bill. This suggestion, discussed in Chapter Eight, has as its objective the distancing of conscience issues from party politics, the removal of the pressure on the government to win every vote by imposing its whip, and the elimination of the confusion that sometimes results over how an issue should be treated by parliament. A 'conscience bill' would be explicitly recognised as a non-party bill that has been submitted to the will of parliament itself. Any member of parliament, or even a party, would have the ability to promote such a bill, and it may or may not represent government policy. Parliament itself would own the bill, however, and would collectively take responsibility for its outcome. The standing orders could then specifically accommodate the individual voting that would result, and protect the right of individual MPs to both make a contribution to the debate and vote as they saw fit.

Yet even this might not be enough. With the increase in social and moral issues coming on to the political agenda as discussed in Chapter Six, the traditional parliamentary infrastructure, already creaking under the weight of expectations that politicians will provide a moral and ethical example for the rest of the country, may be stretched beyond its mandate. The increasing centrality of parliament to the values of a society in which there has been a withdrawal of organised religion has created a need for leaders to fill the void in the public square. Politicians, however, do not automatically absorb the requisite moral wisdom from parliament's walls once elected, and such leadership cannot be expected, either, from political parties. With a perceptiveness gained through years within one of the world's foremost parliaments, former British Prime Minister Harold Macmillan is reputed to have once written "If people want a sense of purpose they should get it from their archbishops. They should not hope to receive it from their politicians."¹⁴

A view was recently expressed by Cardinal Williams that conscience voting had become meaningless because modern liberal society lacked a conscience with which to make discerning judgments.¹⁵

¹⁴ Quoted in Templeton and Eunson, *Election 1969*, 13.

¹⁵ Williams, "The Spiritual Bankruptcy of Liberalism."

Williams was expressing a view that society had jettisoned all constraints on both belief and behaviour, and right and wrong had become archaic concepts. Under such conditions, Williams asked, who was parliament legislating for and how could it decide what an appropriate public policy was? And would conscience voting still be a useful mechanism for handling issues of public morality? The Cardinal's answer to all these questions was expressed in the negative, although it partially rested on his assumption that conscience was an important aspect of conscience voting. Nevertheless, the making of social policy through conscience voting is a reflection of society's dominant values at best, and a lottery at worst. Moral leadership, and the establishment of values for society, is a wider issue yet to be adequately addressed by western society.

Further change can be noted in the very notion of parties in a post-materialist society. Parties are now coming to represent new interests and new ideals, and represent them in new ways. Parties themselves are diversifying, taking on post-materialist policies related to gender, the environment, marriage and even the economy. As parties regroup around these new issues and adopt policies to promote them, releasing their members from party discipline during votes on conscience issues may become increasingly unnecessary.

From another perspective, however, postmodern society eschews metanarratives and promotes only personal preferences. On the face of it, conscience voting, with its focus on individual judgment, seems ready-made for a postmodern society. On this view, conscience voting seems assured of a bright future.

It is questionable whether optimal outcomes are produced from a parliamentary procedure that is as informal and unspecified as conscience voting, but it can be equally argued that the co-operation and goodwill demanded from MPs as a result may produce unanticipated benefits. Although conscience vote debates are often hotly contested and can be fractious, a high degree of collegiality is built by the voting alliances formed across the House. Traditional political opponents become allies and vice versa. In the words of one MP, they not infrequently "place love on the agenda",¹⁶ in turn providing a more human face on a process that is often poorly understood and from which many feel alienated. Further, the reduction in the power of the executive, the greater uncertainty of outcome, the need to conduct meaningful debate in the House, and the requirement to negotiate and compromise could be considered virtues.¹⁷ Thus, most importantly, conscience votes contribute to an increase in the interest of citizens in democracy generally, and parliament in particular.

The debate over the efficacy of conscience voting and the most appropriate interface between parliament and matters of significant social change will go on. Conscience voting itself will also continue, however, as it represents a practical reality that parties, MPs, and the public perceive as entrenched.

Conclusion

Ultimately, the efficacy of conscience voting depends upon the participation of citizens. Parties and MPs can only adequately reflect the views of citizens if citizens participate in the policy making process. In

¹⁶ *NZPD*, Vol. 662, 28 April 2010, 10569. Excise And Excise-Equivalent Duties Table (Tobacco Products) Amendment Bill, Rahui Katene

¹⁷ One MP believed that uncertainty of outcome was a virtue worth preserving, although others clearly disagree. The belief that it is advantageous for an MP to not reveal their voting preference may be a 'golden rule' for some, but a rule worth breaking for others. See *NZPD*, Vol. 579, 20 July 1999, 18343, Sale of Liquor Amendment Bill (No.2), Patricia Schnauer

addition, voting for candidates who will represent not just their own views but act with integrity and honour in the exercise of governance is the responsibility of all citizens in a democracy. The actions of parliamentarians cannot be divorced from New Zealanders being democratic citizens, and the operation of parliamentary conscience voting ultimately rests, like most things in a democracy, with the integrity of those citizens.¹⁸ One politician sounded a warning to those citizens who were not prepared to involve themselves in morally contentious issues: "...if they want to leave it to politicians alone, the result will be one they are not too happy with."¹⁹

Conscience voting as a concept can be seen as a reflection of the country's commitment to maintaining a civil society. People in civil societies are not essentially governed by either law or force, but by personal conscience. Laws gain their integrity not only because they are accompanied by the threat of punishment but because they are created by a democratic process; as such, entrusting legislative ideas to that process and accepting its outcome consensually is an important part of living a democratic society. Although motivations for granting conscience votes are not always based on selfless motives and the subjects of the votes vary in significance, conscience voting demonstrates this commitment to democracy to a greater than usual degree because such legislation is released from the control usually possessed by the governing party and entrusted to representatives of the people. Conscience voting implies the existence of both a healthy diversity of opinions and the freedom to express them. A polity that refused to grant its citizens either respect nor freedom would have neither the need nor the inclination for conscience voting – to this extent, the presence of conscience voting in New Zealand is a healthy sign.

On balance, conscience voting can be considered a politically useful mechanism for dealing with socially contentious issues. The unpredictability of the outcome provides an incentive, if not the compulsion, for parliamentarians to consider more carefully their own and others' views, as well as the potential implications of their vote. It also has the added advantage of creating a greater interest in parliament for society generally. Despite these benefits, the indiscriminate use of conscience voting may ultimately work against it, as society is too complex, government is too large, and MPs' resources too limited to make conscience votes the norm rather than the exception. Although, as discussed in Chapter Four, arguments have been made around the edges of the issue – the subjects conscience votes are applied to could be widened or narrowed, additional resourcing could be provided to MPs during conscience votes, and public referendums could be held more regularly – its constant use may be impractical. The regular use of conscience voting could render decision making too unpredictable for an electorate that prefers certainty, and may produce policy decisions that lack analytical rigour and clear responsibility for implementation.

Conscience voting is, therefore, neither the panacea for democracy's ills, nor the archaic aberration some assert it is. It fulfils a useful, or at least a harmless, function within our parliamentary system precisely because it is within a system – to expect it to be the sole procedure for parliamentary decision making would expect more of it than it can deliver. Rather than concluding, therefore, that conscience voting is either the saviour of democracy or that it is an outmoded relic, it is better, perhaps, to describe

¹⁸ Peter Cullinane, "Time to Exercise the Conscience Vote," *NZ Herald*, 18 August 2005.

¹⁹ *NZPD*, Vol. 618, 24 June 2004, 13929. Civil Union Bill, Gerry Brownlee

conscience voting as a benign anomaly – a mechanism whose absence would give the impression, if not the reality, of our democracy being the poorer for it.

APPENDIX 1: CONSCIENCE VOTES HELD IN NEW ZEALAND

Year of First Intro. ¹	Bill (Child Bills Indented) ¹	Notes	Type of Bill ^{III}	Passed into Law?	Outcome	Brief Summary of Main Purpose	Brief Summary of Conscience Issue
1891	Female Franchise Bill		Members	No	Negated in Legislative Council	Granting women the right to vote	Female enfranchisement
1891	Electoral Bill		Gov't	No	Negated in Legislative Council	Granting women the right to vote	Female enfranchisement
1891	Gaming and Lotteries Bill		Members	No	Lapsed after CWH	Tightening regulations pertaining to gaming	Gambling generally
1892	Electoral Bill		Gov't	No	Negated in Legislative Council	Granting women the right to vote	Female enfranchisement
1893	Women's Suffrage Bill		Members	No	Order for Committal discharged. Bill withdrawn	Granting women the right to vote	Female enfranchisement
1893	Electoral Bill		Gov't	Yes		Granting women the right to vote	Female enfranchisement
1893	Licensing Act Amendment Bill		Members	No	Lapsed after Committal	Extending the local option to permit citizens to vote on whether to reduce the number of public houses in their district (i.e. direct veto)	Alcohol generally, in particular the tension between prohibitionists and those supporting continuance
1893	Alcoholic Liquors Sale Control Bill		Gov't	Yes		Changes to liquor law seeking to address public drunkenness and the quality of public bars, but also seeking to enable a compromise between the temperance movement and the liquor industry	Alcohol generally, particularly whether the local option should be a straight majority, 60% or something higher
1894	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1894	Parliamentary Disabilities of Women Abolition Bill		Members	No	Lapsed in Committee	Granting women the right to stand for parliament	Female enfranchisement
1894	Gaming Bill		Members	Yes		Tightening regulations pertaining to gaming	Gambling generally
1895	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1895	Alcoholic Liquors Sale Control Act Amendment Bill		Gov't	Yes		Removal of the requirement that a valid licensing poll requires half the voters. Also the conducting of the licensing poll and the general election on the same day	Alcohol generally, in particular holding the general election on the same day was one of the key issues
1896	Elective Executive Bill		Members	No	Order for Committal discharged. Bill withdrawn	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament

1896	Divorce Act Amendment Bill (Divorce Bill)		Members	No	Lapsed in Legislative Council	Equalising the grounds of divorce between the sexes	Changes to family law generally
1896	Bible in Schools Bill		Members	No	2 nd reading negated	Permitting religious exercises in public schools	Religion in public schools
1896	Alcoholic Liquors Sale Control Amendment Bill		Gov't	No	Lapsed in Legislative Council	Incremental changes to liquor laws	Alcohol generally
1896	Admission of Women to Parliament Bill		Members	No	2 nd reading negated	Granting women the right to stand for parliament	Female enfranchisement
1896	Abolition of Capital Punishment Bill		Members	No	2 nd reading negated	Abolishing capital punishment	The relative virtues of capital punishment
1897	Gaming and Lotteries Amendment Bill	A	Members	No	Lapsed after 1 st reading	Tightening regulations pertaining to gaming	Gambling generally
1898	Alcoholic Liquors Sale Control Act Amendment Bill		Gov't	No	2 nd reading negated	Giving electors greater control and facility for expressing their opinions in connection with the liquor trade	Alcohol generally
1898	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1899	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1899	Removal of Women's Disabilities Bill		Members	No	Order for Committal discharged, Bill withdrawn	Granting women the right to stand for parliament	Female enfranchisement
1899	Divorce and Matrimonial Causes Amendment Bill		Members	No	2 nd reading negated	Incremental changes to the divorce law	Changes to family law generally
1899	Totalisator Gradual Extinction Bill / Totalisator Abolition Bill (No.2)		Members	No	Order for resuming adjourned debate on 2 nd Reading discharged. Bill withdrawn	The abolition of legal bookmaking	Gambling generally
1899	Licensing Poll Regulation Bill		Members	Yes		Provision for the better conduct of licensing polls	Alcohol generally
1900	Abolition of Capital Punishment Bill		Members	No	2 nd reading negated	Abolishing capital punishment	The relative virtues of capital punishment
1900	Gaming and Lotteries Act 1881 Amendment Bill (No.1)		Members	No	Order for 2 nd reading negated	Tightening regulations pertaining to gaming	Gambling generally
1900	Removal of Women's Disabilities Bill		Members	No	Lapsed after CWH	Granting women the right to stand for parliament	Female enfranchisement

