Refereed paper delivered at
Australian Political Studies Association Conference
6 – 9 July 2008
Hilton Hotel, Brisbane, Australia

Reining in the Rebels: Holding Party MPs to Account

Anika Gauja
Department of Politics
University of Cambridge

Abstract

Party government is the organisational arrangement that characterises many parliaments in contemporary democracies, including Australia, New Zealand and the United Kingdom. Two basic conditions of party government specify that (1) parties must formulate policies for enactment once in office, and (2) parties in office must give high priority to carrying out party policies, and must be sufficiently cohesive or disciplined to enable this implementation. Nonetheless, theories of party government and indeed parties themselves emerged well after the establishment of representative legislatures. Consequently there is a great deal of tension and many inconsistencies between the constitutional and legal design of parliaments that were intended to comprise of independent/constituency representatives, and the political reality and current practice of party government. A potentially uncomfortable situation has developed whereby MPs hold dual responsibilities to their party and the public that may theoretically conflict.

This paper contrasts the obligations MPs assume as party agents with their legal and constitutional responsibilities as parliamentarians. Analysing legal precedent from Australia, the United Kingdom and New Zealand, I argue that in the vast majority of instances a party (or its members) cannot legally mandate their elected MPs to act in accordance with their policy wishes. In the absence of legal sanctions, the paper briefly examines the various other ways in which political parties hold their MPs to account (transparent decision-making, preselections, branch meetings, disciplinary bodies), and evaluates their effectiveness. I analyse variations in accountability within three party types (liberal democratic, green and social democratic parties) across three democracies: Australia, New Zealand and the United Kingdom.

Reining in the Rebels: Holding Party MPs to Account

In May 2008 the New South Wales State Labor Conference, the party's formal policy-making body, voted overwhelmingly to reject the State Labor government's plans to privatise electricity by 702 to 107 votes. Although privatisation was publicly advocated by the majority of the Parliamentary Labor Party, it was strongly opposed by union delegates, and the outcome of the vote sent a clear signal to the Labor government that the party machine did not support its actions in office. However, the day after the vote, Premier Morris Iemma announced his intention to continue with the privatisation despite the unequivocal opinion of the Conference, justifying his divergence from party policy as a decision 'taken in the best interests of the people of NSW' (ABC 2008a). Faced with a direct conflict between the directives of the Cabinet and the opinion of the party conference, former NSW Labor Minister Rodney Cavalier suggested that individual members of parliament (MPs) will have no choice but to resolve and 'deal with this in terms of both their conscience and the binding decision of the caucus, the binding decision of the conference. They'll have to work that through as individuals and as a group of men and women…' (ABC 2008b).

This paper examines the formal role of MPs in deciding upon and applying party policies to parliamentary activities and debate, in the context of their duties as both party and constituency representatives. The first part of the paper briefly examines the issue of policy transferral and accountability within the context of party government – which has served as the dominant paradigm of governance throughout the twentieth century. The second part turns to analysis of the formal obligations that MPs assume as policy agents; contrasting both legal conceptions of an MP's duty and those imposed by the party organisation. I argue that these obligations have the potential to conflict, and consequently in the vast majority of instances a party (or its members) cannot legally mandate their elected representatives to act in accordance with their policy wishes. Finally, I evaluate how this contradiction is resolved within formal party documents (for example, constitutions), and the alternate internal mechanisms parties have adopted to pursue the accountability of their parliamentarians. The paper presents a qualitative comparative study of policy transferral and accountability across three democracies that operate under systems of party government (Australia, New Zealand and the United Kingdom) and within three party types (social democratic, liberal democratic and green parties), whose parliamentarians are formally answerable to the broader party organisation. Data has been compiled from party documents, legal materials and interviews with party MPs and activists conducted by the author.

Policy Transferral and Party Government

As the legitimising 'myth'[1] that justifies the existence of parties as vehicles for representation and the aggregation of the policy preferences of the masses, party government relies on the ability of political parties to 'translate possession of the highest formal offices of a regime into operational control of government' (Rose 1969, 413).

[1] See Katz (1987, 3).

Although slightly different conceptions of party government have been offered by a number of scholars, a theme common to all is that for party government to function effectively, parties must formulate or decide on clear policies (or policy preferences), which are presented to the electorate. Once elected to parliament, a party must have 'the organisational and institutional capacity to carry these out through the people it appoints for that purpose' (Mair 2007, 15). In this way, political parties act as media for the transmission of policy preferences, and are held accountable to the public and their supporters through internal power structures (for example, internal leadership selection) and general elections. Looking more specifically at policy transferral, party government requires several conditions. First, partisans must formulate policy intentions for enactment once in office. Second, partisans in office must give high priority to carrying out party policies, and must be sufficiently cohesive or disciplined to enable them to implement their policy. Third, the party policies that are promulgated must be put into practice by the personnel of the regime (Rose 1969, 416-8; Katz 1986, 43; Katz 1987, 7; Thomassen 1994).

Although the language in this literature is that of 'government', it is important to note that many of the assumptions and requirements of party government (for example, that parliamentary parties seek to implement party policies) can also be applied to all party groups that have gained representation in the legislature.[2] Whilst opposition parties may not be able to see their policies directly implemented, they can seek amendments to government bills in line with their own principles, or introduce private members' bills to pursue similar outcomes. It should also be noted that although policy must be 'decided' or 'formulated' by parties, there is no requirement that this must be done through the democratic and inclusive participation of the membership (see Katz 1987, 4). As such, the theoretical requirements of party government are somewhat weaker than the formal policy processes established by many parties themselves, which provide for membership participation in policy formulation. However, the key relevant element in the theoretical model of party government is that a party's elected representatives work to implement the principles and policies of the party – established and disseminated to the public prior to general elections – and in this sense there is an assumption that MPs can, and should, be required to do so.