1900	Divorce Bill		Members	No	2 nd reading negated	Equalising the grounds of divorce between the sexes	Changes to family law generally
1901	Elective Executive Bill		Members	No	Lapsed after 1 st reading	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1901	Divorce Act 1898 Amendment Bill [Divorce Bill]		Gov't	No	2 nd reading negated	Incremental changes to the divorce law	Changes to family law generally
1902	Electoral Bill		Gov't	Yes		Changes to electoral law incl. the introduction of the second ballot	Changes to electoral law
1902	Elective Executive Referendum (No.2) Bill		Members	No	2 nd reading negated	Conducting of a referendum over members of the Executive being elected by all MPs	Changing the constitutional make-up of parliament
1903	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1903	Barmaids Abolition Bill		Members	No	2 nd reading negated	Preventing women from serving alcohol in public bars	Provisions pertaining to alcohol generally
1903	Licensing Acts Amendment Bill		Gov't	No	Motion for committal negated	Attempt to placate both the temperance movement and the liquor industry re liquor licensing	Alcohol generally
1904	Gaming and Lotteries Act Amendment Bill		Members	No	Lapsed after 2 nd reading	Tightening regulations pertaining to gaming	Gambling generally
1904	Marriage Restrictions Removal Bill		Members	No	2 nd reading negated	Providing that a man might marry his mother's brother's wife, and that a woman might marry her mother's sister's husband	Changes to marriage law
1904	Licensing Acts Amendment Bill		Gov't	Yes		Incremental changes to the liquor licensing laws	Alcohol generally
1905	Gaming and Lotteries Act Amendment Bill ^a	A	Members	No	Lapsed after CWH	Tightening regulations pertaining to gaming	Gambling generally
1905	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1905	Bible Lessons in Public Schools Plebiscite Bill		Members	No	Lapsed in Legislative Council	Conducting of a referendum over permitting religious exercises in public schools	Religion in public schools
1905	Divorce Act Amendment Bill		Members	No	Lapsed in Legislative Council	Extending the grounds for divorce where respondents have been confined for seven years continuously in a lunatic asylum	Changes to divorce law
1906	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1906	Divorce Act Amendment Bill		Members	No	Lapsed after 2 nd reading	Extending the grounds for divorce where respondents have been confined for seven years continuously in a lunatic asylum	Changes to divorce law
1907	Divorce Act Amendment Bill		Members	No	Lapsed after 2 nd reading	Extending the grounds for divorce where respondents have been confined for seven years continuously in a lunatic asylum	Changes to divorce law

1907	Marriages Validation Act Amendment Bill		Members	No	2 nd reading negated	Changes to marriage law	Changes to marriage law
1907	Gaming and Lotteries Act Amendment Bill		Gov't	Yes		Tightening regulations pertaining to gaming	Gambling generally
1907	Divorce and Matrimonial Causes Act Amendment Bill		Gov't	Yes		Changes to divorce law	Changes to divorce law
1908	Licensing Polls Absolute Majority Bill		Members	No	2 nd reading negated	Changing the three-fifths majority in licensing polls to a simple majority	Alcohol generally
1908	Marriage Act Amendment Bill		Members	No	2 nd reading negated	Changes to marriage law	Changes to marriage law
1909	New Zealand Local Time Bill	A	Members	No	Lapsed after SC report	Introduction of summer time	Farming community opposed summer time
1909	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1909	Marriage Act Amendment Bill		Members	No	Lapsed after CWH	Changes to marriage law	Changes to marriage law
1910	Gaming Resolutions		Gov't	n/a ^{vi}	n/a ^{vi}	Tightening regulations pertaining to gambling & racing	Gambling generally
1910	Licensing Amendment Bill		Gov't	Yes		Incremental changes to the liquor licensing law	Alcohol generally
1910	Gaming Amendment Bill / formerly Gaming Amendment Bill No.2		Gov't	Yes		Reducing the number of race days; removal of totalisator at races	Gambling generally
1911	New Zealand Mean Time Bill		Members	No	Lapsed after CWH	Introduction of summer time	Farming community opposed summer time
1911	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1911	Gaming Amendment Bill		Members	No	Lapsed after CWH	Rectifying purported injustices in a previous gambling bill which removed licenses from some long standing clubs	Gambling generally
1911	Marriage Act Amendment Bill		Members	No	2 nd reading negated	Changes to marriage law	Changes to marriage law
1912	Elective Executive Bill		Members	No	2 nd reading negated	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1912	Licensing Amendment Bill		Members	No	2 nd reading negated	Incremental changes to the liquor licensing law	Alcohol generally
1912	Licensing Amendment (No.2) Bill		Members	No	Lapsed after 2 nd Reading adjourned	Incremental changes to the liquor licensing law	Alcohol generally
1912	Marriages Validation Act Amendment Bill		Members	No	3 rd reading negated	Changes to marriage law	Changes to marriage law
1913	New Zealand Standard Time Bill / Definition of Time Bill		Members	No	Lapsed after CWH	Introduction of summer time	Farming community opposed summer time
1913	Gaming Amendment Bill (No.1)		Members	No	Lapsed after CWH	Tightening regulations pertaining to gaming	Gambling generally

1913	Gaming Amendment Bill (No.2)	A	Members	No	2 nd reading negatived	Tightening regulations pertaining to gaming	Gambling generally
1914	Licensing Amendment Bill		Gov't	Yes		Reducing the required majority for national prohibition from 60 per cent to 55 per cent. Also adjusting provisions dealing with the questions that are submitted at the ballot	Alcohol generally
1914	Gaming Amendment Bill		Members	Yes		Granting country clubs more racing licenses	Permitting more racing, and gambling generally
1914	Election of Ministers and Party Government Reform Bill	A	Members	No	Lapsed after 2 nd reading	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1914	Education [Amendment] Bill		Gov't	Yes		New approach to education, incl. the centralisation of administrative control, making teachers' career advancement easier, provision for 'backward children', consistent interpretation of the syllabus, ensuring proper medical treatment for children at school, etc.	Disagreements about education generally, a matter of considerable importance to the country
1915	Definition of Time Bill		Members	No	Lapsed in Legislative Council	Introduction of summer time	Farming community opposed summer time
1915	Gaming Amendment Bill		Gov't	Yes		Dispensing with prize restrictions for lotteries organised to support the war effort	Gambling generally
1916	Definition of Time Bill	A	Members	No	Lapsed after 1 st Reading	Introduction of summer time	Farming community opposed summer time
1917	Sale of Liquor Restriction Bill		Gov't	Yes		Restricting the opening hours of licensed premises	Restricting the supply of alcohol
1918	Licensing Amendment Bill		Gov't	Yes		Providing for a special national licensing poll in April 1919	Alcohol prohibition
1920	Licensing Amendment Bill		Gov't	Yes		Changes to the licensing laws	Alcohol generally
1920	Gaming Amendment Bill		Gov't	Yes		Suppressing the activities of bookmakers	Gambling generally
1920	Elective Executive Bill		Members	No	2 nd reading negatived	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1921	Abolition of Capital Punishment Bill		Members	No	2 nd reading negatived	Abolishing capital punishment	The relative virtues of capital punishment
1921	Gaming Amendment Bill		Gov't	No	2 nd reading negatived	Incremental changes to gambling law	Gambling generally
1923	Election of Ministers and Party Government Reform Bill		Members	No	2 nd reading negatived	Members of the Executive to be elected by all MPs	Changing the constitutional make-up of parliament
1923	Gaming Amendment Bill		Gov't	No	Lapsed after CWH	Tightening regulations pertaining to gaming	Gambling generally
1924	Summer Time Bill		Members	No	Lapsed after CWH	Introduction of summer time	Farming community opposed summer time
1924	Religious Exercises in Schools Bill		Members	No	2 nd reading negatived	Permitting religious exercises in public schools	Religion in public schools
1924	Gaming Amendment Bill		Gov't	Yes		Tightening regulations pertaining to gaming	Gambling generally

1925	Summer Time Bill		Members	No	Lapsed after CWH	Introduction of summer time	Farming community opposed summer time
1925	Religious Exercises in Schools Bill		Members	No	2 nd reading negated	Permitting religious exercises in public schools	Religion in public schools
1926	Summer Time Bill		Members	No	Negated in Legislative Council	Introduction of summer time	Farming community opposed summer time
1927	Gaming Amendment Bill		Members	No	Lapsed after 2 nd reading	Tightening regulations pertaining to gaming	Gambling generally
1927	Summer Time Bill		Members	Yes		One year trial of summer time	Variable impact of summer time on local constituents and various industries
1927	Religious Exercises in Schools Bill		Members	No	Lapsed after 2 nd reading	Permitting religious exercises in public schools	Religion in public schools
1927	Licensing Amendment Bill		Members	No	Lapsed due to disagreements from LC	Removing State control as one of the three options in the ballot, and making 55% the majority required for prohibition	Changes to the percentage required for prohibition and removing state control of the liquor industry as an option
1928	Summer Time Bill		Members	No	2 nd reading negated	Making summer time permanent, after the just completed one year trial	Variable impact of summer time on local constituents and various industries
1928	Religious Exercises in Schools Bill		Members	No	2 nd reading negated	Permitting religious exercises in public schools	Religion in public schools
1928	Licensing Amendment Bill		Members	No	Lapsed after SC report	Assistance to the wine industry, namely 1) permitting winegrowers to sell other growers' wine in order to encourage industry cooperation; 2) reducing the minimum sale quantity; 3) enabling a wine grower to sell his wine on other than his own premises	Changes to liquor regulation
1928	Summer Time (Local Empowering) Bill	A	Members	No	Lapsed after SC report	Enabling local authorities to make their own decisions about summer time	Variable impact of summer time on local constituents and various industries
1928	Licensing Amendment (No.2) Bill		Gov't	No	3 rd reading negated	Changes to the licensing laws	Alcohol generally
1929	Summer Time Bill		Gov't	Yes		Making summertime permanent	Variable impact of summer time on local constituents and various industries
1931	Religious Instruction in Public Schools Enabling Bill	A	Members	No	Lapsed after SC report	Permitting religious exercises in public schools	Religion in public schools
1931	Licensing Amendment Bill	A	Members	No	Lapsed after SC report	Relief and encouragement to the wine-growing industry	Alcohol generally
1931	Marriage Amendment Bill		Members	No	2 nd reading negated	Permitting women ministers of religion to marry people	Disagreement about the role of women in religion
1931	Licensing Poll Postponement Bill		Gov't	Yes		Postponement of the licensing poll	Alcohol generally
1934	Religious Instruction in Public Schools Enabling Bill	A	Members	No	Lapsed after SC report	Permitting religious exercises in public schools	Religion in public schools

1948	Hoardings Bill		Members	No	2 nd reading negatived	Restricting freedom to erect advertising hoardings in rural parts of NZ	1) private members bills are non-party issues, 2) the issue is not one that should bring down a government
1948	Licensing Amendment Bill		Gov't	Yes		Constitution of a Licensing Commission to ensure consistent standards; the establishment of tourist licenses; provision for residents to demand a poll if they object to the granting of a license in their locality; facility for redistribution of licenses due to population change	Alcohol generally
1949	Licensing Amendment Bill	A	Gov't	Yes		Provision for Maoris to vote in the general licensing poll	Alcohol generally
1950	Capital Punishment Bill		Gov't	Yes		Reintroduction of capital punishment for murder	The relative virtues of capital punishment
1950	Gaming Amendment Bill		Gov't	Yes		Changes to horse racing, incl. the introduction of off-course betting in an effort to eliminate the bookmaker, the establishment of a maintenance fund, and the extension of the number of horse racing permits	The liberalisation of gambling regulations
1951	Auckland Metropolitan Drainage Amendment Bill		Local	Yes		Enabling the Auckland Metropolitan Drainage Board to establish a drainage treatment system and further extent drainage reticulation	Disagreement about the governance structure for infrastructure development in Auckland
1953	Licensing Amendment Bill (No.2)		Gov't	Yes		1) providing for a combined Maori-European poll in the King Country; 2) polls in Johnsonville and Porirua because of boundary changes; 3) the creation of a grape wine licence and a fruit wine licence; 4) miscellaneous other provisions	Alcohol generally, particularly licensing in the King Country, an area previously considered to be perpetually dry by pact with a Maori chief
1955	Gaming Amendment Bill	A	Gov't	Yes		The permitting of more racing and trotting permits	The liberalisation of gambling regulations
1959	Land Settlement Promotion Amendment Bill		Gov't	Yes		The prevention of arable land falling into the hands of non-farmers, speculators or other non-productive owners	The requirement that owners of rural land reside on the land for at least 3 years from date of purchase
1960	Licensing Amendment Bill		Gov't	Yes		Incremental improvements to the liquor industry: provisions for hotel keepers & the wine industry, a limited restaurant license, etc.	Alcohol generally, particularly the restaurant license and the license that would permit liquor at social functions
1961	Crimes Bill		Gov't	Yes		Major revision of the criminal code, including provisions relating to capital punishment	The relative virtues of capital punishment
1961	Licensing Amendment Bill		Gov't	Yes		Incremental amendments to licensing laws, incl. new licences for taverns and hotels, the empowering of the Licensing Control Commission to employ inspectors, the removal of the restriction on employing bar hostesses, etc.	Liquor licensing generally
1962	Parliamentary Commissioner for Investigations Bill		Gov't	Yes		Creation of a new office with the power to scrutinise the functions and actions of the state	The ombudsman would be responsible to the whole of parliament, so a non-partisan approach was taken
1962	Auckland Regional Authority Bill		Local	Yes		The creation of regional government in Auckland	Disagreement of how regionalism was being enacted
1962	Sale of Liquor Bill		Gov't	Yes		Consolidation/restatement of the existing law, and some relatively minor amendments	Alcohol generally
1962	Religious Instruction and Observances in Public Schools Bill	A	Gov't	Yes		Permitting religious exercises in public schools	Religion in public schools
1963	Indecent Publications Bill		Gov't	Yes		Establishment of an Indecent Publications Tribunal; provision for a standardised classificatory system for publications	Provision for the Tribunal to restrict publication of books on their banned list