The Constitutional Design of Representative Parliament and the Legal Duties of a Parliamentarian

Nonetheless, theories of party government and indeed parties themselves emerged well after the establishment of representative legislatures. Consequently there is a great deal of tension and many inconsistencies between the constitutional and legal design of parliaments that are intended to comprise of electoral/constituency representatives, and the political reality and current practice of party government. A potentially uncomfortable situation has developed whereby members of parliament hold dual responsibilities to the party and the public that may theoretically conflict. This section of the paper examines the legal framework surrounding these public obligations. Although often overlooked in

[2] Authors such as Judge (1999) do, however, speak more broadly of a concept of party 'representation'.

comparative party studies, there is a significant body of public law that governs the activities of the parliamentary party based on a specific conception of its primary role, and which has important implications for party organisations, particularly in the balance of power between the party in public office and the extra-parliamentary organisation and for achieving accountability in policy transferral.

Elected representatives and the Westminster parliamentary tradition: Australia and the United Kingdom

The constitutional design of representative democracy in the United Kingdom, Australia and New Zealand is rooted in Burkean conceptions of the role of the parliamentarian as an independent representative (or more accurately trustee) of his/her electorate rather than a party delegate. Despite changing party systems and the modification of electoral laws to accommodate political parties as formal actors in electoral and parliamentary processes (see Gauja 2006; 2008), the common law has held a relatively consistent view of the representative role of a parliamentarian over the last century.

This view on the proper relationship between a parliamentarian and his/her electorate was first considered by the English Court of Appeal in 1909. The court expressed a strict disapproval with the concept of a political mandate, which stands in stark contrast to the importance of the concept in the model of party government:

> To deliver an opinion is the right of all men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But authoritative instructions; mandates issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience; these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our constitution. Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You chose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a Member of Parliament.[3]

If a member of parliament is not bound by the wishes of his/her electorate, they certainly cannot be bound in common law by the wishes of the party they represent. This line of reasoning was later applied in the 1980s by UK courts in two key cases concerning party discipline and the delivery of election promises at the local council level.

---

[3] Per Farwell LJ in *Amalgamated Society of Railway Servants v Osborne* [1909] 1 Ch 163, at 197 (Court of Appeal).

According to the decisions in *Bromley London Borough Council v Greater London Council* [1983] 1 AC 768 and *R v Waltham Forest London Borough Council; ex parte Baxter* [1988] 2 WLR 257, parliamentarians are required to take individual responsibility for their actions and at all times consider the 'public interest' when voting or contributing to debates.[4] Parliamentarians should not consider themselves bound by policy documents or previous promises made by the party, even if the electorate has endorsed them. As Denning MR commented:

> It seems to me that no party can or should claim a mandate and commitment for any one item in a long manifesto. When the party gets into power, it should consider any proposal or promise afresh – on its merits – without any feeling of being obliged to honour it or being committed to it. It should then consider what is best to do in the circumstances of the case and to do it if it is practicable and fair.[5]

Blind deferral to party policy is considered a breach of a representative's duty to consider the interests of all in his/her electorate, irrespective of majority opinion:

> The rigid adoption of policy simply as a matter of political commitment to a section of the local government electorate and without regard to the purpose for which the statutory powers are given by itself demonstrates a breach of the fiduciary duty. That duty is owed not simply to all electors, but to the whole body of ratepayers, including a large and important number who have no voice at all in electing local councillors.[6]

How does this legal precedent impact upon the internal organisation of parties and the implementation of party policy? The most significant consequence is that it guarantees the autonomy of parliamentary party from decisions of the party organisation in any matters that can be applied to the legislative arena. If parliamentarians are to represent their constituencies, which are defined by electoral law in geographic rather than party terms, they must remain independent in their deliberations and cannot take orders from third parties or external bodies. This includes voting in parliament in accordance with party policy, even if it has been democratically formulated by the membership. Although it rarely arises, if a parliamentarian crosses the floor on an issue and votes against the wishes of their party, he/she cannot be expelled or forced to resign from Parliament, even if the MP has taken a pledge or signed an agreement to do so (Oliver 2003, 133; Cowley 1996, 219). As Donaldson MR ruled in the context of local council representation:

> What would be objectionable would be a provision that a member had forthwith to resign his membership of the council if, in the absence of a conscience situation, he intended to vote contrary to group policy. This would

[4] See *Bromley LBC v Greater London Council* [1983] 1 AC 768; *R v Waltham Forest Borough Council, ex parte Baxter* [1988] 2 WLR 257.
[5] *Bromley v Greater London Council*, at 777 per Denning MR.
[6] *Bromley v Greater London Council*, at 793 per Oliver LJ.

> fetter his discretion and make him a mere delegate of the majority of the group.[7]

A major difficulty with this legal conception of representative democracy is that it bears little semblance with reality of party politics, where constituents vote for parties rather than individuals, and parliamentarians overwhelmingly vote along party lines (see Cowley 1996, 221). The law's rather creative response to reconciling the latter of these tensions has not been to alter the basic conception of the role of the representative as a trustee for the electorate, but to include party discipline and unanimity as a legitimate consideration in choosing how to vote. As the majority in *R v Waltham* found:

> I can see no reason why a councillor should not vote in favour of a resolution contrary to his own intellectual assessment of the merits, taken in isolation, in order to secure unanimity of vote, provided he retains an unfettered discretion in the council chamber. There is nothing, in my view, morally or legally culpable in voting in support of a majority which he has considered, and rejected, his arguments providing he considers all the available options and that considers that the maintenance of such unanimity is of greater value to the ratepayers than insistence upon his own view.[8]
>
> Party loyalty, party unanimity, party policy, were all relevant considerations for the individual councillor. The vote becomes unlawful only when the councillor allows these considerations or any other outside influences so to dominate to exclude other considerations which are required for a balanced judgment. If, by blindly toeing the party line, the councillor deprives himself of any real choice or the exercise of any real discretion, then his vote can be impugned and any resolution supported by his vote potentially flawed.[9]

Therefore, in Australia and the United Kingdom, legal precedent suggests that members of parliament are effectively free agents – immune from any attempt to mandate their voting in the legislature in favour of their party or electorate. It would appear that subsequent to the decision in *R v Waltham*, a constituent cannot hold his/her MP legally accountable for voting along party lines in breach of their duty to the constituency. Similarly, neither a political party nor its members can hold its MPs legally accountable for failing to abide by official party policy – for example, it cannot force MPs to resign their seat from parliament for breaching policy, even if the MP has pledged or signed a previous agreement to do so.

New Zealand's Electoral Integrity (Amendment) Act 2001: Enforcing party discipline

The tension between parliamentarians' independence and their election on a party platform caused particular difficulties in New Zealand after the transition to multi-

---

[7] *R v Waltham*, per Donaldson MR at 261.
[8] *R v Waltham*, at 264-5 per Stocker LJ.
[9] *R v Waltham*, at 265 per Russel LJ.

member proportional representation and the introduction of party list voting, which entrenched the role of parties (rather than individual parliamentarians) as the unit of interest aggregation. As Stockley (2004, 134) notes, since the introduction of the reforms in 1996, it has been presumed that parliamentarians will vote with their party unless they advise otherwise. As in Australia and the United Kingdom, several parties in New Zealand require candidates to ratify their commitment to the party cause.[10] For example, Labour candidates must sign a pledge to 'vote on all questions in accordance with the decisions of the Caucus of the Parliamentary Labour Party' (Labour Party Constitution 2002).

The effectiveness of such pledges was tested by the New Zealand Parliament's Privileges Committee after Alliance party list parliamentarian Alamein Kopu decided to leave the party but refused to resign her seat. The Alliance, which governed in coalition with Labour between 1999-2002,[11] required candidates to pledge to resign their seat in parliament if for whatever reason, they left the party. In ruling the pledge to be unenforceable on the ground of public policy, the Committee upheld the common law's refusal to regulate the decisions of parliamentarians, or uphold any document that purported to do so. However, in this instance, the Committee was faced with the added difficulty of reconciling its decision with the fact that the actions of a parliamentarian in leaving the party through which he/she was elected would destroy the proportionality of the New Zealand Parliament. The Committee considered this predicament, but held that in the absence of any statutory intention to the contrary, the principle of freedom and independence should prevail over that of proportionality:

> The balance that, in my view, has been struck between these two principles under the current statutory regime is that while the principle of proportionality dominates the process by which Members are appointed to Parliament, the statutory scheme supports their freedom and independence once elected. Thus in law an Alliance MP retains the freedom to cross the floor and vote with the opposing political forces notwithstanding the fact that this would be in breach of both the Alliance nomination pledge and the principle of proportionality… There may be legitimate questions of whether this is a desirable legislative policy. If so, that question needs to be resolved by Parliament. [12]

To counter this predicament and contrary to the common law tradition of representation, the New Zealand Parliament passed the *Electoral (Integrity) Amendment Act* 2001 (NZ). The Act was initiated by the Labour/Alliance government elected in 1999, which in the aftermath of the Kopu resignation, was 'determined to stop defections' (Palmer and Palmer 2004, 140). Indeed, 'party hopping' was perceived to be a significant problem during the period of transition to proportional representation: during the 44th parliament

---

[10] See further discussion pp. 16-22.

[11] Alliance is a leftist party that gained parliamentary representation between 1996-2002. Although currently registered, it holds no seats in the NZ parliament.

[12] Question of Privilege: Contention as to Resignation of Mrs Alamein Kopu MP, McGrath JJ, 10 September 1997, p. 5.

(1993-1996), fourteen MPs defected from their parties, while a further 11 defected during the 45th parliament (1996-1999) (Malone 2008, 51).

Containing provisions in stark contrast to the constitutional norms of representative democracy in New Zealand, there was significant doubt over the legislation's consistency with the Bill of Rights Act, and despite the determination of the governing coalition to pass legislation that would in essence enforce party discipline, the Act passed through parliament subject to 'serious criticism and required heavy amendment in order to secure enough votes to pass' (Palmer and Palmer 2004, 140). Under the Act, an MP who notified the Speaker of having resigned from his/her party was also deemed to have resigned from the Parliament. Section 55D of the *Electoral Act* 1993 (NZ) also contained a provision to declare a seat vacant if the Parliamentary Leader of a party serves notice on the Speaker that he/she 'reasonably believes that the MP has acted in a way that has distorted, and is likely to continue to distort' party proportionality in the Parliament (Stockley 2004, 134). However, the MP must be given prior notice and an opportunity to respond, and two-thirds of the party's MPs must agree with the serving of the notice.

The implications of this legislation for party organisation are significant and diverge considerably from the traditional position of the common law. With the intent of maintaining proportionality within the parliament, the Act formalises and institutionalises party discipline, holding MPs legally accountable to their parliamentary parties with significant sanctions. This arguably strengthens party accountability if individual parliamentarians are not able to diverge from already formulated policy positions. Their actions do not necessarily have to amount to crossing the floor: 'if there is a cumulative number of particular actions or continuing pattern of conduct designed to embarrass the political party, to harm its reputation not only in Parliament but also with those who voted for it' then the leader can form a reasonable belief that proportionality is distorted and request a seat be declared vacant (Gendall J *Huata v Prebble and Shirley* (High Court, Auckland, Civ 70/4/03, 19 February 2004)). Therefore, the legislation can stop rebel MPs from hijacking policy decided by the party. It cannot, however, serve this function if all MPs agree on a policy position (as it is the MPs who initiate and approve the notice, not the party members), significantly reducing accountability to the extra-parliamentary party organisation.

Currently, this legislation is more notable for its theoretical rather than practical application, as there has been little attempt to enforce it. The legislation was not invoked in the defections of Jim Anderton from the Alliance in 2002 and Tariana Turia from Labour in 2004 (Miller 2005, 125). The legislation was also subject to a sunset clause and expired in September 2005. Attempts to reintroduce the legislation in December 2005 were aborted after a majority of the Justice and Electoral Committee voted to reject the amending bill.[13] Nonetheless, reinstating the anti party-hopping legislation remains on the agenda of the NZ Labor Party (Barnett 2008).

[13] Electoral (Integrity) Amendment Bill 2005 – see Malone (2008, 73).