1963	Matrimonial Proceedings Bill	A	Gov't	Yes		Revisions and consolidation of the law, incl. greater provision for children & for the wife who does not have her name on the family home, and giving judges more flexibility in how to achieve an optimal outcome given individual circumstances	Removal of the mandatory provision that a judge dismiss an appeal for divorce if the petitioner was at fault
1963	Licensing Amendment Bill	A	Gov't	Yes		Changes to the local licensing polls and district licensing trusts	Alcohol generally
1965	Sale of Liquor Amendment Bill		Gov't	Yes		Addressing anomalies; further liberalisation of the liquor laws, incl. a widening of options for supplying liquor in restaurants with meals incl. in no-licence districts; a revision of wine sellers licences	All of these matters, and alcohol generally
1967	Sale of Liquor Amendment (No.2) Bill	A	Gov't	Yes		Enacting the results of a referendum on extending the opening hours of bars from 6pm to 10pm	Alcohol generally, and opening hours specifically
1968	Fair Credit Transactions Bill		Members	No	Lapsed after 2 nd reading	Protecting the interests of consumers in the face of the availability of credit, including full disclosure, maximum interest rates	Essentially, private members bills are non-party issues
1968	Matrimonial Proceedings Amendment Bill		Gov't	Yes		Amendments to matrimonial and divorce laws	The reduction of the required separation time
1969	Sale of Liquor Amendment Bill	A	Gov't	Yes		Amendments to the liquor law, incl. lowering the minimum drinking age; increasing the fine for those who supply liquor to minors; lowering the age at which people may be employed in hotels; permitting the employment of underage people as entertainers	mainly lowering of the drinking age
1970	Sale of Liquor Amendment Bill		Gov't	Yes		The creation of a licence to permit sales of alcohol at airports	The creation of another liquor licence
1971	Sale of Liquor Amendment Bill (No.2)	A	Gov't	Yes		The permitting of a wider array of live entertainment, the removal of the fair price for taverns and bars that change hands, widening of the scope of supplying liquor on ships, etc.	Alcohol generally, especially liberalising measures such as the issuing of club charters in no-licence districts
1971	Transport Amendment Bill (No.2)		Gov't	Yes		Amendments to road safety legislation	Making the wearing of seat belts compulsory
1974	Crimes Amendment Bill		Members	No	2 nd reading negated	Legalising homosexual acts, and a number of other associated issues	Homosexuality and other sexually 'deviant' practices
1974	Hospitals Amendment Bill		Members	Yes		Prohibiting the conducting of abortions in public hospitals	Abortion
1975	Licensing Trusts Amendment Bill		Gov't	Yes		Creation of a new ancillary license; reducing the drinking age to 18; increasing penalties; removing the restriction on women working in bars; permitting the police or a publican to close a bar if necessary	Alcohol generally, particularly the lowering of the drinking age from 20 to 18
1975	Sale of Liquor Amendment Bill / formerly Sale of Liquor Amendment Bill (No.2)		Gov't	Yes		Assisting suburban licensing trusts to establish themselves easier	Changes to liquor legislation generally
1975	Matrimonial Property Bill		Gov't	Yes		The presumption of a 50-50 split during divorce and the recognition of both spouses' contribution to all matrimonial property regardless of the nature of their contributions	Changes to the divorce law
1976	Health Amendment Bill		Gov't	No	2 nd reading	Introducing into hospital boards abortion counselling and a	Abortion

					deferred. Lapsed	procedure for certifying that an abortion is justified	
1976	Licensing Trusts Amendment Bill		Gov't	Yes		Reversing the 1975 legislation that made suburban licensing trust into district licensing trusts; 3% accommodation levy on Trusts	Alcohol generally
1977	Contraception, Sterilisation, and Abortion Bill	D	Gov't	Split		Whether to have a panel or two doctors granting abortion rights; establishment of an Abortion Supervisory Committee; circumstances surrounding permitting of euthanasia; sterilisation of the mentally disabled; some provisions relating to sex education	Abortion generally, but also some other issues like sterilisation of the mentally handicapped
1977	Contraception, Sterilisation, and Abortion Bill	F	Gov't	Yes			
1977	Crimes Amendment Bill	F	Gov't	Yes			
1977	Food And Drug Amendment Bill	G	Gov't	Yes			
1977	Guardianship Amendment Bill	G	Gov't	Yes			
1977	Hospitals Amendment Bill	G	Gov't	Yes			
1977	Mental Health Amendment Bill	G	Gov't	Yes			
1977	Medical Practitioners Amendment Bill	G	Gov't	Yes			
1977	Property Law Amendment Bill	G	Gov't	Yes			
1977	Social Security Amendment Bill (No. 3)	G	Gov't	Yes			
1977	Sale of Liquor Amendment Bill		Gov't	Yes			
1977	Licensing Trusts Amendment Bill	A	Gov't	Yes			
1978	Contraception, Sterilisation, and Abortion Amendment Bill	D	Gov't	Split		Clarification of the role of the performing surgeon, the right of the certifying surgeons to see the patient before they act, and clarification of when an abortion may be performed	Abortion generally, but particularly changes to the circumstances under which abortions are legal
	Contraception, Sterilisation, and Abortion Amendment Bill	G	Gov't	Yes			
	Crimes Amendment Bill	G	Gov't	Yes			
1979	Sale of Liquor Amendment Bill		Gov't	Yes		Enabling bar managers to exclude disorderly patrons if appropriate; to close their bar altogether if necessary; the ability for cricket grounds to be issued with booth licences	Enabling the granting a booth license to Eden Park for cricket match days, a facility in a no-licence district
1979	Family Proceedings Bill (No.2)		Gov't	Yes		The establishment of a Family Court, an attempt to reduce the adversarial nature of resolving marriage disputes, an explicit emphasis on reconciliation if possible, provisions for ensuring children are cared for, reintroduction of the separation order, reduction of the time living apart divorce provision from 4 years to 2, changes to maintenance arrangements, a move to 'no fault' divorce on the grounds of irreconcilable breakdown	The provisions relating to moving to a position of no fault divorce and, to a lesser extent, the provisions relating to marriage counselling before a divorce is granted
1980	Adult Adoption Information Bill		Members	No	Lapsed after SC report	Enabling adopted adults to find their biological parents under certain circumstances	The question of adoption generally
1980	Sale of Liquor Amendment Bill		Gov't	Yes		New liquor licenses – club licence, proprietary club licence,	Alcohol generally, lowering of the drinking age to 18 in

						ancillary licence, café licence; the lowering of the drinking age to 18; provision for licensing of airports; ship licence replaced by passenger licence, minor extensions to opening hours of hotels and taverns; etc.	particular
1980	Licensing Trusts Amendment Bill	A	Gov't	Yes		Making the provision of alcohol sale relating to trusts consistent with those of the Sale of Liquor Bill (currently before the House)	Alcohol generally
1981	Winton Holdings Licensing Bill		Members	Yes		The granting of a special license to Winton Holdings Ltd to sell alcohol	Liquor licensing generally
1981	Licensing Amendment Bill	A	Gov't	Yes		Streamlining the regulations relating to restoration, such as disposal of voting papers, and the determination of the fact and number of licensing trusts in the restored area	Liquor licensing generally
1981	Wine Makers Bill		Gov't	Yes		Helping ensure the success of the wine export industry by maintaining the high standards of export wine	The permitting of wine sales on Sundays, Good Friday and Christmas Day; whether a winemaker can make both grape and fruit wine
1981	Sale of Liquor Amendment Bill	A	Gov't	Yes		Measures to enhance the development of the wine industry	Creation of a distributors license for wholesalers, although this was removed from the bill at SC stage
1981	Sale of Liquor Amendment Bill (No.2)		Gov't	Yes		A new distributors licence; clarification of the legality of "charge-through"; increasing the flexibility of opening hours for wholesale licensees	The creation of a new 'distributor liquor license' for wholesalers
1982	Transport Amendment Bill (No.4)		Gov't	Yes		Strengthening regulations relating to restraining children in cars; raising penalties for drink driving, random stopping of cars, disqualifying drink drivers	Transport safety generally, but particularly random stopping of motor vehicles
1983	Broadcasting (Television Advertising of Liquor) Bill	A	Members	No	Lapsed after 1 st reading	Prohibition of alcohol television advertising	Regulations pertaining to alcohol generally
1983	Contraception, Sterilisation, and Abortion Repeal Bill		Members	No	Leave to introduce denied	Repeal of the Contraception, Sterilisation, and Abortion Act 1977	Abortion generally
1983	Status of Unborn Children Bill		Members	No	Leave to introduce denied	Seeks to make more explicit and give effect to the rights of the unborn child as mentioned in the Contraception, Sterilisation, and Abortion Act 1977	Particularly the provisions relating to the availability of abortion
1984	Adult Adoption Information Bill		Members	Yes		Enabling adopted adults to find their biological parents under certain circumstances	The question of adoption generally
1985	Longley Adoption Bill		Members	Yes		Permitting a now divorced couple to rectify an historical oversight in not formally adopting the mother's children when they married	The appropriateness of parliament legislating for the error of a single lawyer
1984	Explosives (Fireworks Safety) Amendment Bill		Members	Yes		Restricting the supply of fireworks to those aged 16 and over	The role of the state in ensuring public safety
1985	Homosexual Law Reform Bill		Members	Yes		Reform of the laws making male homosexual acts illegal	The legalisation of male homosexual acts; the age of consent; the protection of homosexuals under human rights legislation
1986	Fencing of Swimming Pools Bill		Members	Yes		Requiring local authorities to compel and enforce the	The use of compulsion in enforcing public safety

						fencing of swimming pools	
1986	Gaming and Lotteries Amendment Bill		Gov't	Yes		Establishment of a Lotteries Commission to oversee a new form of state run gambling, Lotto	gambling generally, and the introduction of Lotto in particular
1988	Casinos (Licensing) Bill	A	Members	No	Lapsed after intro.	the establishment of the regulatory framework necessary for the granting of casino licenses in NZ	The legalisation of casinos
1988	Sale of Liquor Bill		Gov't	Yes		An overhaul of liquor legislation and liquor licensing. Proposals for: Sunday trading; lowering of the drinking age; the sale of wine in supermarkets; transferring administration of liquor licensing from committees to local authorities	All of these issues, and alcohol generally
1988	Racing Amendment Bill	A	Gov't	Yes		Permitting limited horse racing on Sundays, and on-course betting facilities	1) the expansion of the racing industry, including betting; 2) the legalisation of racing on Sundays
1989	Abolition of the Death Penalty Bill		Members	Yes		The total abolition of the death penalty in NZ	Capital punishment generally, especially its removal from the armed forces
1989	Casino Control Bill		Gov't	Yes		The legalising of casinos in NZ and the establishment of a regulatory regime to ensure criminal elements do not operate within them	The legalisation of casinos
1989	Contraception, Sterilisation, and Abortion Amendment Bill	D	Gov't	Split		Repeal of S.3 of the Contraception, Sterilisation, and Abortion Act 1977, which makes it an offence to sell or to give a contraceptive, or to provide contraceptive advice, to anyone under 16 years of age	Abortion generally, but especially enabling people under 16 to access contraceptive information, supplies and services
	Contraception, Sterilisation, and Abortion Amendment Bill	F	Gov't	Yes			
	Contraception, Sterilisation, and Abortion Amendment Bill (No.2) [not a conscience vote]	G	Gov't	No	Held over for 2 sessions. Lapsed		
1989	Shop Trading Hours Act Repeal Bill		Gov't	Yes		Deregulation of shop trading hours through the repeal of the Shop Trading Hours Act 1977	Permitting of trading on Sundays and other days such as ANZAC day and Christmas Eve
1990	Education Amendment Bill		Gov't	Yes		Reforms to the education sector, particularly tertiary education	Abolition of corporal punishment, a provision added during the CWH
1990	Proportional Representation Indicative Referendum Bill		Members	No	Lapsed after 2 nd reading	Conducting of a referendum on electoral reform	Electoral reform generally
1990	Gaming and Lotteries Amendment Bill		Gov't	Yes		Provides the statutory basis for 'instant games' that do not require a skill or knowledge question	Gambling generally
1990	Human Rights Commission Amendment Bill		Gov't	No	Lapsed after 1 st reading	Extension of grounds upon which it is illegal to discriminate	the bill generally, but especially the extension of the grounds to include sexual orientation
1991	Smoke-Free Environments Amendment Bill		Gov't	Yes		Enables tobacco company sponsorship of sporting events in certain circumstances, such as multi-country events	Relaxing the provisions relating to tobacco company sponsorship
1991	Smoke-Free Environments Amendment Bill (No.2)		Gov't	Yes		Repeals the ban on tobacco sponsorship of sporting events, with certain provisos	Permitting tobacco company sponsorship of sporting and cultural events
1991	Sale Of Liquor (Off-Licence) Amendment Bill	A	Gov't	Yes		Amends the Sale of Liquor Act 1989 to allow licence holders to sell wine on Sundays, and supermarkets to sell fruit wine	A further change to the liquor laws, allowing for some sales of liquor on Sundays
1991	Racing Amendment Bill		Gov't	Yes		Changes to assist racing compete more equally with other	1) permitting racing with off-course betting on