Duty to the Party: A Comparative Analysis of Party Constitutions

An analysis of party constitutions and the formal rules regulating the relationship between the parliamentary party and the party as a whole paints a different picture of the role of an MP to that of the independent 'Westminster parliamentarian' outlined above. Although the paradigm of the Burkean representative is still influential (particularly in the United Kingdom and within liberal democratic parties) rather than exercise independent judgement on issues of policy, in most cases party MPs are expected to remain formally subservient to the extra-parliamentary organisation. The rhetoric of this particular variant of 'party discipline' is strongest within social democratic parties although there are significant variations between parties and democracies in how the difficult relationship between party and constituency representative is resolved.

Labour parties in all three democracies examined attempt to exert the greatest formal influence upon their parliamentarians, who are intended to act as party delegates. Within the social democratic party family, the strongest example of formal extra-parliamentary control is within the NZ Labour Party, due to a combination of explicit party constitutional regulations governing its MPs, parliamentary practices that facilitate cohesion[14] and a recent history that has raised awareness of the important yet often conflicting relationship between the parliamentary party and the extra-parliamentary party organisation in the formulation and implementation of party policy. Article 293 of the Party's Constitution explicitly states that 'the policy of the New Zealand Labour Party shall be binding on all members of the Parliamentary Labour Party'. Further, the Statement of Intent drafted at the Party's 1988 Dunedin Conference reiterates this expectation: 'the parliamentary leadership undertakes to implement policies which are consistent with the manifesto of the New Zealand Labour Party' (reproduced in Debnam 1994, 67-8). In part this is a reflection of the party's history – by demanding adherence to policy yet recognising the crucial role MPs must play in formulating it, the Statement of Intent was drafted to avoid future instances of infighting and conflict over policy that occurred when Labour was elected to government in the 1980s, but abandoned the party's election policies 'without regard for detail or principle' (Debnam 1994, 56).

Within the Australian Labor Party, the parliamentary party is granted some autonomy to make decisions 'directed towards establishing the collective attitude of the Parliamentary Party to any question or matter in the Federal Parliament'. However, this right is subject to compliance with the party's Platform and Conference decisions and a positive undertaking that all possible action be taken to implement these decisions (ALP National Constitution 2004, Part B, Art. 5). This approach acknowledges the practicalities of legislative decision-making: '[a] conference meeting every two years cannot itself govern in circumstances where hundreds of decisions are taken each week, but it can – and it

[14] The Standing Orders of the New Zealand Parliament introduced in 1996 explicitly acknowledged the prominence of political parties in the legislature as opposed to the traditional emphasis on individual parliamentarians and the government/opposition groupings. For example, there is a right to vote by party (S.Os 142 and 144) and each party has the right to exercise a proxy vote for its party members (S.Os 155(4) and 156) – see McGee 2005, 83.

must – provide our guidelines now and into the future, and be on hand to give wise counsel to this or any other Labor government' (ALP 1986, 8; see Lloyd 2000, 61). It is pertinent to note that neither the ALP nor the NZ Labour constitution makes mention of the public duty of the parliamentary party, nor do they give formal recognition to any rights of MPs to vote according to conscience, electoral or national interest.

Interestingly, unlike Australia and New Zealand, the UK Labour Party's *Rule Book* does not contain any mention of the relationship between the party's parliamentarians (the Parliamentary Labour Party) and the extra-parliamentary party organisation. However, statements of the appropriate relationship between the PLP and the extra-parliamentary organisation have been published by the party elsewhere. Former Labour PM Clement Atlee wrote in 1937 that the Labour Party Conference 'lays down the policy of the Party and issues instructions which must be carried out by the Executive, the affiliated organizations and its representatives in Parliament and on local authorities…The Labour Party Conference is in fact a parliament of the movement' (Attlee 1937, 93; quoted in McKenzie 1963, 10). A publication produced by the Labour Party Head Office in 1948, *The Rise of the Labour Party*, further emphasised the supremacy of the party conference - the 'Parliamentary Party carries through its duties within the framework of policy laid down by the Annual Party Conference to which it reports each year. The Parliamentary Party has no power to issue orders to the National Executive, or the Executive to the Parliamentary Party. Both are responsible only to the Party Conference' (*The Rise of the Labour Party* 1948; quoted in McKenzie 1963, 11).

Although there is a 'deeply ingrained discourse' of membership sovereignty 'based on the idea that the parliamentary group was created to serve the interests of the extra-parliamentary organisation', the independence of the PLP has always been a contentious topic of debate within the party (Pettitt 2006, 291; see also Bille 1997; McKenzie 1963, 13). As early as 1907 the Labour conference passed a resolution allowing the parliamentary party flexibility in the 'time and method' by which conference decisions on party policy were to be carried out (UK Labour Party 1907, 49; McKenzie 1963, 394). More recently decisions in disciplinary matters have affirmed the PLP as a 'sovereign body,' a status that Bale (1997, 161) argues 'affects the extent to which it can be bound by Conference decisions on matters of policy'.

The Liberal Democrats (UK) and the NZ Greens do not codify the relationship between the party and its elected representatives in their constitutions and rules.[15] The parliamentary party of the Liberal Democrats remains a distinct entity for organisational purposes, governed by its own rules. According to the Constitution, the parliamentary party 'shall be entitled to make such regulations (not being inconsistent with this Constitution) as it thinks fit for the conduct of its own proceedings' (Article 9.1). Absent explicit constitutional regulation, NZ Greens MP Nandor Tanczos regarded the relationship between the Greens' parliamentary party and the broader party organisation as similarly flexible; the influence of party policy upon MPs as akin to 'legislators and judges – they write the law and we interpret it'.

[15] The NZ Greens do require that candidates for public office adhere to party policy, with the opportunity to state specific objections on the basis of conscience (Constitution Art. 10.3.2-3).

The constitutions of three parties, the Australian Greens, the Australian Democrats and the Green Party of England and Wales explicitly attempt to balance MPs' roles as constituency representatives with their duty to the party. The actions and activities of all elected Australian Greens' MPs must be consistent with the Charter of the Greens (41.1). All MPs must also adhere to the policies of the Greens, except in circumstances where there is a conflict between the Greens' national policy and the interests of the parliamentarians' constituents and/or their conscience (Article 41.2). In such circumstances the MP must provide reasons for this action to his/her electorate and the party (Articles 41.3-4).[16] Similarly, the Australian Democrats' Constitution requires that all parliamentarians adhere to party policy, except in cases where this conflicts with the parliamentarian's own view or electoral duty, in which case he/she may vote according to conscience (s11.3). Although this provision seems to shift the balance of power in favour of the parliamentary party, it is corrected somewhat by a further provision that requires the parliamentarian to report all differences of opinion to the National Executive.