						forms of gambling	Sundays; 2) lowering the minimum betting age to 16
1991	Transport Safety Bill	D	Gov't	Split		Measures designed to improve road safety, incl. reducing the driver alcohol limit, introducing random breath testing, the introduction of speed cameras, a graduated demerit points system, vehicle-specific registration, vehicle identification numbers, owner-liability for vehicle offences, English-language and area-knowledge testing for taxi drivers	Transport safety generally a non-partisan issue, but in particular the introduction of random breath testing and the reduction of the legal blood alcohol levels
	Transport Amendment (No. 3)	G	Gov't	Yes			
	Transport Services Licensing Amendment (No. 3)	G	Gov't	Yes			
	Transport (Vehicle and Driver Registration and Licensing) Amendment	G	Gov't	Yes			
	Railway Safety and Corridor Management Bill	G	Gov't	Yes			
	Transport Accident Investigation Commission Amendment	G	Gov't	Yes			
	Local Government Amendment Bill (No. 6)	G	Gov't	Yes			
	Road User Charges Amendment Bill	G	Gov't	Yes			
1992	Broadcasting (Liquor Advertising) Bill	A	Members	No	Lapsed. Ruled out of order because involved an appropriation	Requiring health messages to be played before and/or during liquor advertisements	Liquor advertising
1992	Human Rights Bill		Gov't	Yes		Consolidation and strengthening of existing human rights legislation, incl. extending protection on the grounds of disability, employment status, family status, political opinion, and age	Extending human rights protection to homosexuals and health (HIV) status
1992	Electoral Reform Bill	D	Gov't	Split		Establishment of a procedure for deciding whether to change NZ's electoral system, the options available, and the changes that would be made if the referendum were favourable	Electoral reform generally
	Electoral Referendum Bill (No. 2)	G	Gov't	Yes			
	Electoral Bill	G	Gov't	Yes			
1993	Children, Young Persons, and their Families Amendment Bill		Gov't	Yes		Addressing deficiencies in the principal Act, incl. mandatory reporting of child abuse by professionals, provision for the waiving of family conferences, increased emphasis on the needs and best interests of the child, making explicit the child's rights when dealing with police	The issue of mandatory reporting of child abuse by professionals
1994	Racing Amendment Bill	D	Gov't	Split		Changes to the regulations governing the racing industry, partially in response to the legalisation of casinos. In particular, allowing the TAB to enter into sports betting	Gambling generally. In particular, permitting 1) the TAB to engage in sports betting, 2) simulated racing, 3) credit card deposits to betting accounts
	Racing Amendment Bill	G	Gov't	Yes			

	Racing Amendment Bill (No.2)	F	Gov't	Yes			
	Income Tax Act (1994) Amendment Bill (No.5)	G	Gov't	Yes			
	Income Tax Act 1994 Amendment Bill (No.6)	F	Gov't	Yes			
	Goods and Services Tax Amendment Bill (No.4)	G	Gov't	Yes			
	Goods and Services Tax Amendment Bill (No.5)	F	Gov't	Yes			
1994	Criminal Investigations (Blood Samples) Bill		Gov't	Yes		Prescribing the powers and procedures for the taking of blood samples from suspects in the investigative process; establishing a DNA databank	Compulsorily acquiring blood samples from crime suspects, and the development of a blood sample database
1995	Electoral Reform Bill	D	Gov't	Split		Adjustments to the law surrounding elections to improve fairness and accuracy	Electoral reform generally
	Electoral Amendment Bill	G	Gov't	Yes			
	Electoral Amendment Bill (No 2)	G	Gov't	Yes			
	Citizens Initiated Referenda Amendment Bill (No 2)	G	Gov't	Yes			
1995	Death with Dignity Bill		Members	No	Leave to introduce denied	Legalising voluntary euthanasia	Euthanasia generally
1995	Sale of Liquor (Off-Licence) Amendment Bill		Members	No	Leave to introduce denied	Allowing sales of liquor in supermarkets on any day except Christmas and Good Friday; enabling supermarkets to sell a wider range of liquor; enabling liquor licenses to be granted in no-licence areas controlled by licensing trusts	Liberalising of liquor laws
1996	Shop Trading Hours Act Repeal (Easter) Amendment Bill		Members	No	Question that bill do proceed negatived	Addresses inconsistencies in the principal Act by enabling all shops to open on Easter Sunday	Liberalising trading hours
1996	Human Assisted Reproductive Technology Bill	B	Members	Yes		Clarifying the conditions around which new technology related to human assisted reproduction can be used, including the banning of cloning humans for reproductive purposes	The ethics of reproductive technology. the role of the state in controlling the ethical implications of new technology
1997	Shop Trading Hours (Repeal of Restrictions) Bill		Members	No	2 nd reading negatived	Removal of geographic and day-restrictions on shop trading	Liberalising trading hours
1997	Casino Control (Poll Demand) Amendment Bill		Members	No	Question that bill do proceed negatived	Tightening the regulatory framework around the licensing of casinos - Requires the Casino Control Authority to consider community opinions when considering a casino application; places additional demands on license applicants to do independent social and economic impact assessments; provides a mechanism for a local poll/referendum	Gambling generally
1997	Casino Control (Moratorium) Amendment Bill		Gov't	Yes		Extending the moratorium on new casino applications to provide time to review the casino industry more fully; removing the right of existing applicants to object or seek compensation for losses	Gambling generally
1997	Land Transport Bill	B	Gov't	Yes		Incremental improvements to land transport safety	The inclusion of photographs on the new drivers

							licenses, the compulsory carrying of licenses, extra powers for police to impound vehicles
1998	Gaming Law Reform Bill		Gov't	No	Discharged	Incremental changes to the regulations relating to licensing and regulation of casinos, as well as gaming machines outside casinos.	Gambling generally
1998	Sale of Liquor Amendment (No. 2) Bill		Gov't	Yes		A range of adjustments to liquor laws	Lowering of the legal age to purchase alcohol; the allowing of shops to sell liquor on Easter Sunday; the selling of liquor in supermarkets (and other outlets); adoption of an age of eligibility identification card
1998	Matrimonial Property Amendment Bill / renamed Property (Relationships) Amendment Bill	C, D	Gov't	Split		Addressing inconsistencies, anomalies and injustices in the way property is distributed after the ending of a relationship, either by separation or death.	Extending of property rights to partners involved in de facto relationships of 3 years or more and the extension of these rights to same-sex relationships
	Property (Relationships) Amendment Bill	G	Gov't	Yes			
	Administration Amendment Bill	G	Gov't	Yes			
	Family Proceedings Amendment Bill (No. 2)	G	Gov't	Yes			
	Family Protection Amendment Bill	G	Gov't	Yes			
1999	Shop Trading Hours (Abolition of Restrictions) Bill / Shop Trading Hours Act Repeal Act (Abolition of Restrictions) Amendment Bill	C	Members	No	Question that bill do proceed negated	Abolition of both day and geographic restrictions on shop trading	Liberalising of shop trading hours
1999	Smoke-Free Environments (Enhanced Protection) Amendment Bill / Smoke-Free Environments Amendment Bill	B	Members	Yes		Extending the provisions of the original Smoke free Environments Act to further discourage smoking around other people	State control of private behaviour
2000	Casino Control (Poll Demand) Amendment Bill	B	Members	No	2 nd reading negated	Enabling communities to make their own decisions about whether to permit casinos in their area	Gambling generally
2000	Sale of Liquor (Health Warnings) Amendment Bill		Members	No	1 st reading negated	Placing warnings on liquor bottles in an attempt to influence behaviour	Alcohol generally
2000	Casino Control (Moratorium Extension) Bill		Gov't	Yes		Extending the existing moratorium on casino licence applications	Gambling generally
2000	Prostitution Reform Bill		Members	Yes		Decriminalising the selling of sex and associated activities; exposing the sex industry to laws normally applicable to other businesses	The morality of being seen to encourage prostitution
2001	Shop Trading Hours Act Repeal Amendment Bill	B	Gov't	Yes		Reinstating the right of garden centres to open on Easter Sunday	Shop trading hours generally
2001	Local Government (Prohibition of Liquor in Public Places) Amendment Bill	B	Members	Yes		Empowering local authorities to establish alcohol-free zones within their jurisdiction	Alcohol generally
2002	Rotorua District (Easter Sunday Shop Trading) Bill	C	Local	No	2 nd reading negated	Aligning the shop trading hours of Rotorua with those of other tourist centres over Easter	Extension to shop trading hours
2003	Death with Dignity Bill		Members	No	1 st Reading negated	Allowing terminally ill people the right to choose a medically assisted death	Euthanasia generally

2003	Care of Children Bill	D	Gov't	Split		Updating the law on guardianship	The relative merits of requiring girls under 16 to obtain parental consent before an abortion can be obtained
	Care of Children Bill	G	Gov't	Yes			
	Status of Children Amendment Bill	G	Gov't	Yes			
2003	Parole (Extended Supervision) and Sentencing Amendment Bill	B, D	Gov't	Split		Improvements to the handling of child sex offenders after release, including provisions for supervision and home detention	Electronic monitoring of parolees
	Parole (Extended Supervision) Amendment Bill	B, F	Gov't	Yes			
	Sentencing Amendment Bill (No.2)	B, F	Gov't	Yes			
2003	Sale of Liquor Amendment Bill (No.2)	B	Gov't	Yes		The reinsertion of provisions relating to selling wine from wineries on Easter Sunday, mistakenly removed from the statute book in 1999	The sale of liquor on Easter Sunday
2004	Identity (Citizenship and Travel Documents) Bill	B, D	Gov't	Split		Adjustments to the procedure for granting citizenship such as length of time applicants must be resident in NZ; issues relating to travel documents, restricting the movement of terrorists, shortening the time of validity of passports from 10 to 5 years, etc.	Provision for the Minister to revoke a passport from a NZ citizen if he believes they pose a national threat
	Citizenship Amendment Bill (No.2)	B, F	Gov't	Yes			
	Passports Amendment Bill (No.2)	B, F	Gov't	Yes			
2004	Civil Union Bill		Gov't	Yes		Provision of a new legal entitlement, civil unions, to enable people in a wider variety of relationship configurations than at present to be recognised by the law	Morality of sanctioning non-traditional families
2004	Relationships (Statutory References) Bill	C, D	Gov't	Split		The legal recognition of relationships other than formal marriage, in the nature of marriage	Morality of sanctioning non-traditional families
	Relationships (Statutory References) Bill	F	Gov't	Yes			
	Administration Amendment Bill (No.2)	F	Gov't	Yes			
	Care of Children Amendment Bill	F	Gov't	Yes			
	Child Support Amendment Bill (No.3)	F	Gov't	Yes			
	Deaths by Accidents Compensation Amendment Bill	F	Gov't	Yes			
	Estate and Gift Duties Amendment Bill	F	Gov't	Yes			
	Goods and Services Tax Amendment Bill	F	Gov't	Yes			
	Government Superannuation Fund Amendment Bill (No.4)	F	Gov't	Yes			
	Income Tax Amendment Bill	F	Gov't	Yes			
	Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No.4)	F	Gov't	Yes			
	Interpretation Amendment Bill	F	Gov't	Yes			
	Life Insurance Amendment Bill (No.2)	F	Gov't	Yes			
	Marriage Amendment Bill	F	Gov't	Yes			

	Minors' Contracts Amendment Bill	F	Gov't	Yes			
	New Zealand Superannuation Amendment Bill (No.2)	F	Gov't	Yes			
	Parental Leave and Employment Protection Amendment Bill (No.2)	F	Gov't	Yes			
	Property (Relationships) Amendment Bill	F	Gov't	Yes			
	Real Estate Agents Amendment Bill	F	Gov't	Yes			
	Social Security Amendment Bill	F	Gov't	Yes			
	Tax Administration Amendment Bill	F	Gov't	Yes			
	Trustee Amendment Bill	F	Gov't	Yes			
	War Pensions Amendment Bill (No.3)	F	Gov't	Yes			
	Wills Amendment Bill	F	Gov't	Yes			
2004	Animal Welfare (Restriction on Docking of Dogs' Tails) Bill	B	Members	No	Order for 2 nd reading discharged	Restricting the docking of dog's tails to occasions when it is required for the health of the dog	Legislative action to stop cosmetic dog tail docking, perhaps at the expense of more important subjects
2004	Shop Trading Hours (Easter Trading Local Exemption) Bill		Members	No	1 st reading negated	Authorising territorial authorities to grant exemptions to restricted trading hours for retail shops	Liberalisation of trading laws
2005	Smoke-free Environments (Exemptions) Amendment Bill	B	Members	No	1 st reading negated	Enabling exemptions to the Smoke-free Environments Act to assist hospitality businesses	Smoking generally, and state control of private behaviour
2005	Marriage (Gender Clarification) Bill	B	Members	No	1 st reading negated	Clarifying the existing law to explicitly specify that marriage is between a man and a woman; specifying that marriage-specific activities such as marriage counselling are not discriminatory	Marriage exclusively between a man and a woman
2005	Sale Of Liquor (Youth Alcohol Harm Reduction) Amendment Bill / Sale of Liquor (Youth Alcohol Harm Reduction: Purchase Age) Amendment Bill		Members	No	2 nd reading negated	Raising the drinking age to 20 and controlling its advertising in response to purported problems that arose after the 1999 legislation lowered it	Alcohol generally, drinking age specifically
2005	Sale Of Liquor (Youth Alcohol Harm Reduction) Amendment Bill	C	Members	No	2 nd reading negated	Restrictions on the advertising of liquor	Restrictions on the advertising of liquor
2005	Manukau City Council (Control of Street Prostitution) Bill		Local	No	2 nd reading negated	Prohibiting street prostitution by making it an offence to solicit for prostitution in a public place in Manukau City	Prostitution generally, specifically the wisdom of permitting a single local authority special powers to control it
2005	Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill / Crimes (Substituted Section 59) Amendment Bill	B	Members/ Gov't ^{iv}	Yes		Removing the defence of reasonable force when using physical force to discipline children	Issues of parental rights vs. children's rights; role of state in dictating private behaviour
2006	Employment Relations (Probationary Employment) Amendment Bill	B	Members	No	2 nd reading negated	Introducing a probationary period for new employees	Employer rights vs. employees rights
2006	Young Offenders (Serious Crimes) Bill	B	Members	No	2 nd reading negated	Toughening how the justice system deals with young offenders	The wisdom of treating 12-14 year olds as criminals
2006	Local Government Law Reform Bill	B, D	Gov't	Split		Refinements to the legislative framework within which local authorities operate	Compulsory micro chipping of dogs (contained within the Dog Control Amendment Bill)
2006	Dog Control Amendment Bill	G	Gov't	Yes			

2006	Litter Amendment Bill	G	Gov't	Yes			
2006	Local Electoral Amendment Bill	G	Gov't	Yes			
2006	Local Government Act 2002 Amendment Bill	G	Gov't	Yes			
2006	Local Government Act 1974 Amendment Bill	G	Gov't	Yes			
2006	Local Government (Rating) Amendment Bill	G	Gov't	Yes			
2006	Rates Rebate Amendment Bill	G	Gov't	Yes			
2006	Land Transport Amendment Bill (No.2)	G	Gov't	Yes			
2006	Te Arawa Lakes Settlement Bill	B	Gov't	Yes		Settlement of a Treaty grievance over the Te Arawa Lakes	Adequacy of the Treaty settlement
2006	Easter Sunday Shop Trading Amendment Bill / Shop Trading Hours Act Repeal (Good Friday and Easter Sunday) Amendment Bill		Members	No	2 nd reading negated	Widening the list of exemptions of districts whose retailers are allowed to stay open on Good Friday and Easter Sunday	Liberalising of trading hours
2006	Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill / Shop Trading Hours Act Repeal (Easter Sunday) Amendment Bill		Members (began as a Local)	No	2 nd reading negated	Delegating the decision about extending shop trading hours to territorial authorities	Liberalising of trading hours
2007	Te Roroa Claims Settlement Bill	B	Gov't	Yes		Settlement of a Treaty grievance relating to the Te Roroa claim	Adequacy of the Treaty settlement
2007	Wanganui District Council (Prohibition of Gang Insignia) Bill	B	Local	Yes		Addressing gang problems in Wanganui by outlawing the wearing of gang insignia in specified public places	Proscribing the rights of people; the rights of gangs vs. the rights of the public
2008	Sale of Liquor (Objections to Applications) Amendment Bill		Members	n/a ^v		Attempting to prevent alcohol abuse by making it easier for local communities to object to liquor license applications	Alcohol generally
2009	Misuse of Drugs (Medicinal Cannabis) Amendment Bill		Members	No	1 st reading negated	Legalising the medicinal use of cannabis under certain conditions	Legalisation of cannabis
2009	Liquor Advertising (Television and Radio) Bill		Members	No	1 st reading negated	The banning of liquor advertising	Liquor advertising
2009	Shop Trading Hours Act 1990 Repeal (Easter Sunday Local Choice) Amendment Bill		Members	No	1 st reading negated	Empowering local communities to decide for themselves whether to open on Easter Sunday	Potential for the liberalisation of shop trading hours
2010	Excise And Excise-Equivalent Duties Table (Tobacco Products) Amendment Bill	B	Gov't	Yes		Increasing the rates of excise on tobacco products in an effort to further reduce tobacco consumption	The role of the state in legislating for private behaviour

Notes

This study excludes votes on administrative issues such as the appointment of the Speaker and the appointment of members of the Abortion Advisory Council.

- i Bills have been classified according to their year of first introduction, not their date of passing.
- ii In recent decades, 'parent' bills are sometimes split at the Committee stage, spawning 'child' bills that have a common heritage but nevertheless become separate bills. This study focuses, for the most part, on the 'parent' bills. A child bill – created from the splitting of a bill – also has the date of first introduction of its parent bill.
- iii Prior to 1983, bills were classified in the official record as either 'Public' or 'Private' bills. These have been converted to the more recently used classification of 'Government', 'Members' and 'Local' bills.
- iv Originally introduced as a members bill, but taken over by the government at the Committee stage.
- v Not yet completed: currently awaiting select committee report.
- vi This is the only non-legislative instance of conscience voting included in this study. These 'resolutions' of the house did result in the Gaming Legislation Bill 1910, however.

- A No division, only voice votes taken, but the participants in the debate made it clear they considered it a conscience issue.
- B Bill received only a Split Party Vote(s) rather than a Personal Vote(s).
- C Bills receiving a Split Party Vote as well as a Personal Vote.
- D Parent bill that was a CV.
- E Parent bill that was not a CV; the CV being a child.
- F Child bill that was a CV as well as the parent.
- G Child bill that was not a CV, but the parent was.
- H Child bill that was not a CV, but only a sibling was.
- I Child bill that was a CV, whose parent was not a CV.
- J Orphan; a child bill whose parent no longer exists.
- K Black sheep; a CV child bill whose siblings are not CVs.

APPENDIX 2: CONSCIENCE VOTES – DIVISIONS AND CLASSIFICATION

Year of First Intro. ¹	Bill (Child Bills Indented) ¹	Votes in the House				Votes in the Committee of the Whole House				Total Votes	% Conscience Votes	Classification	
		Voice Votes	Party Votes	Split Party Votes	Conscience Votes	Voice Votes	Party Votes	Split Party Votes	Conscience Votes			Subject	Topic
1891	Female Franchise Bill	1	0		1	2	0		2	6	50%	Female Enfranchisement	Electoral Reform
1891	Electoral Bill	3	0		0	4	0		14	21	67%	Female Enfranchisement	Electoral Reform
1891	Gaming and Lotteries Bill	2	0		0	0	0		1	3	33%	Regulation of Gambling	Gambling
1892	Electoral Bill	4	0		0	1	0		19	24	79%	Female Enfranchisement	Electoral Reform
1893	Women's Suffrage Bill	1	0		0	0	0		0	1	0%	Female Enfranchisement	Electoral Reform
1893	Electoral Bill	9	0		1	0	0		20	30	70%	Female Enfranchisement	Electoral Reform
1893	Licensing Act Amendment Bill	1	0		0	0	0		1	2	50%	Regulation of Alcohol	Alcohol
1893	Alcoholic Liquors Sale Control Bill	12	0		7	0	0		32	51	76%	Regulation of Alcohol	Alcohol
1894	Elective Executive Bill	1	0		1	0	0		0	2	50%	Promoting an Elected Executive	Constitutional Reform
1894	Parliamentary Disabilities of Women Abolition Bill	1	0		3	0	0		2	6	83%	Female Enfranchisement	Electoral Reform
1894	Gaming Bill	3	0		0	0	0		3	6	50%	Regulation of Gambling	Gambling
1895	Elective Executive Bill	1	0		1	0	0		0	2	50%	Promoting an Elected Executive	Constitutional Reform
1895	Alcoholic Liquors Sale Control Act Amendment Bill	3	0		5	34	0		41	83	55%	Regulation of Alcohol	Alcohol
1896	Elective Executive Bill	1	0		1	0	0		0	2	50%	Promoting an Elected Executive	Constitutional Reform
1896	Divorce Act Amendment Bill (Divorce Bill)	2	0		1	0	0		0	3	33%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1896	Bible in Schools Bill	1	0		2	0	0		0	3	67%	Religious Instruction in Public Schools	Religious Instruction
1896	Alcoholic Liquors Sale Control Amendment Bill	1	0		2	16	0		19	38	55%	Regulation of Alcohol	Alcohol
1896	Admission of Women to Parliament Bill	1	0		1	0	0		0	2	50%	Female Enfranchisement	Electoral Reform
1896	Abolition of Capital Punishment Bill	1	0		1	0	0		0	2	50%	Outlawing Capital Punishment	Crime and Punishment

1897	Gaming and Lotteries Amendment Bill	2	0	0	0	0	0	2	0%	Regulation of Gambling	Gambling
1898	Alcoholic Liquors Sale Control Act Amendment Bill	1	0	1	0	0	0	2	50%	Regulation of Alcohol	Alcohol
1898	Elective Executive Bill	1	0	1	0	0	0	2	50%	Promoting an Elected Executive	Constitutional Reform
1899	Elective Executive Bill	1	0	1	0	0	0	2	50%	Promoting an Elected Executive	Constitutional Reform
1899	Removal of Women's Disabilities Bill	1	0	2	0	0	0	3	67%	Female Enfranchisement	Electoral Reform
1899	Divorce and Matrimonial Causes Amendment Bill	1	0	1	0	0	0	2	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1899	Totalisator Gradual Extinction Bill / Totalisator Abolition Bill (No.2)	1	0	1	0	0	0	2	50%	Regulation of Alcohol	Alcohol
1899	Licensing Poll Regulation Bill	3	0	0	3	0	1	7	14%	Regulation of Alcohol	Alcohol
1900	Abolition of Capital Punishment Bill	1	0	1	0	0	0	2	50%	Outlawing Capital Punishment	Crime and Punishment
1900	Gaming and Lotteries Act 1881 Amendment Bill (No.1)	1	0	1	0	0	0	2	50%	Regulation of Gambling	Gambling
1900	Removal of Women's Disabilities Bill	1	0	2	0	0	3	6	83%	Female Enfranchisement	Electoral Reform
1900	Divorce Bill	1	0	1	0	0	0	2	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1901	Elective Executive Bill	1	0	2	0	0	0	3	67%	Promoting an Elected Executive	Constitutional Reform
1901	Divorce Act 1898 Amendment Bill [Divorce Bill]	1	0	1	0	0	0	2	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1902	Electoral Bill	5	0	0	74	0	28	107	26%	Promoting an Elected Executive	Constitutional Reform
1902	Elective Executive Referendum (No.2) Bill	1	0	1	0	0	0	2	50%	Promoting an Elected Executive	Constitutional Reform
1903	Elective Executive Bill	1	0	1	0	0	0	2	50%	Promoting an Elected Executive	Constitutional Reform
1903	Barmaids Abolition Bill	1	0	3	0	0	0	4	75%	Regulation of Alcohol	Alcohol
1903	Licensing Acts Amendment Bill	3	2	1	1	0	0	7	14%	Regulation of Alcohol	Alcohol
1904	Gaming and Lotteries Act Amendment Bill	1	0	1	1	0	1	4	50%	Regulation of Gambling	Gambling
1904	Marriage Restrictions Removal Bill	1	0	1	0	0	0	2	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1904	Licensing Acts Amendment Bill	11	0	4	142	0	55	212	28%	Regulation of Alcohol	Alcohol
1905	Gaming and Lotteries Act Amendment Bill ^a	1	0	1	0	0	0	2	50%	Regulation of Gambling	Gambling
1905	Elective Executive Bill	1	0	1	0	0	0	2	50%	Promoting an Elected Executive	Constitutional Reform
1905	Bible Lessons in Public Schools Plebiscite Bill	1	0	1	0	0	0	2	50%	Religious Instruction in Public Schools	Religious Instruction
1905	Divorce Act Amendment Bill	3	0	2	8	0	2	15	27%	Provisions Relating to	Marriage/Family/