Article 9 of the Constitution of the Green Party of England and Wales places an onus on its elected representatives to remain accountable to the extra-parliamentary party organisation. The article states:

> Green Party members who are elected or otherwise appointed to public office have responsibilities to the public, to the body on which they serve and to the Green Party. Whilst they must fulfil public duties, they also remain accountable to the party (ss. ii).
>
> Elected members and other representatives should seek to further the Object and Aims of the Green Party…Their accountability in fulfilling this is to the appropriate Green party/parties corresponding to the Authority they have been elected to (ss. iii).

The constitution is, however, curiously silent on what 'accountability' involves and the consequences of non-compliance. With respect to party policies and objectives, elected members 'have a responsibility to promote the policies of the national and local green parties, as expressed in the Manifesto for a Sustainable Society and national, regional and local manifestos'. Elected representatives are free to disagree with party policy, but upon publicly stating their own position, 'should at the same time state and explain the position of the Green Party' (Article 9 (iv)).

[16] Note, however, that there is a significant divergence of opinion on the issue of conscience votes in the State party branches (see Vromen and Gauja 2009, forthcoming), and no option of a conscience vote in the Greens NSW (Article 41.5).

Table 1: Constitutional regulation of MPs' relationship to the party

Adherence to Party	**Balancing Party/Parliamentary Duties**	**No Regulation**
Australian Labor Party	Australian Democrats	UK Labour
NZ Labour Party	Australian Greens	Liberal Democrats
	Green Party of England & Wales	NZ Greens

The way in which the relationship between the parliamentary party and the extra-parliamentary organisation is codified in party rules and constitutions is illustrated in the table above. Labour parties in New Zealand and Australia conform to the expectation that the party in public office should be subservient (at least in a formal sense) to the extra-parliamentary party organisation – a characteristic of their historical development and one of the distinguishing features of the mass party model. Interestingly, unlike their counterparts in Western Europe, green parties in the UK and Australia acknowledge the potential for the role of MPs as both constituency and party representatives to conflict, and make provision for this in their constitutions. European Green parties, for example in Germany have historically emphasised the role of their elected MPs as party delegates much more heavily and demand adherence to party policy and the views of the membership. A strong socialist influence was notable in the early years of the Die Grünen, manifest in calls for 'permanent control of all office holders' by the party's 'base' (Die Grünen 1980; Kreusser 2003, 6). As Poguntke notes, like social democratic parties,

> Green ideology and organisational history as an offspring of the new social movements led the Green Party to define itself as the parliamentary mouthpiece of extra-parliamentary movements…Green politics has been inspired by the ideal of an active extra-parliamentary party guiding, or even supervising, the actions of Green parliamentarians (Poguntke 1993, 388; see also Kitschelt 1989; 1990; Offe 1980).

This key difference illustrates the tempering effect of the culture and practices of Westminster-style representative government, and an acknowledgement by Green parties in Australia, the United Kingdom and New Zealand that the role of a parliamentarian involves both public and party duties.

Alternate Accountability Mechanisms

If policy transmission between the party and the parliament is to effectively occur as per the model of parliamentary party delegates outlined in the constitutions of many parties surveyed above, there must be some mechanism or mechanisms by which a party's MPs can be held to account if they fail to abide by the policy directions set by the broader party organisation. As I have argued, in Westminster parliaments such accountability cannot be sought by legal means as MPs are essentially viewed free agents and the law will not uphold any agreement that purports to constrain the independence of

parliamentarians' processes of decision-making. Consequently, parties have had to rely upon mechanisms internal to their organisation to ensure that policy decisions are complied with, the most common of which are analysed below.

Providing explanations and transparent decision-making

For those party constitutions that acknowledge and balance the duties of an MP as having to fulfil both public and party functions, the option of taking a conscience vote and voting contrary to party policy is always subject to explanation. In the Australian Democrats, this explanation must be provided to the party's executive and in the Australian Greens it must be provided to both the party executive and the electorate. When elected representatives of the English Greens 'do not agree with the party and publicly state their own position, they should at the same time state and explain the position of the Green Party' (Constitution Art. 9 (iv)). A similar practice is observed in the Liberal Democrats, although it is not formally codified: if parliamentarians respond to a debate 'in a way that is completely against current party policy, they have to do so under their own name, not on behalf of the party' (Liberal Democrats Head of Policy, Greg Simpson). Apart from encouraging transparency and avoiding confusion, there is very little coercive value in this mechanism, and it is usually seen as a precursor to the more effective process of candidate selection.

Although the majority of parties surveyed required their MPs to report their activities to the party conference,[17] there is only limited evidence to suggest that this forum functions as an effective mechanism in pursuing accountability. The primary reason is the increasing tendency for party conferences to function as stage-managed media events, where debate is tightly controlled and reports serving as vehicles for advertising rather than scrutiny (Faucher-King 2005; Button 2002, 42). The ineffectiveness of the NSW Labor Conference's motion to reject electricity privatisation after the Premier's prompt dismissal of this decision (discussed previously) provides a telling example. By comparison, former UK Labour Executive member Tony Robinson lamented that

> As far as the membership itself is concerned, conference became sacrificed as genuine forum for debate between members and the leadership and an awful lot of party members including myself acquiesced in that because we felt that we didn't want any longer conference to be a kind of bear baiting circus, which was observed by everybody in the country on television and just seemed to demonstrate how dysfunctional we were as an organisation.