												Marriage and Divorce	Children
1906	Elective Executive Bill	2	0	0	0	0		0	2	0%	Promoting an Elected Executive	Constitutional Reform	
1906	Divorce Act Amendment Bill	1	0	1	0	0		0	2	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children	
1907	Divorce Act Amendment Bill	1	0	1	0	0		0	2	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children	
1907	Marriages Validation Act Amendment Bill	1	0	1	0	0		0	2	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children	
1907	Gaming and Lotteries Act Amendment Bill	4	0	3	20	0		24	51	53%	Regulation of Gambling	Gambling	
1907	Divorce and Matrimonial Causes Act Amendment Bill	2	0	1	6	0		3	12	33%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children	
1908	Licensing Polls Absolute Majority Bill	1	0	1	0	0		0	2	50%	Regulation of Alcohol	Alcohol	
1908	Marriage Act Amendment Bill	1	0	1	0	0		0	2	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children	
1909	New Zealand Local Time Bill	3	0	0	0	0		0	3	0%	Introduction of Summer Time	Summer Time	
1909	Elective Executive Bill	1	0	1	0	0		0	2	50%	Promoting an Elected Executive	Constitutional Reform	
1909	Marriage Act Amendment Bill	2	0	1	1	0		2	6	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children	
1910	Gaming Resolutions	2	0	2	0	0		0	4	50%	Regulation of Gambling	Gambling	
1910	Licensing Amendment Bill	4	1	0	69	1		12	87	14%	Regulation of Alcohol	Alcohol	
1910	Gaming Amendment Bill / formerly Gaming Amendment Bill No.2	6	0	0	14	0		12	32	38%	Regulation of Gambling	Gambling	
1911	New Zealand Mean Time Bill	2	0	0	4	0		3	9	33%	Introduction of Summer Time	Summer Time	
1911	Elective Executive Bill	1	0	1	0	0		0	2	50%	Promoting an Elected Executive	Constitutional Reform	
1911	Gaming Amendment Bill	1	0	1	1	0		5	8	75%	Regulation of Gambling	Gambling	
1911	Marriage Act Amendment Bill	1	0	1	0	0		0	2	50%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children	
1912	Elective Executive Bill	1	0	1	0	0		0	2	50%	Promoting an Elected Executive	Constitutional Reform	
1912	Licensing Amendment Bill	1	0	1	0	0		0	2	50%	Regulation of Alcohol	Alcohol	
1912	Licensing Amendment (No.2) Bill	1	0	1	0	0		0	2	50%	Regulation of Alcohol	Alcohol	
1912	Marriages Validation Act Amendment Bill	1	0	2	1	0		4	8	75%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children	
1913	New Zealand Standard Time Bill / Definition of Time Bill	1	0	1	3	0		2	7	43%	Introduction of Summer Time	Summer Time	
1913	Gaming Amendment Bill (No.1)	1	0	2	0	0		0	3	67%	Regulation of Gambling	Gambling	
1913	Gaming Amendment Bill (No.2)	3	0	0	0	0		0	3	0%	Regulation of Gambling	Gambling	

1914	Licensing Amendment Bill	2	0		1	11	0		4	18	28%	Regulation of Alcohol	Alcohol
1914	Gaming Amendment Bill	2	0		1	3	0		1	7	29%	Regulation of Gambling	Gambling
1914	Election of Ministers and Party Government Reform Bill	2	0		0	0	0		0	2	0%	Promoting an Elected Executive	Constitutional Reform
1914	Education [Amendment] Bill	6	0		0	60	0		10	76	13%	Adjustments to the Education System	Education
1915	Definition of Time Bill	2	0		2	1	0		12	17	82%	Introduction of Summer Time	Summer Time
1915	Gaming Amendment Bill	2	0		1	0	0		0	3	33%	Regulation of Gambling	Gambling
1916	Definition of Time Bill	2	0		0	0	0		0	2	0%	Introduction of Summer Time	Summer Time
1917	Sale of Liquor Restriction Bill	4	0		0	4	0		3	11	27%	Regulation of Alcohol	Alcohol
1918	Licensing Amendment Bill	2	0		2	17	0		5	26	27%	Regulation of Alcohol	Alcohol
1920	Licensing Amendment Bill	3	0		0	9	0		1	13	8%	Regulation of Alcohol	Alcohol
1920	Gaming Amendment Bill	3	0		1	6	0		4	14	36%	Regulation of Gambling	Gambling
1920	Elective Executive Bill	1	0		1	0	0		0	2	50%	Promoting an Elected Executive	Constitutional Reform
1921	Abolition of Capital Punishment Bill	1	0		1	0	0		0	2	50%	Outlawing Capital Punishment	Crime and Punishment
1921	Gaming Amendment Bill	1	0		1	0	0		0	2	50%	Regulation of Gambling	Gambling
1923	Election of Ministers and Party Government Reform Bill	1	0		1	0	0		0	2	50%	Promoting an Elected Executive	Constitutional Reform
1923	Gaming Amendment Bill	2	0		2	0	0		0	4	50%	Regulation of Gambling	Gambling
1924	Summer Time Bill	3	0		1	0	0		2	6	50%	Introduction of Summer Time	Summer Time
1924	Religious Exercises in Schools Bill	1	0		1	0	0		0	2	50%	Religious Instruction in Public Schools	Religious Instruction
1924	Gaming Amendment Bill	5	1		1	8	0		4	19	26%	Regulation of Gambling	Gambling
1925	Summer Time Bill	2	0		0	0	0		2	4	50%	Introduction of Summer Time	Summer Time
1925	Religious Exercises in Schools Bill	1	0		1	0	0		0	2	50%	Religious Instruction in Public Schools	Religious Instruction
1926	Summer Time Bill	2	0		1	0	0		1	4	50%	Introduction of Summer Time	Summer Time
1927	Gaming Amendment Bill	1	0		2	0	0		0	3	67%	Regulation of Gambling	Gambling
1927	Summer Time Bill	2	0		1	8	0		10	21	52%	Introduction of Summer Time	Summer Time
1927	Religious Exercises in Schools Bill	1	0		2	0	0		0	3	67%	Religious Instruction in Public Schools	Religious Instruction
1927	Licensing Amendment Bill	3	0		2	41	0		6	52	15%	Regulation of Alcohol	Alcohol

1928	Summer Time Bill	1	0		1	0	0		0	2	50%	Introduction of Summer Time	Summer Time
1928	Religious Exercises in Schools Bill	1	0		1	0	0		0	2	50%	Religious Instruction in Public Schools	Religious Instruction
1928	Licensing Amendment Bill	3	0		1	0	0		0	4	25%	Regulation of Alcohol	Alcohol
1928	Summer Time (Local Empowering) Bill	4	0		0	0	0		0	4	0%	Introduction of Summer Time	Summer Time
1928	Licensing Amendment (No.2) Bill	2	0		1	26	0		15	44	36%	Regulation of Alcohol	Alcohol
1929	Summer Time Bill	3	0		0	2	0		4	9	44%	Introduction of Summer Time	Summer Time
1931	Religious Instruction in Public Schools Enabling Bill	3	0		0	0	0		0	3	0%	Religious Instruction in Public Schools	Religious Instruction
1931	Licensing Amendment Bill	3	0		0	0	0		0	3	0%	Regulation of Alcohol	Alcohol
1931	Marriage Amendment Bill	2	0		1	0	0		0	3	33%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1931	Licensing Poll Postponement Bill	3	0		1	0	0		1	5	40%	Regulation of Alcohol	Alcohol
1934	Religious Instruction in Public Schools Enabling Bill	5	0		0	0	0		0	5	0%	Religious Instruction in Public Schools	Religious Instruction
1948	Hoardings Bill	1	1		1	0	0		0	3	33%	Restriction of Advertising	Business/Employment
1948	Licensing Amendment Bill	7	0		0	19	0		1	27	4%	Regulation of Alcohol	Alcohol
1949	Licensing Amendment Bill	3	0		0	9	0		0	12	0%	Regulation of Alcohol	Alcohol
1950	Capital Punishment Bill	2	1		2	0	0		0	5	40%	Outlawing Capital Punishment	Crime and Punishment
1950	Gaming Amendment Bill	2	0		1	0	0		0	3	33%	Regulation of Gambling	Gambling
1951	Auckland Metropolitan Drainage Amendment Bill	4	0		0	0	0		1	5	20%	Provision of Infrastructure	Governance and Infrastructure
1953	Licensing Amendment Bill (No.2)	3	0		1	22	0		1	27	7%	Regulation of Alcohol	Alcohol
1955	Gaming Amendment Bill	5	0		0	2	0		0	7	0%	Regulation of Gambling	Gambling
1959	Land Settlement Promotion Amendment Bill	7	0		0	1	3		1	12	8%	Controlling Land Settlement	Miscellaneous
1960	Licensing Amendment Bill	4	0		0	30	0		4	38	11%	Regulation of Alcohol	Alcohol
1961	Crimes Bill	6	0		0	22	0		1	29	3%	Outlawing Capital Punishment	Crime and Punishment
1961	Licensing Amendment Bill	7	0		0	42	0		5	54	9%	Regulation of Alcohol	Alcohol
1962	Parliamentary Commissioner for Investigations Bill	3	0		0	3	0		1	7	14%	Creation of the Office of the Ombudsman	Constitutional Reform
1962	Auckland Regional Authority Bill	8	0		1	20	0		9	38	26%	Governance of Auckland	Governance and Infrastructure
1962	Sale of Liquor Bill	9	0		2	90	0		9	110	10%	Regulation of Alcohol	Alcohol

1962	Religious Instruction and Observances in Public Schools Bill	7	0	0	4	0	0	11	0%	Religious Instruction in Public Schools	Religious Instruction
1963	Indecent Publications Bill	6	0	1	14	0	3	24	17%	Censorship of Literature	Censorship
1963	Matrimonial Proceedings Bill	7	0	0	5	0	0	12	0%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1963	Licensing Amendment Bill	9	0	0	0	0	0	9	0%	Regulation of Alcohol	Alcohol
1965	Sale of Liquor Amendment Bill	7	0	0	8	0	8	23	35%	Regulation of Alcohol	Alcohol
1967	Sale of Liquor Amendment (No.2) Bill	7	0	0	2	0	0	9	0%	Regulation of Alcohol	Alcohol
1968	Fair Credit Transactions Bill	1	0	1	0	0	0	2	50%	Availability of Credit	Business/Employment
1968	Matrimonial Proceedings Amendment Bill	7	0	0	4	0	1	12	8%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1969	Sale of Liquor Amendment Bill	9	0	0	0	0	0	9	0%	Regulation of Alcohol	Alcohol
1970	Sale of Liquor Amendment Bill	6	0	1	2	0	1	10	20%	Regulation of Alcohol	Alcohol
1971	Sale of Liquor Amendment Bill (No.2)	8	0	0	15	0	0	23	0%	Regulation of Alcohol	Alcohol
1971	Transport Amendment Bill (No.2)	3	0	0	6	0	1	10	10%	Improving Road Safety	Health and Safety
1974	Crimes Amendment Bill	4	0	2	0	0	0	6	33%	Legalising Homosexuality	Homosexuality
1974	Hospitals Amendment Bill	2	0	6	5	0	3	16	56%	Regulating Abortion	Abortion
1975	Licensing Trusts Amendment Bill	4	0	2	0	0	2	8	50%	Regulation of Alcohol	Alcohol
1975	Sale of Liquor Amendment Bill / formerly Sale of Liquor Amendment Bill (No.2)	10	0	3	62	1	6	82	11%	Regulation of Alcohol	Alcohol
1975	Matrimonial Property Bill	5	0	0	2	0	2	9	22%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1976	Health Amendment Bill	2	0	3	0	0	0	5	60%	Regulating Abortion	Abortion
1976	Licensing Trusts Amendment Bill	3	0	3	6	0	2	14	36%	Regulation of Alcohol	Alcohol
1977	Contraception, Sterilisation, and Abortion Bill	7	0	6	110	0	39	162	28%	Regulating Abortion	Abortion
1977	Contraception, Sterilisation, and Abortion Bill	0	0	1	0	0	0	1			
1977	Crimes Amendment Bill	0	0	1	0	0	0	1			
1977	Food And Drug Amendment Bill	1	0	0	0	0	0	1			
1977	Guardianship Amendment Bill	1	0	0	0	0	0	1			
1977	Hospitals Amendment Bill	1	0	0	0	0	0	1			
1977	Mental Health Amendment Bill	1	0	0	0	0	0	1			
1977	Medical Practitioners Amendment Bill	1	0	0	0	0	0	1			
1977	Property Law Amendment Bill	1	0	0	0	0	0	1			
1977	Social Security Amendment Bill (No. 3)	1	0	0	0	0	0	1			
1977	Sale of Liquor Amendment Bill	3	0	0	3	0	1	7	14%	Regulation of Alcohol	Alcohol
1977	Licensing Trusts Amendment Bill	3	0	0	1	0	0	4	0%	Regulation of Alcohol	Alcohol

1978	Contraception, Sterilisation, and Abortion Amendment Bill	2	0		3	3	0		9	17	71%	Regulating Abortion	Abortion
	Contraception, Sterilisation, and Abortion Amendment Bill	1	0		0	0	0		0	1			
	Crimes Amendment Bill	1	0		0	0	0		0	1			
1979	Sale of Liquor Amendment Bill	5	0		0	3	0		2	10	20%	Regulation of Alcohol	Alcohol
1979	Family Proceedings Bill (No.2)	6	0		0	22	0		1	29	3%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
1980	Adult Adoption Information Bill	3	0		1	0	0		0	4	25%	Provision of Adoption Information	Marriage/Family/Children
1980	Sale of Liquor Amendment Bill	6	0		0	31	0		3	40	8%	Regulation of Alcohol	Alcohol
1980	Licensing Trusts Amendment Bill	6	0		0	2	0		0	8	0%	Regulation of Alcohol	Alcohol
1981	Winton Holdings Licensing Bill	5	0		3	1	0		0	9	33%	Regulation of Alcohol	Alcohol
1981	Licensing Amendment Bill	5	0		0	1	0		0	6	0%	Regulation of Alcohol	Alcohol
1981	Wine Makers Bill	4	0		0	9	0		1	14	7%	Regulation of Alcohol	Alcohol
1981	Sale of Liquor Amendment Bill	7	0		0	2	0		0	9	0%	Regulation of Alcohol	Alcohol
1981	Sale of Liquor Amendment Bill (No.2)	2	0		2	9	0		1	14	21%	Regulation of Alcohol	Alcohol
1982	Transport Amendment Bill (No.4)	7	0		0	14	0		2	23	9%	Improving Road Safety	Health and Safety
1983	Broadcasting (Television Advertising of Liquor) Bill	2	0		0	0	0		0	2	0%	Regulation of Alcohol	Alcohol
1983	Contraception, Sterilisation, and Abortion Repeal Bill	0	0		1	0	0		0	1	100%	Regulating Abortion	Abortion
1983	Status of Unborn Children Bill	0	0		1	0	0		0	1	100%	Regulating Abortion	Abortion
1984	Adult Adoption Information Bill	5	0		3	6	0		2	16	31%	Provision of Adoption Information	Marriage/Family/Children
1985	Longley Adoption Bill	7	0		1	0	0		0	8	13%	Provision of Adoption Information	Marriage/Family/Children
1984	Explosives (Fireworks Safety) Amendment Bill	6	0		0	3	0		1	10	10%	Reducing Accidents from Fireworks	Health and Safety
1985	Homosexual Law Reform Bill	3	0		12	5	1		21	42	79%	Legalising Homosexuality	Homosexuality
1986	Fencing of Swimming Pools Bill	4	0		4	6	0		5	19	47%	Improving Water Safety	Health and Safety
1986	Gaming and Lotteries Amendment Bill	1	3		3	4	3		5	19	42%	Regulation of Gambling	Gambling
1988	Casinos (Licensing) Bill	1	0		0	0	0		0	1	0%	Regulation of Gambling	Gambling
1988	Sale of Liquor Bill	6	0		8	104	0		13	131	16%	Regulation of Alcohol	Alcohol
1988	Racing Amendment Bill	4	0		0	0	0		0	4	0%	Regulation of Gambling	Gambling
1989	Abolition of the Death Penalty Bill	0	4		4	4	0		4	16	50%	Outlawing Capital Punishment	Crime and Punishment
1989	Casino Control Bill	0	0		5	52	0		3	60	13%	Regulation of Gambling	Gambling
1989	Contraception, Sterilisation, and Abortion Amendment Bill	0	2		6	1	0		6	15	80%	Regulating Abortion	Abortion
	Contraception, Sterilisation, and Abortion Amendment Bill	1	0		1	0	0		0	2			

	Contraception, Sterilisation, and Abortion Amendment Bill (No.2) [not a conscience vote]	0	0	0	0	0	0	0	0			
1989	Shop Trading Hours Act Repeal Bill	4	5	0	14	3	5	31	16%	Changes to Shop Trading Hours	Shop Trading Hours	
1990	Education Amendment Bill	1	6	0	38	6	1	52	2%	Prohibiting Corporal Punishment	Crime and Punishment	
1990	Proportional Representation Indicative Referendum Bill	1	0	1	0	0	0	2	50%	Introducing Electoral Reform	Constitutional Reform	
1990	Gaming and Lotteries Amendment Bill	1	4	3	11	0	8	27	41%	Regulation of Gambling	Gambling	
1990	Human Rights Commission Amendment Bill	1	0	1	0	0	0	2	50%	Protecting Human Rights	Rights (Human and Animal)	
1991	Smoke-Free Environments Amendment Bill	0	0	5	1	0	6	12	92%	Restricting Public Smoking	Health and Safety	
1991	Smoke-Free Environments Amendment Bill (No.2)	3	0	1	1	0	1	6	33%	Restricting Public Smoking	Health and Safety	
1991	Sale Of Liquor (Off-Licence) Amendment Bill	5	0	0	1	0	0	6	0%	Regulation of Alcohol	Alcohol	
1991	Racing Amendment Bill	5	1	0	5	0	2	13	15%	Regulation of Gambling	Gambling	
1991	Transport Safety Bill	4	0	0	51	0	4	59	7%	Improving Road Safety	Health and Safety	
	Transport Amendment (No. 3) ⁱⁱⁱ	1	0	0	0	0	0	1				
	Transport Services Licensing Amendment (No. 3) ⁱⁱⁱ											
	Transport (Vehicle and Driver Registration and Licensing) Amendment ⁱⁱⁱ											
	Railway Safety and Corridor Management Bill ⁱⁱⁱ											
	Transport Accident Investigation Commission Amendment ⁱⁱⁱ											
	Local Government Amendment Bill (No. 6) ⁱⁱⁱ											
	Road User Charges Amendment Bill ⁱⁱⁱ											
1992	Broadcasting (Liquor Advertising) Bill	4	0	0	0	0	0	4	0%	Regulation of Alcohol	Alcohol	
1992	Human Rights Bill	3	1	1	30	0	6	41	17%	Protecting Human Rights	Rights (Human and Animal)	
1992	Electoral Reform Bill	4	0	0	92	0	12	108	11%	Introducing Electoral Reform	Electoral Reform	
	Electoral Referendum Bill (No. 2) ⁱⁱⁱ	0	0	0	1	0	0	1				
	Electoral Bill ⁱⁱⁱ											
1993	Children, Young Persons, and their Families Amendment Bill	4	2	0	18	0	4	28	14%	Improving the Care of Children	Marriage/Family/Children	
1994	Racing Amendment Bill	2	0	3	27	0	2	34	15%	Regulation of Gambling	Gambling	
	Racing Amendment Bill ^{iv}	1	0	0	0	0	0	1				
	Racing Amendment Bill (No.2) ^v	0	0	1	0	0	0	1				
	Income Tax Act (1994) Amendment Bill (No.5) ^v											

	Income Tax Act 1994 Amendment Bill (No.6) ^v												
	Goods and Services Tax Amendment Bill (No.4) ^v												
	Goods and Services Tax Amendment Bill (No.5) ^v												
1994	Criminal Investigations (Blood Samples) Bill	4	0		0	30	0		5	39	13%	DNA Sampling from Suspected Criminals	Crime and Punishment
1995	Electoral Reform Bill	1	3		1	38	3		9	55	18%	Introducing Electoral Reform	Electoral Reform
	Electoral Amendment Bill	2	0		0	0	0		0	2			
	Electoral Amendment Bill (No 2)	0	1		0	0	0		0	1			
	Citizens Initiated Referenda Amendment Bill (No 2)	1	0		0	0	0		0	1			
1995	Death with Dignity Bill	0	0		1	0	0		0	1	100%	Legalising Euthanasia	Euthanasia
1995	Sale of Liquor (Off-Licence) Amendment Bill	0	0		1	0	0		0	1	100%	Regulation of Alcohol	Alcohol
1996	Shop Trading Hours Act Repeal (Easter) Amendment Bill	0	0		2	0	0		0	2	100%	Changes to Shop Trading Hours	Shop Trading Hours
1996	Human Assisted Reproductive Technology Bill	4	0	2	0	3	3	40	0	52	0%	Human Assisted Reproduction	Marriage/Family/Children
1997	Shop Trading Hours (Repeal of Restrictions) Bill	0	0	0	1	0	0	0	0	1	100%	Changes to Shop Trading Hours	Shop Trading Hours
1997	Casino Control (Poll Demand) Amendment Bill	0	0	0	2	0	0	0	0	2	100%	Regulation of Gambling	Gambling
1997	Casino Control (Moratorium) Amendment Bill	1	0	0	3	1	0	0	5	10	80%	Regulation of Gambling	Gambling
1997	Land Transport Bill	3	0	1	0	37	38	16	0	95	0%	Improving Road Safety	Health and Safety
1998	Gaming Law Reform Bill	0	0	0	1	0	0	0	0	1	100%	Regulation of Gambling	Gambling
1998	Sale of Liquor Amendment (No. 2) Bill	6	0	0	4	28	0	0	22	60	43%	Regulation of Alcohol	Alcohol
1998	Matrimonial Property Amendment Bill / renamed Property (Relationships) Amendment Bill	3	2	0	6	0	10	2	38	61	72%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
	Property (Relationships) Amendment Bill ⁱⁱⁱ	1	0	0	0	0	0	0	0	1			
	Administration Amendment Bill ⁱⁱⁱ												
	Family Proceedings Amendment Bill (No. 2) ⁱⁱⁱ												
	Family Protection Amendment Bill ⁱⁱⁱ												
1999	Shop Trading Hours (Abolition of Restrictions) Bill / Shop Trading Hours Act Repeal Act (Abolition of Restrictions) Amendment Bill	1	4	3	0	7	3	0	3	21	14%	Changes to Shop Trading Hours	Shop Trading Hours
1999	Smoke-Free Environments (Enhanced Protection) Amendment Bill / Smoke-Free Environments Amendment Bill	3	8	3	0	8	10	32	0	64	0%	Restricting Public Smoking	Health and Safety
2000	Casino Control (Poll Demand) Amendment Bill	1	1	1	0	0	0	0	0	3	0%	Regulation of Gambling	Gambling
2000	Sale of Liquor (Health Warnings) Amendment Bill	0	0	0	1	0	0	0	0	1	100%	Regulation of Alcohol	Alcohol
2000	Casino Control (Moratorium Extension) Bill	1	0	0	3	3	0	0	4	11	64%	Regulation of Gambling	Gambling
2000	Prostitution Reform Bill	1	0	0	4	2	0	0	17	24	88%	Regulating Prostitution	Prostitution
2001	Shop Trading Hours Act Repeal Amendment Bill	2	0	2	0	5	0	5	0	14	0%	Changes to Shop	Shop Trading Hours

													Trading Hours	
2001	Local Government (Prohibition of Liquor in Public Places) Amendment Bill	1	2	1	0	0	3	1	0	8	0%		Regulation of Alcohol	Alcohol
2002	Rotorua District (Easter Sunday Shop Trading) Bill	0	0	1	1	0	0	0	0	2	50%		Changes to Shop Trading Hours	Shop Trading Hours
2003	Death with Dignity Bill	0	0	0	1	0	0	0	0	1	100%		Legalising Euthanasia	Euthanasia
2003	Care of Children Bill	1	6	0	0	0	27	0	4	38	11%		Improving the Care of Children	Marriage/Family/Children
	Care of Children Bill	0	1	0	0	0	0	0	0	1				
	Status of Children Amendment Bill	0	1	0	0	0	0	0	0	1				
2003	Parole (Extended Supervision) and Sentencing Amendment Bill	2	1	2	0	4	23	2	0	34	0%		Youth Crime Sentencing	Crime and Punishment
	Parole (Extended Supervision) Amendment Bill ⁱⁱⁱ	0	0	1	0	0	0	0	0	1				
	Sentencing Amendment Bill (No.2) ⁱⁱⁱ	0	0	0	0	0	0	0	0	0				
2003	Sale of Liquor Amendment Bill (No.2)	3	2	2	0	2	7	4	0	20	0%		Regulation of Alcohol	Alcohol
2004	Identity (Citizenship and Travel Documents) Bill	3	0	2	0	12	0	16	0	33	0%		Altering Travel Documentation	Miscellaneous
	Citizenship Amendment Bill (No.2)	0	0	1	0	0	0	0	0	1				
	Passports Amendment Bill (No.2)	0	0	1	0	0	0	0	0	1				
2004	Civil Union Bill	0	1	0	5	0	3	0	46	55	93%		Legalising Homosexuality	Homosexuality
2004	Relationships (Statutory References) Bill	1	0	0	3	1	1	1	15	22	82%		Legalising Homosexuality	Homosexuality
	Relationships (Statutory References) Bill	0	0	0	1	0	0	0	0	1				
	Administration Amendment Bill (No.2)	0	0	0	1	0	0	0	0	1				
	Care of Children Amendment Bill	0	0	0	1	0	0	0	0	1				
	Child Support Amendment Bill (No.3)	0	0	0	1	0	0	0	0	1				
	Deaths by Accidents Compensation Amendment Bill	0	0	0	1	0	0	0	0	1				
	Estate and Gift Duties Amendment Bill	0	0	0	1	0	0	0	0	1				
	Goods and Services Tax Amendment Bill	0	0	0	1	0	0	0	0	1				
	Government Superannuation Fund Amendment Bill (No.4)	0	0	0	1	0	0	0	0	1				
	Income Tax Amendment Bill	0	0	0	1	0	0	0	0	1				
	Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No.4)	0	0	0	1	0	0	0	0	1				
	Interpretation Amendment Bill	0	0	0	1	0	0	0	0	1				
	Life Insurance Amendment Bill (No.2)	0	0	0	1	0	0	0	0	1				
	Marriage Amendment Bill	0	0	0	1	0	0	0	0	1				
	Minors' Contracts Amendment Bill	0	0	0	1	0	0	0	0	1				