Candidate selection processes

Akin to general elections, which constitute the primary way that citizens hold governments accountable, candidate selection contests within political parties are a

[17] See for example Article 297 of the NZ Labour Party constitution, which requires the parliamentary party to present a report to conference of its work in the previous year.

potential means by which party members can seek responsiveness from their MPs. Inclusive and internally democratic candidate selection processes require that each parliamentarian be re-selected by members as a candidate every election. If members do not like the actions of a particular MP, they may choose simply not to endorse his/her candidature at the next election. Interviews with party MPs revealed that they regarded this as the most effective way of achieving accountability, or in Australian Greens' senator Christine Milne's words, the best 'controlling mechanism' through which to influence the legislative decisions of the party in public office. A similar awareness of the power of preselections imbued MPs' thinking, regardless of their party orientation:

> It's up to that body [the federal executive] to determine if in the future you'll be preselected – whether that breach, or what they would see as a difference of opinion – not a breach – would warrant you being pre-selected or not. So it's not as if Green Members of Parliament can willy-nilly go off on a whim… (Australian Greens Senator, Christine Milne).
>
> When we Democrat senators come up for preselection – members have the right to throw you out. You've always got to look at what's happening with your membership base (former Australian Democrats leader, Meg Lees).
>
> …Of course Liberal Democrat MPs have to be reselected each election. So if the party members really think you have been going away from party policy they could also hold you accountable (Liberal Democrats Shadow Minister, Ed Davey).

In addition to acting as a means of accountability, candidate selection processes also function to install potential parliamentary representatives who are, in theory, sympathetic to the views of the membership and the position of the party in instances where consultation with the extra-parliamentary organisation is not possible:

> If you're in the situation in the Parliament and a piece of legislation is presented or a package of reforms is presented, you simply wouldn't have the time or the resources to involve party members in making those sorts of decisions. That's why we have a preselection process. The people that elect you to be the Labor candidate for a particular area have to have some faith that you are able to make decision on their behalf in areas like that (ALP Minister, Tanya Plibersek).

Candidates for Parliament are directly elected by their local parties / State Divisions in the Australian Democrats, the Liberal Democrats (s. 11.5), the Australian Greens (s. 40.1), the Green Party of England and Wales (Bye-Law 3a), the UK Labour Party (s. 5C.7) and the Australian Labor Party (s. 15). Acknowledging the potential influence of candidate selection, the UK Labour Party's leadership has even attempted to harness the power of pre-selections by circulating voting records to constituency parties in the hope of disciplining MPs who do not toe 'the party line' through the disapproval of their own members (see Cowley 2005, 64).

In New Zealand, both constituency and party list candidates in the Greens are elected by the rank and file, either in local meetings (constituency candidates) or by a postal ballot of the membership (list candidates). The New Zealand Labour Party is the only outlying case, with preselections conducted by selection committees comprised of executive members and local area representatives (ss. 242-255). This is particularly interesting because, of these three democracies, New Zealand is the only one to regulate candidate selection, specifying that parties must follow 'democratic procedures in candidate selection' (*Electoral Act* 1993). Consequently, the presence of several representatives elected from the membership in candidate selection panels (as opposed to direct democratic procedures in the preselection of candidates) must be sufficient to fulfil the requirements of the Act, although this has not been legally challenged.

Nonetheless, candidate selection as a mode of accountability is weak for several reasons. First, apart from the fact that it operates retrospectively, de-selection can only occur in tandem with a general election, hence the opportunities that members have to express their disapproval are limited, particularly in legislatures where the term of office of an elected representative is quite lengthy, for example the Australian Senate (6 years). The practice of 'branch stacking', in which candidates bankroll new memberships in local branches in return for support in pre-selection contests, has caused significant controversies in Australian major parties, particularly the ALP. Further, often pre-selection by the rank and file is subject to conditions set by the party's executive, such as affirmative action measures (see for example, the ALP's measures to have not less than 40% of seats held by women from 2012 (s. 10(c)). In other instances, prior approval or subsequent ratification of a candidate's selection is required by the executive. This process of vetting candidates occurs within the UK Labour Party (s. 5C.8), the Liberal Democrats (Art. 11.1, 11.3) and the Australian Democrats (Art. 11.2). Green parties across the three democracies surveyed and consistent with their ideology and grassroots ethos, were the only party type opposed to executive interference beyond that necessary for administrative purposes. For example, the Australian Greens *Constitution* provides that 'the National Council may formulate guidelines to regulate the selection of candidates, but not to override a fair and democratic process' (s. 40.4). The ability of a party executive to effectively over-ride candidate pre-selections or de-selections demonstrates that accountability to the extra-parliamentary organisation and accountability to the membership can not be treated as being synonymous.

Party Meetings

Another potential way in which MPs feel that they are answerable to the party membership is through attendance at branch and local constituency party meetings, which not only provides parliamentarians with the opportunity to explain their legislative activities and actions, but enables them to proactively ascertain the views of party members, thus presenting a more dynamic type of accountability. In this way, responsiveness is secured through ongoing involvement and continuing links with the broader party organisation, and participating in its activities. However, it is largely a

voluntary mechanism, and there are significant variations in participation amongst individual MPs depending on the importance they place upon attending party meetings.

Apart from the pressures of time, one reason for reluctance amongst parliamentarians to actively engage with their local parties is the perception that they fail to reflect the views of the party as a whole. As Liberal Democrats' Shadow Minister, Ed Davey, explained:

> There's a monthly borough executive, which is not representative of the party, there's a council group meeting which is also not representative of the party. There are pappadams and politics, which are in my area, every other month we have a curry and a political discussion. That's still not representative of the party but there's more people at that so by definition it's more representative, so I'll go along to that.

The extent to which MPs will listen to the views of the party membership varies within parties and depends on 'people's own personal positions…how much they think it's important' (ALP Minister, Anthony Albanese). An innovative approach adopted by Australian Democrats senator Andrew Bartlett was to use surveys of his local membership to solicit opinion on controversial issues undergoing debate in parliament. However, this type of consultation is an isolated example and the majority of MPs prefer to consult with their membership through more conventional forums such as party meetings and issue discussions, albeit on an ad-hoc basis.

Even in social democratic parties, MPs do not view their attendance at party meetings as an exercise in delegation – to receive orders from the membership – but rather as one of consultation, debate and to extend the policy process *to* the membership:

> I feel a strong sense of accountability, to my constituency as well as to Party members. I am not, though, their delegate to Parliament – and I am sure most understand that – how the accountability works is that I explain, respond to questions, account for my votes, actions and views, and they have the right to ask questions, and to put arguments back. My constituency party has never passed a resolution attempting to tell me to do something; they know that is not the nature of the relationship. But they do know I will always answer, discuss, take up concerns, and let them know honestly my own views (UK Labour MP).

> I need to know when I'm making policy how it affects people living in country areas. I don't think you get those insights without actually going places sometimes. So I value [attendance at party meetings] highly for the actual ideas, for the insights it gives me into how policies affect people in different places. Because I think I owe it to branch members, I think that people in the party get little enough respect and reward for the huge effort they put into their party membership and I think it's good for people to participate in democracy so you've got to make it worth their while by having an opportunity to give their views, that they're not just members of the party

> to be used as letterboxers. Most importantly, I really enjoy it, I really value talking to Labor Party members' (ALP Minister, Tanya Plibersek).

Attendance at local party group meetings and maintaining links with social movements by participating in social protest activity was emphasised to a significantly greater extent by Green Party MPs, who perceive a sense of 'responsibility' towards attending (Tanczos 2008), and who regard it both as a primary accountability mechanism and an opportunity to assess the views of the party on contentious legislation.

> So from a personal perspective, I try to make sure I'm very actively involved in the party as well as a politician, trying to get feedback if we're having to make decisions that are…I've never had to make a decision inconsistent with our policy, but if it isn't covered in our policy I'd make sure I talked to people about what we're doing and I'd make sure I get their feedback and that people are happy with the decision that we're taking. If there's a big issue coming up, make sure that's discussed (Australian Greens Senator, Rachel Siewert).

> For me personally, [accountability is]… it's being a member of a local group, going to those meetings, giving a report on what's happening in parliament, answering questions. I'm accountable in the sense that there is also an expectation that you will attend meetings of other groups. If they're involved in some sort of public issue, a contentious issue, that if you can you will go along – often to speak or at least participate (NSW Greens MLC, Sylvia Hale).

> There'd be hardly a meeting would go by where you wouldn't have the MPs at those meetings. And I would see that that would be the main level of our accountability within the party, is going to those meetings. We give reports. We participate in much of the discussion, and we know (as so often is the case) informal networking is a big part of it and those meetings would now average about 60 people. It's an opportunity to catch up with people from around the State, both formally and informally, in a meeting structure (NSW Greens MLC, Lee Rhiannon).

The importance of meetings within Green Parties is backed up by a culture of transparency and open decision-making. Membership participation in the Australian Greens 'is actively encouraged through formal rules allowing members to attend *all* meetings of the party, even if they are not always accorded full speaking rights' (Miragliotta 2006, 588-9). Similarly, within the Green Party of England and Wales, all meetings of elected and appointed Green Party bodies at the national level are open to members (of more than one year) to attend as observers (s. 10(iv)).

The extent of consultation and the levels of engagement MPs maintain with their extra-parliamentary party organisations is one indicator of the strength of party upon legislative roles and duties. The evidence indicates that whilst party members may potentially

constitute an influential source of information and opinion influencing the decision-making processes of MPs, levels of engagement vary significantly amongst parliamentarians and are largely dependent on individual initiative on the part of the MP to seek this out. The Greens are the only party grouping of MPs that emphasised the importance of ongoing consultation and communication between the parliamentary party and the party's membership.

Other mechanisms of accountability

Another possible means of holding party parliamentarians accountable is through disciplinary bodies, set up within the framework of the party organisation. However, as the Australian Democrats experience in the aftermath of the controversial GST vote (1999) illustrates, they are largely ineffective and often viewed as antagonistic – unnecessarily highlighting disputes within a party. For example, Australian Democrats parliamentarians are notionally held in check by the possibility of disciplinary action brought by the National Executive on behalf of the membership for actions deemed to be against the 'party's interests'. However, disciplining the parliamentary party has not been an easy task for the executive, as Democrats' Senator Natasha Stott Despoja comments: 'ultimately, it's a governing body to which we're accountable, but because we have so much power in the parliamentary wing sense, it's possible for us to ignore them - but that shouldn't be allowed'. The ineffectiveness of disciplinary mechanisms was exemplified by the resignation of former leader Senator Lees from the party. Lees did not accept actions brought against her by the National Executive's disciplinary body, the National Compliance Committee, and chose to exit the party rather than comply with its orders (*The Australian* 27-28 July). As former Democrats Senator Brian Greig explained: 'At the end of the day, we have a conscience vote on everything, so National Executive cannot and do not direct the senators to do anything in particular, other than the general overt and covert pressure on them to be good senators and to committing themselves to party policy'.

Finally, it is often the case that ad hoc and informal processes provide a greater level of scrutiny, for example, self-policing amongst parliamentarians and the prompt commentary and criticism provided by and disseminated through online media:

> If a spokesperson says something which is quite out of line with policy directions and values of the party, you can bet your bottom dollar that other parliamentarians will spot this. So other MPs will say 'what is that about?', and you can also be absolutely clear, and even more so in the age of bloggers, that party members will saying 'what on earth did they say?'. So even in those moments where there isn't an official party policy or process, the party is still influential (Liberal Democrats MP, Ed Davey).

Conclusions: Accountability in Policy Transferral

Although party government has become the dominant paradigm in political governance over the last century, many of the requirements for its effective operation potentially stand in conflict with the norms of Burkean representative government, developed from the Westminster parliamentary tradition. One of the most significant tensions is the dual role MPs play as both party and constituency representatives. Whilst there is some variation by party type in the way in which these two roles are acknowledged and reconciled in party rules and constitutions, these documents generally paint a picture of a party MP as that of a delegate to the policy decisions of Conference or at the very least, accountable to the extra-parliamentary party organisation for decisions taken in the legislative chamber.

However, this conception of the role of an MP stands in stark contrast to expectations of parliamentarians as expressed in the common law, which closely follow the Burkean tradition of a trustee. Consequently, political parties and party members to not have recourse to the law to hold their parliamentarians accountable if they decide (either as individuals or a group) to diverge from the dictates of party policy.