	New Zealand Superannuation Amendment Bill (No.2)	0	0	0	1	0	0	0	0	1			
	Parental Leave and Employment Protection Amendment Bill (No.2)	0	0	0	1	0	0	0	0	1			
	Property (Relationships) Amendment Bill	0	0	0	1	0	0	0	0	1			
	Real Estate Agents Amendment Bill	0	0	0	1	0	0	0	0	1			
	Social Security Amendment Bill	0	0	0	1	0	0	0	0	1			
	Tax Administration Amendment Bill	0	0	0	1	0	0	0	0	1			
	Trustee Amendment Bill	0	0	0	1	0	0	0	0	1			
	War Pensions Amendment Bill (No.3)	0	0	0	1	0	0	0	0	1			
	Wills Amendment Bill	0	0	0	1	0	0	0	0	1			
2004	Animal Welfare (Restriction on Docking of Dogs' Tails) Bill	0	1	1	0	0	0	0	0	2	0%	Protecting Animal Welfare	Rights (Human and Animal)
2004	Shop Trading Hours (Easter Trading Local Exemption) Bill	0	0	0	1	0	0	0	0	1	100%	Changes to Shop Trading Hours	Shop Trading Hours
2005	Smoke-free Environments (Exemptions) Amendment Bill	0	0	1	0	0	0	0	0	1	0%	Restricting Public Smoking	Health and Safety
2005	Marriage (Gender Clarification) Bill	0	0	1	0	0	0	0	0	1	0%	Provisions Relating to Marriage and Divorce	Marriage/Family/Children
2005	Sale Of Liquor (Youth Alcohol Harm Reduction) Amendment Bill / Sale of Liquor (Youth Alcohol Harm Reduction: Purchase Age) Amendment Bill	0	0	0	2	0	0	0	0	2	100%	Regulation of Alcohol	Alcohol
2005	Sale Of Liquor (Youth Alcohol Harm Reduction) Amendment Bill	0	0	1	1	0	0	0	0	2	50%	Regulation of Alcohol	Alcohol
2005	Manukau City Council (Control of Street Prostitution) Bill	2	0	4	0	1	5	10	0	22	0%	Regulating Prostitution	Prostitution
2005	Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill / Crimes (Substituted Section 59) Amendment Bill	0	1	0	1	0	0	0	0	2	50%	Parental Discipline	Marriage/Family/Children
2006	Employment Relations (Probationary Employment) Amendment Bill	1	1	1	0	0	0	0	0	3	0%	Altering Employment Relations	Business/Employment
2006	Young Offenders (Serious Crimes) Bill	1	1	1	0	0	0	0	0	3	0%	Youth Crime Sentencing	Crime and Punishment
2006	Local Government Law Reform Bill	1	3	0	0	11	17	3	0	35	0%	Microchipping of Dogs	Health and Safety
2006	Dog Control Amendment Bill	1	0	0	0	0	0	0	0	1			
2006	Litter Amendment Bill	0	1	0	0	0	0	0	0	1			
2006	Local Electoral Amendment Bill	0	1	0	0	0	0	0	0	1			
2006	Local Government Act 2002 Amendment Bill	0	1	0	0	0	0	0	0	1			
2006	Local Government Act 1974 Amendment Bill	1	0	0	0	0	0	0	0	1			
2006	Local Government (Rating) Amendment Bill	0	1	0	0	0	0	0	0	1			
2006	Rates Rebate Amendment Bill	0	1	0	0	0	0	0	0	1			
2006	Land Transport Amendment Bill (No.2)	0	1	0	0	0	0	0	0	1			
2006	Te Arawa Lakes Settlement Bill	1	4	2	0	5	7	9	0	28	0%	Settlement of Treaty of Waitangi Claims	Treaty of Waitangi Settlement

2006	Easter Sunday Shop Trading Amendment Bill / Shop Trading Hours Act Repeal (Good Friday and Easter Sunday) Amendment Bill	0	0	0	2	0	0	0	0	2	100%	Changes to Shop Trading Hours	Shop Trading Hours
2006	Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill / Shop Trading Hours Act Repeal (Easter Sunday) Amendment Bill	0	0	0	2	0	0	0	0	2	100%	Changes to Shop Trading Hours	Shop Trading Hours
2007	Te Roroa Claims Settlement Bill	3	0	1	0	11	0	0	0	15	0%	Settlement of Treaty of Waitangi Claims	Treaty of Waitangi Settlement
2007	Wanganui District Council (Prohibition of Gang Insignia) Bill	1	3	1	0	0	23	0	0	28	0%	Restricting Public Display of Gang Insignia	Crime and Punishment
2008	Sale of Liquor (Objections to Applications) Amendment Bill ^{vi}											Regulation of Alcohol	Alcohol
2009	Misuse of Drugs (Medicinal Cannabis) Amendment Bill	0	0	0	1	0	0	0	0	1	100%	Legalising Medicinal Use of Cannabis	Drugs
2009	Liquor Advertising (Television and Radio) Bill	0	0	0	1	0	0	0	0	1	100%	Regulation of Alcohol	Alcohol
2009	Shop Trading Hours Act 1990 Repeal (Easter Sunday Local Choice) Amendment Bill	0	0	0	1	0	0	0	0	1	100%	Changes to Shop Trading Hours	Shop Trading Hours
2010	Excise And Excise-Equivalent Duties Table (Tobacco Products) Amendment Bill	1	0	3	0	0	0	0	0	4	0%	Increasing Tax (from Smokers)	Health and Safety

Notes

- i Bills have been classified according to their year of first introduction, not their date of passing.
- ii In recent decades, 'parent' bills are sometimes split at the Committee stage, spawning 'child' bills that have a common heritage but nevertheless become separate bills. This study focuses, for the most part, on the 'parent' bills. A child bill – created from the splitting of a bill – also has the date of first introduction of its parent bill.
- iii Combined Third Reading.
- iv Combined 3rd reading with Income Tax 1994 Amendment Bill (No.5) & GST Amendment Bill (No.4).
- v Combined 3rd reading with Income Tax 1994 Amendment Bill (No.6) & GST Amendment Bill (No.5).
- vi Not yet completed; currently awaiting select committee report.

Full List of Classifications (see Chapter One for explanation)

SUBJECT CLASSIFICATION

- 1 Regulation of Alcohol
- 2 Regulation of Gambling
- 3 Provisions Relating to Marriage and Divorce
- 4 Outlawing Capital Punishment
- 5 Religious Instruction in Public Schools
- 6 Promoting an Elected Executive
- 7 Female Enfranchisement
- 8 Introduction of Summer Time
- 9 Adjustments to the Education System
- 10 Restriction of Advertising

TOPIC CLASSIFICATION

- 50 Alcohol
- 51 Gambling
- 52 Marriage/Family/Children
- 53 Constitutional Reform
- 54 Crime and Punishment
- 55 Electoral Reform
- 56 Religious Instruction
- 57 Summer Time
- 58 Education
- 59 Business/Employment

11	Controlling Land Settlement	60	Governance and Infrastructure
12	Provision of Infrastructure	61	Miscellaneous
13	Availability of Credit	62	Censorship
14	Creation of the Office of the Ombudsman	63	Health and Safety
15	Governance of Auckland	64	Abortion
16	Censorship of Literature	65	Homosexuality
17	Regulating Abortion	66	Shop Trading Hours
18	Improving Road Safety	67	Rights (Human and Animal)
19	Changes to Shop Trading Hours	68	Euthanasia
20	Legalising Homosexuality	69	Prostitution
21	Provision of Adoption Information	70	Treaty of Waitangi Settlement
22	Improving Water Safety	71	Drugs
23	Reducing Accidents from Fireworks		
24	Restricting Public Smoking		
25	Legalising Euthanasia		
26	Protecting Human Rights		
27	DNA Sampling from Suspected Criminals		
28	Human Assisted Reproduction		
29	Prohibiting Corporal Punishment		
30	Introducing Electoral Reform		
31	Improving the Care of Children		
32	Settlement of Treaty of Waitangi Claims		
33	Youth Crime Sentencing		
34	Legalising Medicinal Use of Cannabis		
35	Parental Discipline		
36	Restricting Public Display of Gang Insignia		
37	Microchipping of Dogs		
38	Regulating Prostitution		
39	Altering Travel Documentation		
40	Protecting Animal Welfare		
41	Altering Employment Relations		
42	Increasing Tax (from Smokers)		

APPENDIX 3: SPLIT PARTY VOTES HELD SINCE THEIR INTRODUCTION IN 1996

Year of Intro.	Name of Bill	Passed into law?	Split Party Votes:		Personal Vote also?	Parties Splitting
			House	CWH		
1996	Human Assisted Reproductive Technology Bill	Yes	2	40	No	National, Act, United Future
1997	Land Transport Bill	Yes	1	16	No	Labour, Alliance, Act
1998	Matrimonial Property Amendment Bill / Property (Relationships) Amendment Bill	Yes	0	2	Yes	National
1999	Shop Trading Hours (Abolition of Restrictions) Bill / Shop Trading Hours Act Repeal Act (Abolition of Restrictions) Amendment Bill	No	3	0	Yes	Labour, National, United Future
1999	Smoke-Free Environments (Enhanced Protection) Amendment Bill / Smoke-Free Environments Amendment Bill	Yes	3	32	No	National, NZ First
2000	Casino Control (Poll Demand) Amendment Bill	No	1	0	No	Labour
2001	Shop Trading Hours Act Repeal Amendment Bill	Yes	2	5	No	National, Greens
2001	Local Government (Prohibition of Liquor in Public Places) Amendment Bill	Yes	1	1	No	National
2002	Rotorua District (Easter Sunday Shop Trading) Bill	No	1	0	Yes	National
2003	Parole (Extended Supervision) and Sentencing Amendment Bill	Yes	3	2	No	Greens
2003	Sale of Liquor Amendment Bill (No. 2)	Yes	2	4	No	Labour, National, United Future
2004	Identity (Citizenship and Travel Documents) Bill	Yes	2	16	No	Progressive
2004	Relationships (Statutory References) Bill	Yes	0	1	Yes	National
2004	Animal Welfare (Restriction on Docking of Dogs' Tails) Bill	No	1	0	No	United Future
2005	Smoke-free Environments (Exemptions) Amendment Bill	No	1	0	No	National
2005	Marriage (Gender Clarification) Bill	No	1	0	No	National, Labour, NZ First
2005	Sale Of Liquor (Youth Alcohol Harm Reduction) Amendment Bill	No	1	0	Yes	Act
2005	Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill / Crimes (Substituted Section 59) Amendment Bill	Yes	4	10	No	National, NZ First, United Future
2006	Employment Relations (Probationary Employment) Amendment Bill	No	1	0	No	Maori Party
2006	Young Offenders (Serious Crimes) Bill	No	1	0	No	National
2006	Local Government Law Reform Bill	Yes	0	3	No	Greens
2006	Te Arawa Lakes Settlement Bill	Yes	2	9	No	Maori Party
2007	Te Roroa Claims Settlement Bill	Yes	1	0	No	Maori Party
2007	Wanganui District Council (Prohibition of Gang Insignia) Bill	Yes	1	0	No	Act
2010	Excise And Excise-Equivalent Duties Table (Tobacco Products) Amendment Bill	Yes	3	0	No	Act

APPENDIX 4: LIST OF PEOPLE INTERVIEWED

Name	Organisation	Role	Date Interviewed	Form of Interview
John Armstrong	NZ Herald	Political Editor	24 March 2009	Face to face, Wellington
David Bagnall	NZ House of Representatives	Assistant Clerk	30 August 2007	Face to face, Wellington
Gordon Copeland	NZ House of Representatives	Independent MP	31 August 2007	Face to face, Wellington
Harry Duynhoven	NZ House of Representatives	Labour MP for New Plymouth	11 July 2005	Email correspondence
Jeanette Fitzsimons	NZ House of Representatives	List MP, Co-Leader of Green Party	30 April 2009	Face to face, Wellington
Tony Garnier	VSG Group	Former member of press corps	24 July	Face to face, Auckland
Phil Goff	NZ House of Representatives	Labour MP for Mt Roskill	10 June 2005	Face to face, Auckland
Catherine Healey	Prostitutes Collective	National Co-ordinator	14 June 2005	Telephone interview
John Hogg	Australian Commonwealth Government	Chair, Senate	3 January 2009	Face to face, Canberra
Jonathan Hunt	Retired from NZ House of Representatives	Former Speaker of the House	3 September 2009	Face to face, Auckland
Doug Kidd	Retired from NZ House of Representatives	Former Speaker of the House	17 February 2009	Face to face, Wellington
Steve Maharey	Retired from NZ House of Representatives	Former Labour MP for Palmerston North	30 April 2009	Telephone interview
David McGee	Retired from NZ House of Representatives	Former Clerk	18 February 2009	Face to face, Wellington
Amanda McGrail	Maxim Institute	Communications Manager	10 June 2005	Face to Face, Auckland
Lord Philip Norton	British House of Lords	Member of House of Lords	12 August 2008	Face to face, Newcastle
Sir Geoffrey Palmer	Retired from NZ House of Representatives	Former Leader, Labour Party	7 February 2009	Face to face, Wellington

Simon Power	NZ House of Representatives	Chief Whip, National Party	14 June 2004	Telephone interview
Lockwood Smith	NZ House of Representatives	National MP for Rodney	14 Deceber 2007	Email communication
Maryan Street	NZ House of Representatives	List MP, Labour	30 August 2007	Face to face, Wellington

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