Political parties have therefore sought to hold their parliamentarians accountable through alternate means endogenous to the party, through engineering ‘specific organisational structural instruments that try to guarantee the undistorted transmission of the political intentions and desires of the represented’ (Kreusser 2003, 8). These instruments have been implemented and utilised by parties with varying levels of success. For example, while candidate selection processes are generally regarded as effective in creating responsiveness in the minds of MPs themselves, disciplinary bodies are viewed as less so. The most significant finding appears to be the importance of a culture of engagement and responsiveness to the broader party organisation – seen most clearly amongst Green Party MPs in their attitudes towards attendance at party meetings – in facilitating policy transferral. This suggests that in the absence of external enforcement mechanisms, party culture and the socialisation of members and parliamentarians alike to a ‘partnership’ model of policy development and application is more effective in securing accountability than coercive measures alone.

References

ABC 2008a. *Stateline* Transcript 'Crashing Through', 9 May 2008. Available online: http://www.abc.net.au/stateline/nsw/content/2006/s2240777.htm

ABC 2008b. *Stateline* Transcript 'The Division', 9 May 2008. Available online: http://www.abc.net.au/stateline/nsw/content/2006/s2240782.htm

Bale, T. 1997. 'Managing the Party and the Trade Unions'. In *New Labour in Power: Precedents and Prospects*, eds B. Brivati and T. Bale. London: Routledge.

Barnett, T. 2008. *Interview with author*. Parliament House, Wellington, 18 March.

Bille, L. 1997. *Partier I Forandring*. Odense: Odense Universitets Forlag.

Button, J. 2002. 'Beyond Belief: What Future for Labor?'. *Quarterly Essay* vol. 6. Melbourne: Black Inc.

Cowley, P. 2005. *The Rebels: How Blair Mislaid his Majority*. London: Politicos.
_________1996. 'Crossing the floor: representative theory and practice in Britain'. *Public Law* [1996]: 214-224.

Debnam, G. 1994. 'Overcoming the Iron Law? The Role of Policy Committees of the New Zealand Labour Party'. In *How Political Parties Work: Perspectives from Within*, ed K. Lawson. Westport, CT: Praegar.

Faucher-King, F. 2005. *Changing Parties: An Anthropology of British Political Party Conferences*. Basingstoke: Palgrave Macmillan.

Gauja, A. 2008. 'State Regulation and the Internal Organisation of Political Parties: The Impact of Party Law in Australia, Canada, New Zealand and the United Kingdom'. *Commonwealth and Comparative Politics* 46(2): 244-261.
________2006. 'From Hogan to Hanson: The Changing Status of Political Parties in Australian Law'. *Public Law Review* 17(4): 282-299.

Judge, D. 1999. *Representation: Theory and Practice in Britain*. London: Routledge.

Katz, R. 1987. 'Party Government and Its Alternatives'. In *Party Governments: European and American Experiences*, ed. R. Katz. Florence: EUI, Berlin: de Gruyter.
_______1986. 'Party Government: A Rationalistic Conception'. In *Visions and Realities of Party Government*, eds. F.G Castles and R. Wildenmann. Berlin: De Gruyter.

Kitschelt, H. 1990. 'New Social Movements and the Decline of Party Organisation'. In *Challenging the Political Order*, eds R. Dalton and M. New York: Oxford University Press.

__________1989. *The Logics of Party Formation. Ecological Politics in Belgium and West Germany*. Ithaca, NY and London: Cornell University Press.

Kreusser, D. 2003. ‘A Comparative Study of Middle Level Elites and Voters of Bündis 90 / Die Grünen in Germany with Regard to Social and Political Representation’. Paper presented at the ECPR Joint Sessions Workshop on ‘European Green Party Members: Analysing Political Behaviour’, Edinburgh.

Lloyd, C. 2000. ‘A Quest for National Rules’. In *The Machine: Labor Confronts the Future*, eds A. Parkin and J. Warhurst. St Leonards: Allen and Unwin.

Mair, P. 2007. ‘The Challenge to Party Government’, EUI Working Paper SPS No. 2007/09. Florence: European University Institute.

Malone, R. 2008. *Rebalancing the Constitution: The Challenge of Government Law-Making under MMP*. Victoria University of Wellington: IPS.

McGee, D. 2005. *Parliamentary Practice in New Zealand*, Third Edition. Wellington: Dunmore Publishing.

McKenzie, R. 1963. *British Political Parties*. London: Mercury Books.

Miller, R. 2005. *Party Politics in New Zealand*. Melbourne: Oxford University Press.

Miragliotta, N. 2006. ‘One Party, Two Traditions: Radicalism and Pragmatism in the Australian Greens’. *Australian Journal of Political Science* 41(4): 585-596.

Offe, C. 1980. ‘Konkurrenzpartei und kollective politische Idenität’. In *Parlamentarisches Ritual und politische Alternativen*, ed R. Roth. Frankfurt: Campus.

Oliver, D. 2003. *Constitutional Reform in the United Kingdom*. Oxford: Oxford University Press.

Palmer, G. and M. Palmer 2004. *Bridled Power: New Zealand’s Constitution and Government*, 4th Edition. Oxford: Oxford University Press.

Pettitt, R. 2006. ‘Rebellion by the seaside: How single member plurality has affected membership dissent at the Labour Party conference’. *Representation* 42(4): 289-301.

Poguntke, T. 1993. ‘Goodbye to Movement Politics? Organisational Adaptation of the German Green Party’. *Environmental Politics* 2(3): 379-404.

Rose, R. 1969. ‘The Variability of Party Government: A Theoretical and Empirical Critique’. *Political Studies* 17(4): 413-45.

Stockley, A. 2004. ‘What difference does proportional representation make?’ *Public Law Review* 15: 121-136.

Tanczos, N. 2008. *Interview with author*. Parliament House, Wellington, 13 March.

Thomassen, J. 1994. ‘Empirical Research into Political Representation: Failing Democracy or Failing Models?’ In *Elections at Home and Abroad: Essays in Honor of Warren Miller*, eds. M. Kent Jennings and T.E. Mann. Ann Arbor: Michigan University Press.

Vromen, A. and A. Gauja 2009, forthcoming. ‘Protesters, Parliamentarians, Policy-Makers: The Experiences of Australian Greens’ MPs’. *Journal of Legislative Studies* 15(1).